



The Commonwealth of Massachusetts Witness Protection Program

An Overview of Cases During Fiscal Years 2010 and 2011

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April 2012

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This document was prepared by the Massachusetts Executive Office of Public Safety and Security.

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Introduction

On March 30, 2006, “An Act Reducing Gang Violence” was signed into Massachusetts law.¹ The law’s principal goal was to create the Commonwealth’s first statewide witness protection program.

The Act established a five-member “Witness Protection Board” (the “Board”), which includes the Attorney General, the State Auditor, a representative from the Massachusetts District Attorneys’ Association, a representative from the Massachusetts Chiefs of Police Association, and the Secretary of Public Safety and Security, or their respective designees.² The statute allows the Attorney General and District Attorneys (or designated prosecutors) to apply for funds to protect a “critical witness,” defined as a person who is essential to the investigation or prosecution of a criminal matter and whose participation places him or her in danger.³ This money can also be used to protect “endangered” persons, defined as individuals who are placed in danger due to an association with the critical witness.⁴ The statute requires prosecutors to file a petition for witness protection services with the Board. The petition must provide a description of the criminal investigation or prosecution, an explanation of how the individual is considered a critical witness, an assessment by the prosecuting officer of the potential risk of harm to the critical witness, a proposed plan for protection services, a proposed budget to cover the cost to provide those services, and a memorandum of understanding between the prosecuting officer and the critical witness.⁵ Typical protection services include relocation, transportation, housing, and living expenses.⁶ The Witness Protection Board reviews the petition and can approve the petition in whole or in part, or it can deny the petition.⁷ The statute and regulations also allow prosecuting officers to take immediate steps to protect a witness facing an imminent threat, and to subsequently be reimbursed for providing such emergency protection services to witnesses.⁸

¹Mass. Gen. L. ch. 263A, added by St.2006, c. 48, “An Act Reducing Gang Violence.” This report to the General Court is filed in part to comply with the requirements of the Act. See § 11 (requiring an annual report to be filed with the General Court, the House and Senate Committees on Ways and Means, and the Joint Committee on the Judiciary).

² M.G.L. c. 263A, §2.

³ M.G.L. c 263A, §1.

⁴ Id.

⁵ See 501 C.M.R. 10.06.

⁶ M.G.L. c. 263A, § 5.

⁷ 501 C.M.R. 10.08

⁸ See M.G.L. ch. 263A, § 4; 501 C.M.R. 10.08.

The statute places significant requirements on the witness as well. Before receiving witness protection funds, the witness and prosecuting officer must sign a Memorandum of Understanding. The Memorandum of Understanding requires critical witnesses to provide complete and truthful information to police and prosecutors, to testify truthfully in all necessary court proceedings, to not commit any crime, to cooperate with all reasonable requests of those providing protective services, to make a sworn statement of all legal and court obligations (such as child support) as well as to disclose any probation or parole conditions, to avoid disclosing to others their participation in the program, and to keep police and prosecutors updated on their activities and current address.⁹ If a critical witness fails to abide by any of the conditions set forth in the Memorandum of Understanding, the prosecuting officer may revoke and terminate all protection services.

In Fiscal Year 2010, the Board received 53 petitions; 40 were new and 13 of them sought additional services. The number of petitions decreased to 49 in Fiscal Year 2011; 30 were new and 19 of them sought additional services. The Board conducted several trainings at District Attorneys' Offices in Fiscal Year 2010 and has continued to provide training.

When first created, the Board received funding totaling \$1 million. However, despite heightened awareness and interest in the program in the years since 2006, the Board received only \$168,799 in funding for Fiscal Year 2009. As a result, the Board reduced its funding of high-cost temporary hotel and motel stays and focused instead on setting up witnesses in longer-term housing. Suffolk County District Attorney Daniel Conley credits the Witness Protection Program as a significant factor in the office's 2009 homicide conviction rate of 95%.¹⁰ The Witness Protection Program has proven to be a critical tool to keep witnesses safe and to secure testimony, without which an indictment or conviction might otherwise be impossible.

This report presents information on witness protection services in Massachusetts during Fiscal Years 2010 and 2011, with several comparisons to previous years of the program. Data in this report is taken from the witness protection petitions filed by the Attorney General and District Attorneys' offices.

⁹ See M.G.L. ch. 263A, §6; 501 C.M.R. 10.11.

¹⁰ Saltzman, Jonathan, "Homicide conviction rate in '09 up sharply," Boston Globe, Dec. 28, 2009, available at http://www.boston.com/news/local/massachusetts/articles/2009/12/28/suffolk_prosecutors_record_95_percent_conviction_rate/

Case Characteristics

Petition Overview

If a critical witness requires protection services beyond the services provided by the original petition, a prosecuting officer must file a new petition for additional services.¹¹ A single case then consists of an original petition as well as any subsequent petitions for additional services. In FY10 this represented a total of 53 petitions, all of which were funded at least in part. Out of those 53, 13 were requests for additional services. In FY11 the Board funded 49 petitions in total. Nineteen of those petitions were requests for additional services.

Funding Overview

The Board approved \$160,532.06 for the petitions funded during FY10. The Board approved approximately 86% of petitions for the full amount requested in FY10, and approved 14% for partial funding. In FY11, the Board approved \$181,654.86 for all petitions funded in FY11. The Board approved approximately 64% of petitions for the full amount requested in FY11, approved 33% for partial funding, and denied 3% of petitions.

Funding For FY10 and FY11

Figure 1 compares the amount of witness protection funding that the state and federal budgets gave to the Board in FY10 and FY11 and the amount of witness protection funding that the Board spent during each of those years. For each of FY10 and FY11, the Board received \$94,245 from the state budget. In FY11, the Board received an additional \$100,000 from federal funds,¹²

¹¹ 501 C.M.R. 10.08(5)

¹² This additional funding was a one-time grant from the Edward Byrne Memorial Justice Assistance Grant Program.

Figure 1.

