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Commonwealth of Massachusetts
Office of the Attorney General

SCOTT HARSHBARGER
Attorney General



1993 LAW ENFORCEMENT LEGISLATIVE PACKAGE

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**ATTORNEY GENERAL SCOTT HARSHBARGER'S
1993 LAW ENFORCEMENT LEGISLATIVE PACKAGE**

PROSECUTORIAL TOOLS

1. **Sentencing Reform**, H. 3347: This legislation proposes comprehensive revision of sentencing practices and criminal justice administration in the Commonwealth. Specifically, the Act calls for the creation of:

The Massachusetts Sentencing Commission

- * Charged with formulating sentencing guidelines and proposing annual amendments to the guidelines where appropriate.
- * Composed of seven voting and four non-voting members, representing judges, attorneys and criminal justice agencies, and serving staggered six-year terms.

Sentencing Guidelines

- * Set prescribed sentencing ranges, promoting certainty and fairness in sentencing by eliminating disparities in sentences for comparable offenders and offenses.
- * Developed to prevent the early release of inmates due to prison and jail overcrowding.
- * Preserving flexibility by allowing individualized sentencing in response to specific aggravating or mitigating factors in a particular case.
- * Departure below existing mandatory minimum term permitted where the Commission has specifically identified limited mitigating factors.

Intermediate Sanctions

- * Establishing a variety of intermediate sanctions, recognizing that imprisonment often may not be the necessary or proper sanction.
- * Utilizing a range of sanctions, enabling limited correctional resources to be most appropriately applied by incarcerating violent and repeat offenders, and imposing noninstitutional punishments on less serious offenders.

Early Release

- * Abolish automatic "good time" credits, which currently reduce prison terms by up to 40%.
- * Restrict eligibility for placement in community supervision to two-thirds of the sentence, and eliminating the current parole structure.
- * Require all offenders to be subject to a minimum period of post-release community supervision.

The Executive Office of Criminal Justice and Public Safety

- * Expand the duties and responsibilities of the Executive Office of Public Safety in order to enhance coordination of the criminal justice functions in the Commonwealth.

- * Combine the functions of probation and parole into a new Department of Community Corrections, placing the state's prisons under the Department of Correctional Institutions.
- * Establish a Community Safety Board, a nine-member body appointed by the governor, to administer the discretionary placement of offenders under community supervision.

2. Statewide Grand Jury, S. 726: This bill would facilitate the prosecution of statewide criminal cases by allowing the Chief Justice of the Supreme Judicial Court, upon written application of the Attorney General and a showing of good cause, to direct superior court judges to convene and preside over statewide grand juries with jurisdiction extending throughout the Commonwealth. Offenses indicted by statewide grand jury may be prosecuted in any county where the offenses occurred. Statewide grand juries will operate in the same manner as county grand juries, except as otherwise provided in the act.

3. Grand Jury Immunity, H. 3228: This bill extends the obligation to a witness who has been granted immunity by a justice of the Supreme Judicial Court to testify or produce evidence not only before a grand jury, but also before any criminal proceeding in the superior court. It also modifies the General Laws by broadening the crimes for which witnesses may be granted immunity with the addition of any felony to the list of crimes. The bill also extends the granting of immunity to a witness in criminal proceedings on the basis of not only immunity previously granted for grand jury testimony, but also for testimony in a superior court criminal proceeding. The procedures for a District Attorney or the Attorney General to seek immunity and to waive service of applications are also modified.

4. Obstruction of Justice, S. 185: This bill would codify the district attorneys' and Attorney General's ability to prosecute individuals who conceal or give false information during an investigation of a crime or during a police officer's official functions with the intent to influence the investigation.

5. Tax Return Disclosure, S. 1313: This bill would expand the availability of tax returns and tax return information for use in criminal investigations. Such availability would be obtainable only by an order from a justice of the Superior Court and only to the Attorney General, the District Attorneys or other law enforcement agency working under their direction for use in criminal

investigations. Before a justice grants disclosure, he must determine that there is reasonable cause to believe that a specific criminal act has been committed, that the information sought is relevant to a matter relating to commission of such act, and that the information is being sought exclusively for use in a state or county criminal investigation or proceeding concerning such act.