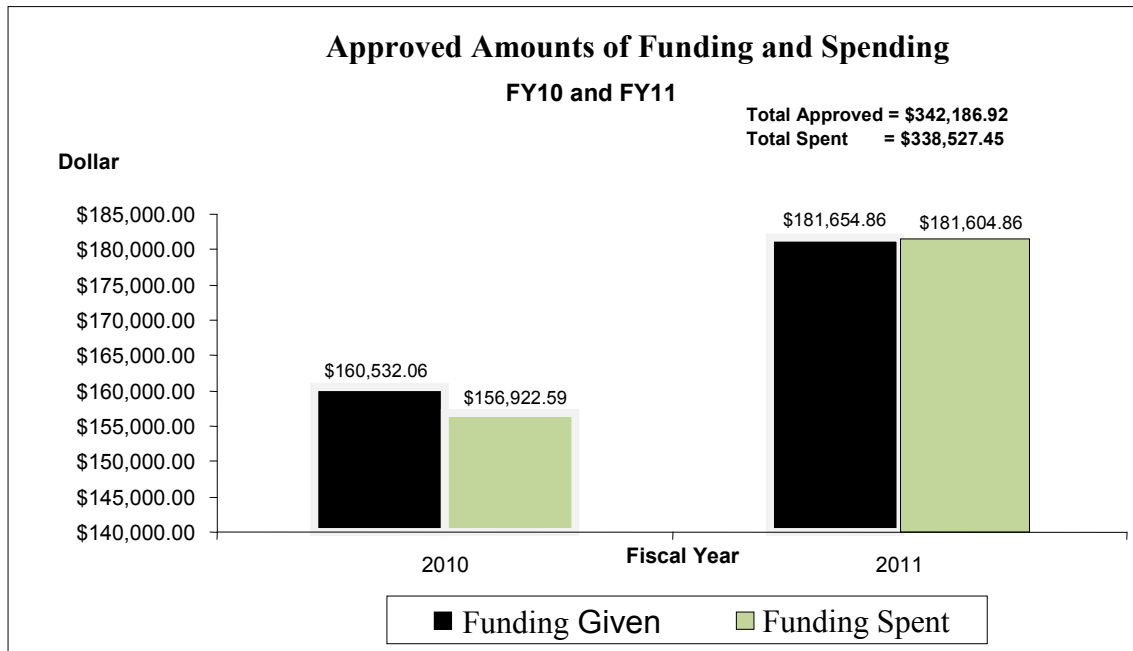
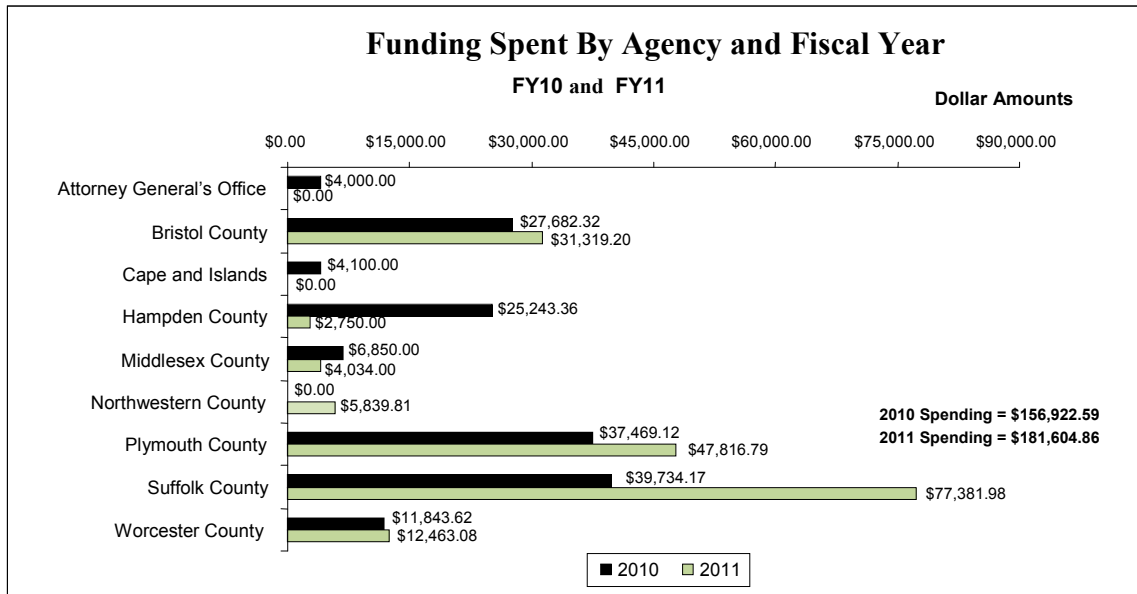


Figure 2 shows how the funds were allocated among the Attorney General’s Office and the various District Attorneys’ offices, identified by county. In both FY10 and FY11, the Suffolk County District Attorney’s Office received the most witness protection funding.

Figure 2.



Funding Per Petition

The tables to follow will compare the number of petitions and average funding amounts per petition for FY10 and FY11. Figure 3 and Table 1 show the number of petitions that were funded by the Board by prosecuting office (identified by county) and fiscal year.

Figure 3.

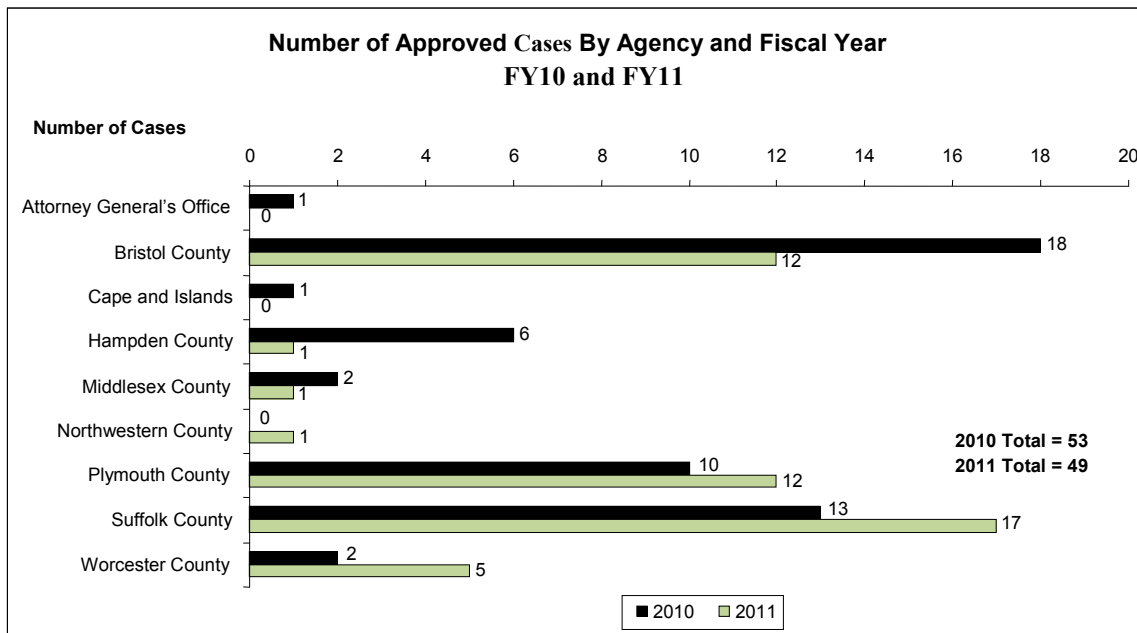


Table 1.