The Attorney General also supports these bills as Prosecutorial Tools:

6. Drive-By Shootings, H. 4691: This bill would create two new crimes punishable by penalties of up to a maximum of twenty years imprisonment and a fine of up to \$50,000: (1) for shooting at occupied or unoccupied dwelling houses, occupied schools, buildings or motor vehicles; and (2) for discharging a firearm from a motor vehicle. Any such shooting which results in personal injury would be punished by a mandatory minimum of five years.

7. Electronic Surveillance, H. 4696: This bill would expand the categories of investigations in which electronic surveillance could be used, to include crimes of violence against persons or property, any type of organized criminal activity, drug offenses, public integrity offenses and illegal toxic waste dumping. It would authorize and provide for the limited use (for personal safety purposes) of transmitting (not recording) devices by law enforcement officers operating in an undercover capacity.

8. Increase Fines For Felonies And Misdemeanors, H. 4687: This bill would increase the maximum fines for all criminal offenses to \$50,000 for an individual convicted of a felony, and \$10,000 for a misdemeanor; and \$250,000 for an organization convicted of a felony and \$50,000 for a misdemeanor.

For Pen Register/Trap and Trace, RICO, Bank Fraud, Conflict of Interest, Increase Conflict of Interest Penalties, Increase Bribery Penalties and Increase Penalties For Major Frauds, Thefts and Embezzlements, see section entitled "Fraud, Government Waste, Corruption".

FAMILIES AND COMMUNITY CRIME, DOMESTIC VIOLENCE

9. Victim Compensation, S. 684: This bill would reform the process by which victims of violent crime receive financial compensation for out-of-pocket losses. Current law requires every victim to go through a long and often adversarial court process to obtain compensation. Under the proposed law, claims will be filed, investigated, and approved for payment by the Victim Compensation Division of the Attorney General's Office. Victims who disagree with the decision of the program director are entitled to a full and fair hearing. The bill also increases the maximum award for funeral and burial expenses from \$2,000.00 to \$4,000.00. It also removes the requirement that the minor dependents of a deceased victim be living with the victim at the time of the crime to receive compensation for loss of support.

10. FID Cards/Domestic Violence, S. 178: The bill would strengthen the existing Firearm Identification Card (FID) and License to Carry Firearms (LCF) statutes to prohibit the issuance of an FID card or a firearms license to any person against whom there is an outstanding domestic violence restraining order. This bill would also permit the revocation of an FID card or firearms license if a domestic violence restraining order is issued against the card holder or licensee. In addition, this bill provides for criminal penalties for making false statements on the application for an FID card which parallel those of the license to carry statute. Finally, the bill would require that FID cards be renewed every 5 years and would establish an expiration schedule for all existing FID cards issued prior to the effective date of this act.

11. Criminal Neglect, H. 2353: This bill holds accountable for their failure to act only those persons who have a duty to care for a dependent person. Proscribed conduct must be wanton or reckless. This means intentional conduct by way of either of commission or omission which involves a high degree of likelihood that a substantial harm will result to another. This standard insures that the statute will not be used against persons whose neglectful conduct results from either a lack of capacity to understand their duty of care or who simply cannot afford to provide appropriate care for their dependents. The person at whom this statute is directed must be a "caretaker" as defined in the statute. A "dependent person" as defined in the statute includes a person who is elderly, disabled or under the age of eighteen. The conduct must cause serious bodily injury.

12. Aggravated Assault, H. 2354: This legislation would provide criminal penalties for the abuse of vulnerable victims - disabled persons, children and the elderly. It would amend the current assault and battery statute to provide enhanced penalties where (1) an assault and battery results in serious bodily injury to the victim; (2) when an assault or assault and battery is committed upon an elder or disabled person; and when an assault and battery is committed upon an elder or disabled person or child resulting in serious bodily injury. The prosecutor's discretion is limited in that enhanced penalties apply only to those offenders who inflict "serious bodily injury" and apply only to those offenders who abuse the elderly, children or disabled person.