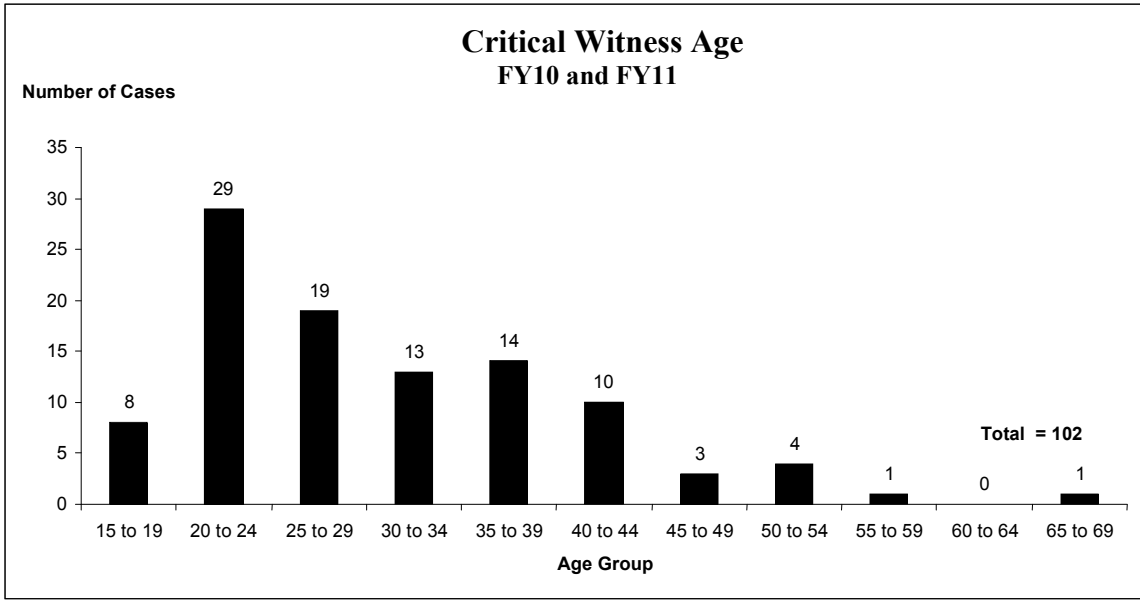
Agencies	2010	2011
Attorney General's Office	\$4,000.00	N/A
Bristol County DA	\$1,537.91	\$2,609.93
Cape and Islands DA	\$4,100.00	N/A
Hampden County DA	\$4,207.23	\$2,750.00
Middlesex County DA	\$3,425.00	\$4,034.00
Northwestern County DA	N/A	\$5,839.81
Plymouth County DA	\$3,746.91	\$3,984.73
Suffolk County DA	\$3,056.47	\$4,551.88
Worcester County DA	\$5,921.81	\$2,492.62

Witness Characteristics

Critical Witness Age and Gender

The following analysis of witness characteristics in FY10 and FY11 will not include persons whose files began in an earlier fiscal year. Of all cases funded in FY10 to FY11, a total of 8% began in FY07, FY08, or FY09. In FY10 and FY11, the average age of the critical witness was 30, and the median age was 27. The youngest critical witness was 15 years old, and the oldest was 66 years old. During the same time period, there were similar numbers of male and female critical witnesses (48% and 52%, respectively).

Figure 4.



Relationship and Age of Endangered Persons

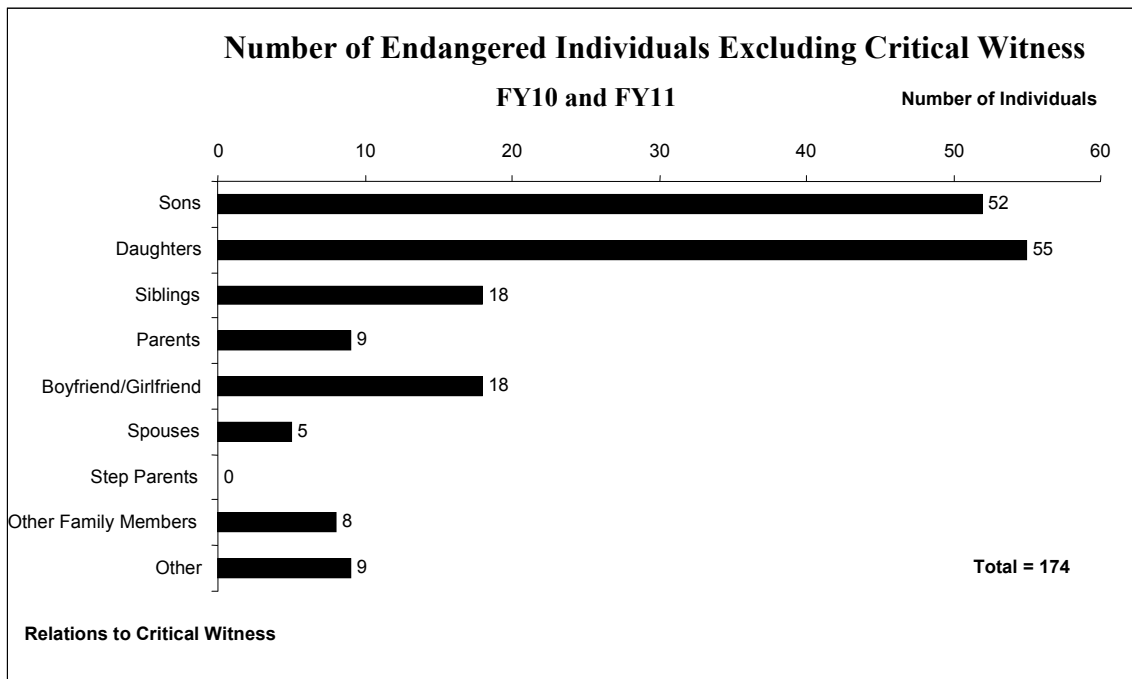
The number of persons protected per case ranged from one to seven people, the former indicating that the critical witness was the only individual protected, which occurred in 29% of cases in FY10 and FY11.