13. Apprehension After 18th Birthday, S. 728: This bill clarifies the court's jurisdiction in cases where an individual has committed an offense prior to his seventeenth birthday, but is not apprehended until after his eighteenth birthday. Due to a 1990 SJC decision, juvenile transfer provisions concerning apprehension after the eighteenth birthday apply only for crimes committed between the ages of fourteen and seventeen. Thus, an individual could commit a murder at age thirteen, evade authorities until after age eighteen, and avoid all responsibility for his actions.

14. Amend G.L. c. 208, sec. 34C, H. 2445: A 1990 amendment to c. 208 was designed to complement provisions in c. 209A, sec. 6(7) which require mandatory arrest for violation of vacate, restraining or no-contact orders. The 1990 amendment included criminal penalties for violation of custody orders pursuant to c. 208. However, c. 209A does not permit mandatory arrest for violation of custody orders. This amendment would make sec. 34C conform to c. 209A, sec. 6(7). The violation of a custody order, unlike other conduct, does not suggest other criminal charges.

15. Amend c. 209A Definitions, H. 2446: The bill amends the definition of "vacate order" in c. 209A, sec. 1. The 1990 amendments to c. 209A require mandatory arrest for violation of a vacate order. However, such violations as the failure to surrender keys, damage to property or interference with utilities or mail delivery are more appropriately subject to civil contempt proceedings. Thus, the amendment moves these matters from sec. 1, defining "vacate order" to sec. 3, governing remedies and content of orders. The definition of "substantive dating

relationship" deletes the requirement that the determination of "substantive dating relationship" be made by the court. This amendment recognizes that the police may be in a position to make the initial finding in a fashion to allow them to act in a timely manner.

16. Transferred Juvenile, S. 727: This bill would require that once a juvenile is transferred to adult court, any subsequent juvenile cases against him would be transferred automatically to adult court as well.

ENVIRONMENTAL CRIME

17. Environmental Trust Fund and Forfeiture, S. 895: This bill has two features. First, where a criminal environmental prosecution results in conviction, the Act permits the Commonwealth to move for forfeiture of instrumentalities and real property used in the commission of the crime, and proceeds derived from the crime (including savings derived from noncompliance with the environmental laws). The Act includes defenses to forfeiture to protect innocent owners. Second, the Act creates the Environmental Prosecution Fund. Proceeds from forfeitures, as well as civil and criminal penalties not already designated for special use, are to be deposited in the Fund. The Act also permits the Commonwealth to recover attorney's fees in successful civil environmental prosecutions, which fees are to be deposited in the Fund. The Fund is to be distributed to the Attorney General (65%) and the Executive Office of Environmental Affairs (35%). All proceeds of the Fund are to be used for environmental law enforcement. The Attorney General can disburse up to 1/3 of his allotment to local law enforcement authorities, boards of health, and conservation commissions involved in the investigation and prosecution of environmental violations.

18. Environmental Endangerment, H. 2833: This bill would provide felony treatment for criminal environmental violations. The penalties include heightened fines and increased sentences, where the Commonwealth can prove that an environmental violation actually caused a substantial risk of serious bodily injury to a human being or substantial risk of damage to natural resources or the property of another. To prove the felony, the Commonwealth must prove the underlying offense and two additional elements: a) the causation of the substantial risk; b) the defendant acted recklessly or knowingly. The Act also provides for escalated fines where the defendant is an organization. Finally, the Act empowers the Court to appoint an independent expert to conduct an environmental audit into the causes of a convicted organization's violative conduct and with limited exceptions to order the organization to implement the audit's recommendations.