Figure 5.

Number of Individuals Protected Per Case In FY10 and FY11						
Number of Individuals Protected Per Case	Number of Cases			Number of Individuals Protected		
	<i>FY 2010</i>	<i>FY 2011</i>	<i>Total Cases</i>	<i>FY 2010</i>	<i>FY 2011</i>	<i>Total</i>
1	15	15	30	15	15	30
2	10	11	21	20	22	42
3	15	8	23	45	24	69
4	6	7	13	24	28	52
5	2	7	9	10	35	45
6	3	1	4	18	6	24
7	2	0	2	14	0	14
<i>Total</i>	53	49	102	146	130	276

In FY10 and FY11, the endangered persons protected under the petitions were generally family members of the critical witness. Approximately 61% of the endangered persons were children of the critical witness. As shown in Figure 6, the most common relationship types were daughter (32%), son (30%), sibling (10%), and girlfriend or boyfriend (10%).

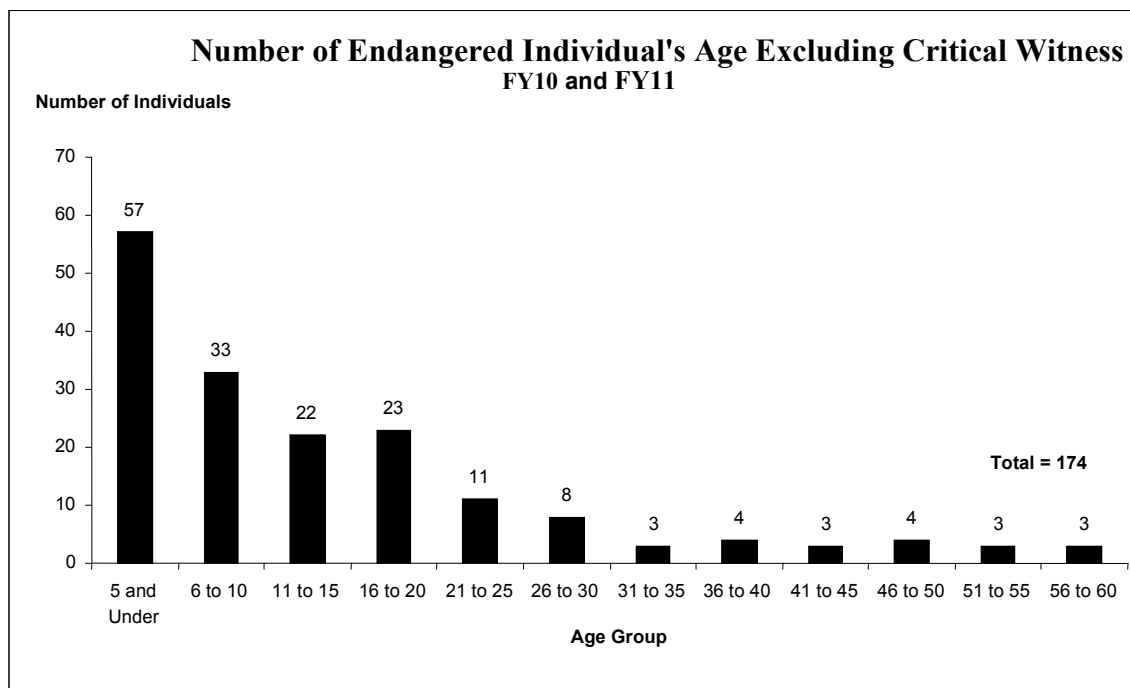
Figure 6.¹³



The endangered persons protected during FY10 and FY11 tended to be younger than the critical witnesses. This is not surprising given that 61% of the endangered persons were children of the critical witness. Approximately 33% of endangered persons were age 5 and under, and 78% were under age 21. The average age of endangered persons was 15 years, and the median age was 10.

¹³ The “other” category included relationships such as in-laws and girlfriend’s/boyfriend’s children.

Figure 7.



Incident Characteristics

Incident Type, Nature, and Weapon Used

In each petition, the prosecutor provides information about the underlying investigation or prosecution for each case. Incident characteristics, nature of the offense, and weapons used for cases spanning FY10 through FY11 are described below. It is important to note that the categories of incident type, offense nature, and weapons in Tables 2, 3, and 4, as well as in the corresponding Figures 8, 9, 10, and 11 are not necessarily mutually exclusive because some cases involved multiple incident types, weapons, etc. Again, the analysis of each fiscal year will only include cases that were initiated in that fiscal year and not cases that were initiated in a previous fiscal year.

In FY10 and FY11, cases involved murder far more often than other incidents (44% for murder in both years, followed by 11% and 18% for attempted murder, respectively).

Table 2. ¹⁴

Number and Percentage of Incidents By Incident Type and FY10 and FY11				
<i>Incident Type</i>	2010		2011	
	<i>Number of Incidents</i>	<i>Percentage</i>	<i>Number of Incidents</i>	<i>Percentage</i>
Assault and Battery	7	9.72%	12	18.18%
Attempted Murder	8	11.11%	12	18.18%
Conspiracy	5	6.94%	0	0.00%
Home Invasion/Breaking and Entering	5	6.94%	5	7.58%
Kidnapping	0	0.00%	1	1.52%
Murder	32	44.44%	29	43.94%
Other	10	13.89%	3	4.55%
Rape/Attempted Rape	1	1.39%	0	0.00%
Robbery	4	5.56%	4	6.06%
Total	72	100%	66	100%

The “nature of the incident” was also recorded, which includes categories such as domestic violence, narcotics trafficking, gang-related incidents and organized crime. As shown in Table 3, gang-related incidents are the most common, with approximately 50% of incidents in FY10 and 58% in FY11.

Table 3.

Incident Type Frequency in FY 10 and FY 11				
<i>Nature Incident Type</i>	2010		2011	
	<i>Number of Incidents</i>	<i>Percentage</i>	<i>Number of Incidents</i>	<i>Percentage</i>
Domestic Violence	2	3.77%	4	8.00%
Gang	27	50.94%	29	58.00%
Narcotics	9	16.98%	8	16.00%
Organized Crime	1	1.89%	0	0.00%
Other	11	20.75%	4	8.00%
Personal Dispute	0	0.00%	1	2.00%
Random Violence	3	5.66%	4	8.00%
Total	53	100.00%	50	100%

¹⁴ “Other incidents” involved crimes such as firearms violations, extortion and threats, and drug related crimes.

The petitions also include information regarding weapons used during the incident. The most common weapon involved in a funded case was a firearm. Firearms were used in 78% and 71% of cases in FY10 and FY11, respectively.

Table 4.

Number and Percentage of Incident Involving Weapons in FY10 and FY11				
<i>Weapons Used</i>	2010		2011	
	<i>Number of Incidents</i>	<i>Percentage</i>	<i>Number of Incidents</i>	<i>Percentage</i>
Blunt Objects	3	5.88%	2	3.57%
Firearm	40	78.43%	40	71.43%
Hand/Feet/Body Parts	4	7.84%	6	10.71%
Knife/Cutting Instrument	2	3.92%	8	14.29%
Other Weapons	2	3.92%	0	0.00%
Total	51	100.00%	56	100.00%

Funding for FY10 and FY11 Cases

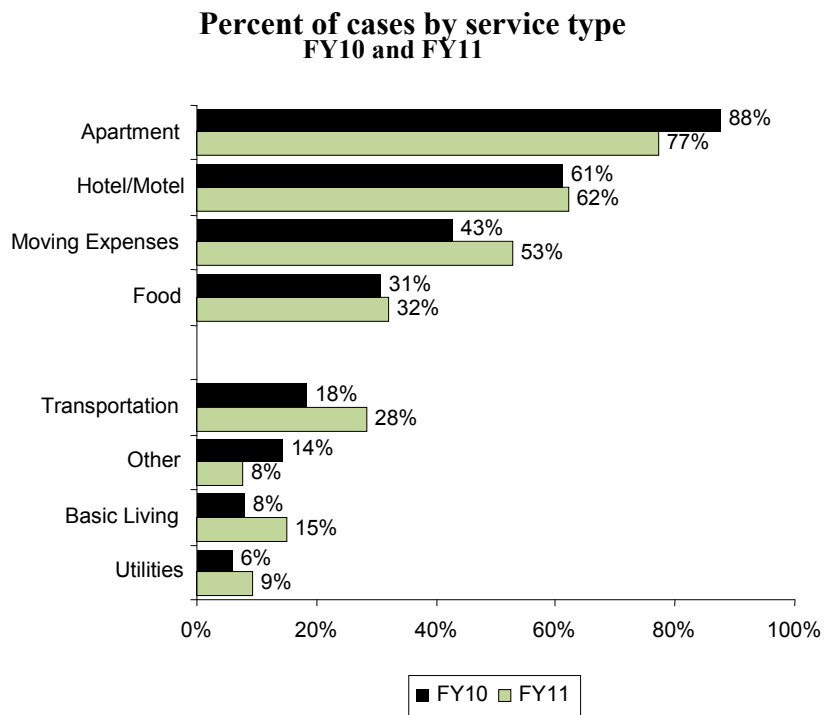
Petitions collect specific information on the costs of the proposed plan for services or emergency services already expended. Figure 9 shows the most commonly funded services for cases initiated in FY10 and those initiated in FY11.

In FY10 and FY11, approximately 77% and 88% of cases received funding for apartment related costs and approximately 62% and 61% for hotel/motel costs, respectively. Other commonly funded services were moving expenses (53% and 43% of cases for FY10 and FY11) and food (32% and 31% of cases).

Figure 8.

Number and Percentage of Incident Receiving Service Type Funding in FY 10 and FY 11				
<i>Service Type</i>	2010		2011	
	<i>Number of Incidents</i>	<i>Percentage</i>	<i>Number of Incidents</i>	<i>Percentage</i>
Apartment	41	26.97%	43	32.58%
Basic Living	8	5.26%	4	3.03%
Food	17	11.18%	15	11.36%
Hotel	33	21.71%	30	22.73%
Moving	27	17.76%	21	15.91%
Other	4	2.63%	6	4.55%
Transportation	16	10.53%	9	6.82%
Utilities	6	3.95%	4	3.03%
Total	152	100.00%	132	100.00%

Figure 9.



Figures 10 and 11 show the total witness protection funding spent by service type in FY10 and FY11. There were similar patterns of funding in both years, with apartment and hotel/motel expenses accounting for the majority of expenses (75% in FY10 and 66% in FY11). The “other”

category, which includes services such as lost wages, phone cards, storage, and security was the third highest category in FY11 accounting for 20% of spending, although it only accounted for 1% in FY10. This discrepancy is attributable to a single case in FY11 that required an uncharacteristically high level of funding. The evidence does not indicate an onset of a major change in the Board's funding priorities.

Figure 10.

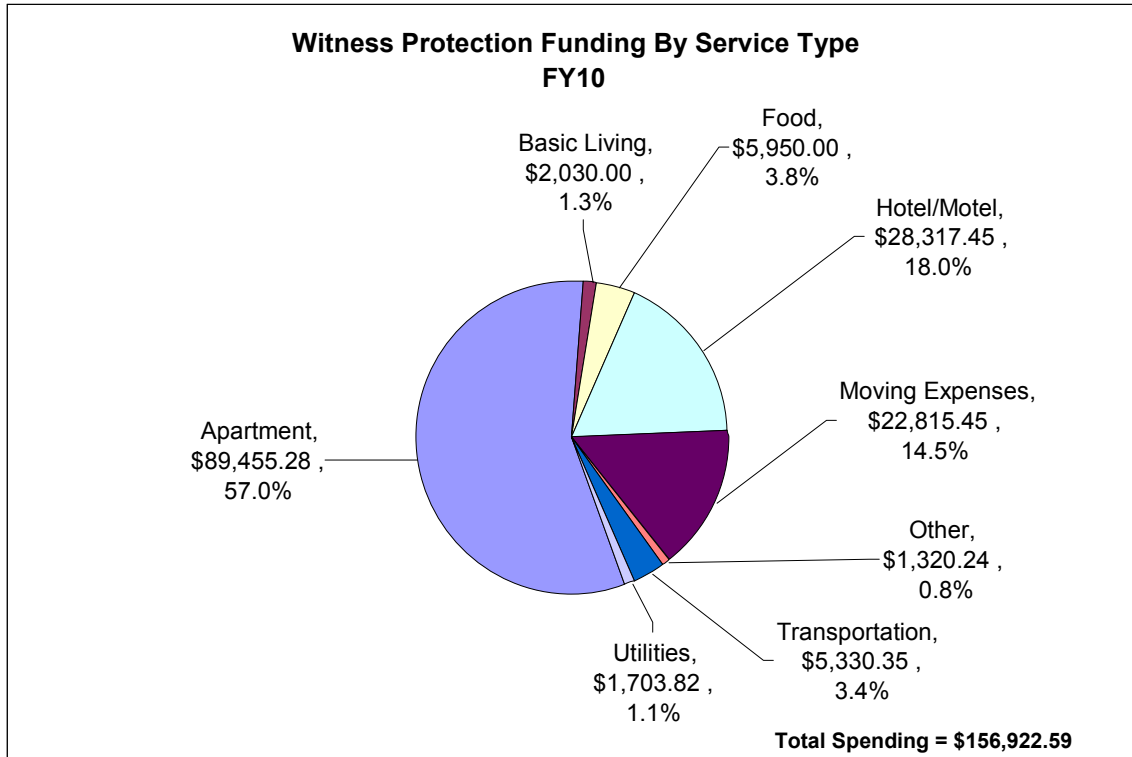
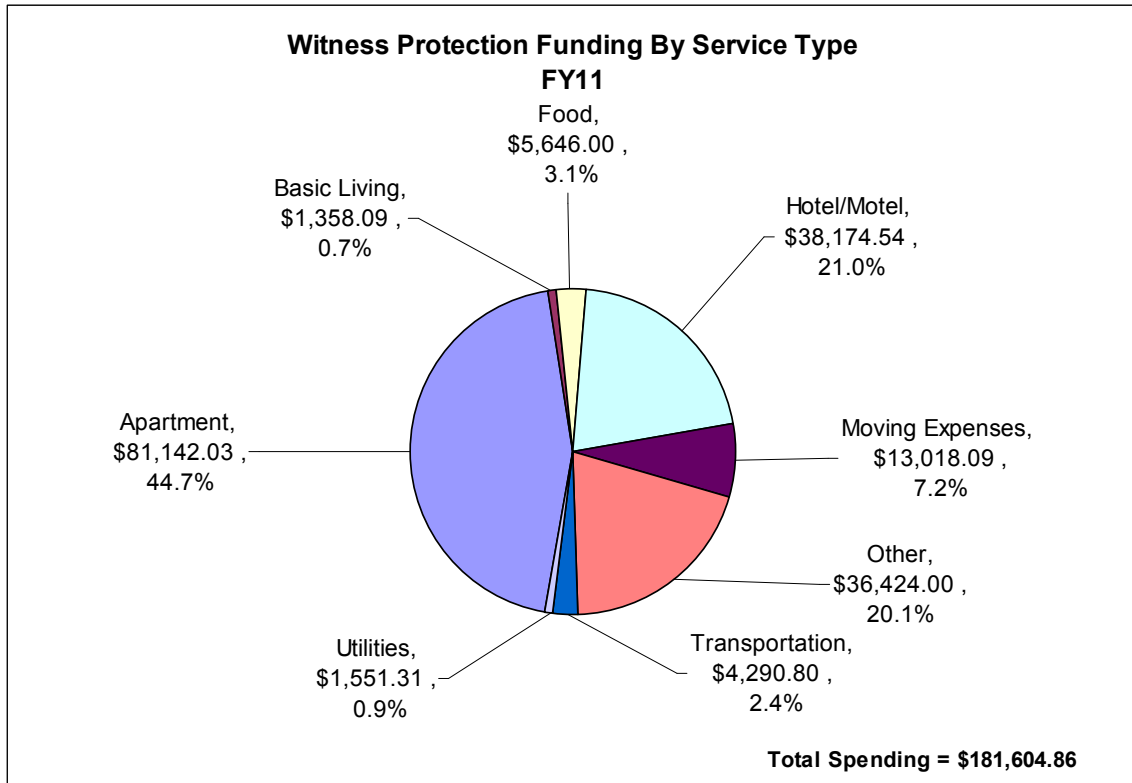


Figure 11.



Despite steep cuts in funding, the Witness Protection Board continues to assist prosecutors across the Commonwealth to protect the health, safety and welfare of critical witnesses facing dangers such as intimidation and retaliatory violence.

Appendix

501 CMR: EXECUTIVE OFFICE OF PUBLIC SAFETY

501 CMR 10.00: Witness Protection Program

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10.01: Purpose

The purpose of 501 C.M.R. 10.00 is to provide guidance to critical witnesses, prosecuting officers, the judiciary, law enforcement, and the public concerning the Witness Protection Program. 501 C.M.R. 10.00 sets forth the procedures by which a prosecuting officer may petition the Witness Protection Board for assistance in protecting a witness from potential dangers related to the witness's participation in a criminal investigation or prosecution.

10.02: Statutory Authorization

501 CMR 10.00 *et. seq.* is promulgated pursuant to St. 2006, c. 48, "An Act Reducing Gang Violence."

10.03: Definitions

For the purposes of 501 C.M.R. 10.00, the following words shall have the following meanings:

Board. The Witness Protection Board, comprised of the Secretary of Public Safety, the Attorney General, the Auditor, a chief of police

appointed by the Massachusetts Chiefs of Police Association, and a district attorney appointed by the Massachusetts District Attorneys' Association, or any member's respective designee.

Critical witness. Any person who:

- (a) is participating in a criminal investigation; or
- (b) has received a subpoena in the context of a criminal investigation; or
- (c) is reasonably expected to give testimony

and, in the judgment of the prosecuting officer, is essential to a criminal investigation or proceeding. For purpose of 501 C.M.R. 10.00, the term "person" shall mean the critical witness, or that witness's relatives, guardians, friends, or associates who are endangered by the witness's participation in the criminal investigation or proceeding. For purpose of 501 C.M.R. 10.00, the term "essential" shall mean the prosecuting officer has a reasonable basis for believing that the witness will provide material, relevant information or testimony.

Prosecuting officer. The Attorney General or a District Attorney for any district.

10.04:

Scope

501 C.M.R. 10.00 shall apply to the Executive Office of Public Safety, members of the Witness Protection Board, all prosecuting officers who seek witness protection services for a critical witness, all critical witnesses accepting protection services, any law enforcement official assigned to provide witness protection services, any person receiving information regarding witness protection services, a superintendent of any school district directed to accept the transfer of a critical witness, an administrator of any housing authority directed to accept the transfer of a critical witness, and any other person called upon by the Board to assist in maintaining the safety and security of a critical witness.

10.05:

Eligibility

Any person who, in the judgment of the Board, meets the definition of a critical witness shall be deemed eligible to receive witness protection services.

0.06:

Petition for Witness Protection Services

Requests by prosecuting officers to the Board for witness protection services shall be submitted on witness protection petition forms developed and issued by the Board. Any witness protection petition shall contain, at a minimum, the following information:

- (1) a description of the criminal investigation or prosecution;
- (2) an explanation of how the prospective protectee meets the definition of a "critical witness";
- (3) an assessment by the prosecuting officer of the potential risk of harm to the critical witness;

- (4) a proposed plan for protection services, including projected costs, method of protection, and expected duration of services; and
- (5) a signed memorandum of understanding between the prosecuting officer and the critical witness. The written memorandum of understanding shall be signed by the prosecuting officer or his designee, the witness to be afforded protection services, and the witness's attorney if he or she is represented by counsel. If the witness is a minor, the witness's guardian shall sign the memorandum for the witness.

10.07:

Petition Authority

A prosecuting officer may delegate the authority to petition for witness protection services to his or her designee, provided that the prosecuting officer submits a letter to the Board naming the designee before the designee submits a petition.

10.08:

Review of Petition by Witness Protection Board

(1) A petition for witness protection services submitted by a prosecuting officer shall be distributed to the Board at the earliest opportunity, and in any event not more than forty eight (48) hours after receipt of the petition. The Board shall meet as often as necessary to review, deliberate, and act on petitions submitted by prosecuting officers.

(2) The Board may approve, in whole or in part, any submitted witness protection petition. The Board may also deny a witness protection petition, or may require a prosecuting officer to resubmit the petition with additional information. Before acting on a petition, the Board may consult with a prosecuting officer, in person or otherwise, and request any additional information it deems necessary. Three or more members of the Board must vote to approve a petition for witness protection services. The Board's decision will be immediately communicated to the prosecuting officer by the Chair of the Board.

(3) Subject to the requirements of 501 C.M.R. 10.10 (2), (3), and 501 C.M.R. 10.12(2), an approved witness protection request shall authorize a prosecuting officer to receive reimbursement up to a dollar amount specified by the Board, and for a period of time determined by the Board or his or her designee.

(4) The prosecuting officer shall notify the Board in writing each time a critical witness commits a breach of the memorandum of understanding. Such notice shall be submitted to the Board within three business days of the prosecuting officer's first learning of the breach. If a breach occurs of a term of the memorandum of understanding, the prosecuting officer may revoke and terminate all protective services, and shall so advise the witness in writing. The prosecuting officer must notify the Board in writing within three business days of his or her decision to terminate a critical witness for committing a breach. If a breach occurs, the Board may terminate or limit reimbursement for witness protection services, require a witness to sign a new memorandum of understanding containing additional terms or restrictions, or take any other action it deems necessary, as a condition of continued reimbursement.

(5) In any case where a prosecuting officer requires additional funds for witness protection services, or must extend the length of time that witness protection services are provided to a critical witness, the prosecuting officer must submit a new petition for witness protection services to the Board. The supplemental petition shall include:

- (a) the previously-filed petition;
- (b) a description of services provided to date,
- (c) a description of funds spent to date, including financial records;
- (d) certification that the witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board;
- (e) the reason why additional witness protection services are needed or have been more expensive to provide than was originally estimated; and
- (f) an updated plan for protection services, including projected costs, method of protection, and expected duration of services.

(6) The Board shall meet periodically, and in no event less than four (4) times per calendar year, in order to conduct business essential to the effective maintenance and administration of the program. These quarterly meetings shall be held in the Office of the Secretary of Public Safety or other location as designated by the Chair, and shall require the attendance of Board members or their designees.

(7) Notwithstanding any general or special law or regulation to the contrary, and pursuant to the authority vested in the Board by M.G.L. c. 263A, § 8, the Board shall have the authority to relocate a critical witness to any public school, within or without the witness's current school system, without requiring that the witness change his or her place of residence, and without regard to any waiting list or other impediment to the relocation.

(8) Notwithstanding any general or special law or regulation to the contrary, and pursuant to the authority vested in the Board by M.G.L. c. 263A, § 9, the Board shall have the authority to relocate a critical witness who resides within the public housing system to another residence within the public housing system, without regard to any waiting list or other impediment to the relocation.

9) M.G.L. c. 30A, §§ 11A and 11A ½ shall not apply to any meeting, discussion, or deliberation of the Board.

10.09:

Emergency Authorization

If a prosecuting officer determines that there is an imminent threat to the safety of a critical witness, the prosecuting officer may take any reasonable, appropriate temporary action he or she deems necessary to protect the safety of the witness without prior approval of the Board. In order to obtain reimbursement for expenses incurred in providing emergency protection services, the prosecuting officer must notify the

Board of the action taken and the related costs as soon as it is reasonably practical to do so, and in no event longer than 48 hours after the prosecuting officer begins expending funds for emergency witness protection services. Within 14 days of expending funds for emergency witness protection services, or within a period of time set by the Board, the prosecuting officer shall file with the Board a petition for witness protection services which includes all of the information detailed in 501 C.M.R. 10.06, as well as an explanation of the exigent circumstances which required the prosecuting officer to act to secure the safety of the witness, the emergency witness protection services provided to date, and the amount of funds expended to provide emergency witness protection. Any costs incurred by a prosecuting officer on an emergency basis which the Board determines, by a vote of three or more members, are otherwise in compliance with these regulations and which are communicated to the Board in compliance with the terms of this section may be reimbursed, in whole or in part.

10.10:

Additional Responsibilities of the Board

- (1) The Board shall reimburse all approved witness protection expenses incurred by prosecuting officers, subject to appropriation.
- (2) The Board shall issue guidelines relative to the payment of witness protection expenses, in addition to accounting and reporting requirements for prosecuting officers.
- (3) At regular intervals to be determined by the Board, the Board shall require the prosecuting officer to certify that:
 - (a) he or she has taken reasonable and appropriate steps to monitor the conduct of the critical witness;
 - (b) to the best of his or her knowledge and belief, the critical witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board.
- (4) All records of the Board, whether generated by the Board or received from a prosecuting officer, related to witness protection services shall be stored in a secure location established by the Secretary of Public Safety. This secure location shall be accessible only to the Secretary of Public Safety, his designee, and any other person whose access is determined by the Secretary of Public Safety to be essential to the successful operation of the witness protection program. Computer files and programs used by the Board containing information related to a critical witness will be protected by appropriate security procedures. Each Board member and prosecuting officer shall develop similar security procedures for his or her office, to ensure the confidentiality of sensitive law enforcement information and the safety of critical witnesses. Each prosecuting officer shall be required to report his or her security procedures to the Board prior to receiving reimbursement for witness protection services. Any officer or employee of the Commonwealth or its political subdivisions who receives information related to witness protection services shall maintain the confidentiality of the information.

(5) The Board shall develop and implement any other necessary policy, rule, or guideline necessary for the successful operation of the witness protection program.

10.11:

Responsibilities of the Critical Witness

(1) The critical witness must, at a minimum, sign a memorandum of understanding in which he or she agrees to undertake the following responsibilities:

- (a) provide complete and truthful information to law enforcement officials, and testify completely and truthfully in all appropriate proceedings;
- (b) not commit any crime;
- (c) take all precautions necessary to avoid making known his or her participation in the witness protection program, except as authorized by a prosecuting officer or the Board;
- (d) cooperate with all requests by all officers and employees of the Commonwealth and its political subdivisions who are providing protection services at the direction of the prosecuting officer;
- (e) designate another person to act as an agent for the service of process;
- (f) make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation, and child support, as well as any probation or parole conditions, obligations or responsibilities;
- (g) undertake to comply with all court orders, legal obligations or civil judgments;
- (h) report his or her activities to the prosecuting officer on a regular basis.

(2) Failure by the critical witness to comply with any of the terms of the memorandum of understanding may lead to termination of protection services.

(3) If a witness, after being offered witness protection services, declines those services, the prosecuting officer shall request that the critical witness document that decision on a form developed and issued by the Board. If the witness refuses to memorialize his or her refusal of protection services, the prosecuting officer shall document the refusal and inform the Board within three business days of learning of the witness's refusal that the witness has declined protection services.

10.12:

Responsibilities of Prosecuting Officer

(1) The prosecuting officer must, at a minimum, sign a memorandum of understanding in which he or she agrees to undertake the following responsibilities:

- (a) provide the witness with the names and telephone numbers of the prosecuting officer or law enforcement personnel to

contact if the witness has questions or concerns related to the protection services or the witness's safety;

- (b) certify that the protection services requested by the prosecuting officer and authorized by the Board will be provided to the witness; and
- (c) establish procedures to be followed if, in the determination of the prosecuting officer, the witness has committed a breach of the agreement.

(2) Subject to the requirements of 501 C.M.R. 10.10(3), the prosecuting officer must certify that:

- (a) he or she has taken reasonable and appropriate steps to monitor the conduct of the critical witness;
- (b) to the best of his or her knowledge and belief, the critical witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board.

The Board shall develop certification forms to accompany reimbursement requests by prosecuting officers.

10.13:

Disclosure of Witness Protection Information in a Criminal Case

With respect to any request by a defendant for information on protection services provided to a witness, the prosecuting officer shall seek appropriate court orders to ensure that the information concerning the witness remains as confidential as possible and is disseminated to as few persons as possible. With an appropriate court order, a defendant may obtain the witness's signed memorandum of understanding, a statement detailing the witness protection services provided, and the approximate cost of providing those services. This statement shall not contain any information which could lead any person to determine where the witness resided while receiving protection services. The Board shall develop model disclosure forms to accompany discovery produced to a defendant by a prosecuting officer.

10.14:

All Other Disclosures Related to Witness Protection

(1) Notwithstanding any general or special law or regulation to the contrary, no document, record, or petition, in whatever form, generated by the Board or by a prosecuting officer and related to witness protection services shall be a public record.

(2) So long as witness protection services are being provided to a critical witness, the prosecuting officer shall disclose the identity and location of a protected critical witness upon the request of a federal, state, or local law enforcement official, or pursuant to a court order, if the prosecuting officer knows, or the request from the law enforcement official reveals, that the protected witness is under criminal investigation for, or charged with, a felony.

(3) In all other instances where information related to witness protection services is requested, no information or document shall be disclosed

without the approval of three or more members of the Board or a valid court order.

10.15: **Liaisons**

(1) The Board shall establish a liaison with the United States Marshal's Office in order to facilitate the legal processes over which the federal government has sole authority.

(2) The Board shall establish a liaison with the United States Department of Justice in order to pursue all federal sources of funding that may be available for implementing this program.

(3) In conjunction with the Executive Office of Administration and Finance and the Senate and House Committees on Ways and Means, the Board shall establish procedures to maximize federal funds for witness protection services.

10.16: **Waiver**

The Board may, by a vote of three or more members, waive any provision of 501 C.M.R. 10.00 not required by statute.

10.17: **Immunity**

Nothing in 501 C.M.R. 10.00 shall be construed as creating a right, entitlement, or cause of action on behalf of any person against any public employee, public agency, the Commonwealth, or any agency responsible for the provision of services set forth herein. The Commonwealth, its officers and employees, and law enforcement personnel shall have immunity from suit based on any decision, act, or omission related to these regulations.

10.18: **Severability**

If any article, section, subsection, clause, or phrase of 501 CMR 10.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Secretary of Public Safety or the Witness Protection Board, or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 501 CMR 10.00.

REGULATORY AUTHORITY

501 CMR 10.00; St. 2006, c. 48.