19. Omnibus Environmental, S. 718: This bill is titled "An Act Relative to Strengthening and Harmonizing Environmental Laws in the Commonwealth". It amends a variety of existing laws to make the penalties stronger, increase their enforceability, and/or make penalties more consistent with other similar state and federal laws.

COMPUTER CRIME

20. Crime of Computer Intrusion, H. 4780: This bill would make it unlawful for an individual to knowingly gain unauthorized access to computer systems. The penalty would be imprisonment for not more than thirty days or imposition of a fine of not more than \$10,000, or both. The legislation acknowledges that computer "hacking" is an invasion of privacy even though no specific harm is done.

21. Establishing The Crime Of Theft Of Commercial Computer Services, H. 4781: This law would criminalize the theft of commercial computer services or data. The penalty would be imprisonment in state prison for not more than five years or by imprisonment in jail for not more than two and one half years or by a fine of not more than \$50,000, or both.

22. Vandalism of Electronic Information, H. 4781: This bill would broaden the definition of personal property subject to prosecution for intentional alteration, damage or destruction to include electronic information.

23. Admissibility Of Duplicates Of Computer Files, H. 4783: This bill would expand Massachusetts evidence law to allow for the admissibility of copies and printouts of computer files, thus minimizing the intrusiveness of searches and seizures of computers while increasing the efficiency of criminal investigations that require the gathering of evidence stored on computers. This legislation adopts provisions of the Federal Rules of Evidence regarding definitions of "originals" and "duplicates" of computer data.

FRAUD, GOVERNMENT WASTE, CORRUPTION

24. Bank Fraud, S. 228: This bill would make it a crime to engage in any act, practice or course of business, or to employ any device or scheme, to defraud a bank or to obtain money or other property being held by a bank. The bill would address the areas of "insider" crimes by bank officers and crimes affecting loans given by financial institutions, especially for real estate.

25. Conflict of Interest, S. 1240: This bill modifies G.L. c. 268A, sec. 4 by restricting state employees from receiving compensation, not only in matters where the state or commonwealth has an interest, but also where a county or municipal agency holds an interest. It also limits legislators from appearing for outside compensation not only before a state agency, but also before a county or municipal agency. Finally, the bill includes county and municipal agencies along with state agencies in the definition of one type of proceeding before which legislators may appear for compensation, given (1) the agency's actions are adjudicatory and appealable and (2) counsel for both sides is not the Attorney General or a state employee.

26. Conflict of Interest Penalties, S. 186: This bill increases criminal fines which may be assessed for violations of G.L. c. 268A.

27. Increase Bribery Penalties, S. 180: The bill would increase the criminal penalties for bribery in G.L. c. 268A, sec. 2 for corrupt gifts, offers or promises to influence official acts, and corruption of witnesses. The present statute allows a fine of not more than \$5,000 or imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one-half years, or both such fine and imprisonment in a jail or house of correction. The new language would punish by imprisonment for not more than fifteen years and increase the potential fine up to \$50,000 or three times the value of the bribe, or both such fine and imprisonment. The amendment continues the ban on an offender holding an office of public trust. The bill would also amend the penalty provisions of G.L. c. 268A, sec. 3, concerning gifts, offers or promises for acts performed or to be performed, corruption of witnesses or solicitation of gifts. The current punishment is a fine of not more than \$3,000 or imprisonment of not more than two years, or both. The bill would increase the penalties to a fine of not more than \$50,000 or three times the monetary equivalent of the value of the bribe, or imprisonment for not more than 15 years, or both.

28. Pen Register/Trap and Trace, S. 737: This bill defines a pen register as a device which records or decodes the impulses that identify the numbers dialed on the telephone line to which it is attached. Trap and trace device is defined as a device which identifies the originating number from which a call was transmitted. The bill sets out application procedures for the use of pen register or trap and trace devices and the proper authorization criteria and limits for the court.

The Attorney General also supports these bills in the area of Fraud, Government Waste and Corruption.

29. Racketeering Influence and Corrupt Organizations, S. 783: This bill would aid prosecutors in the war on drug trafficking and other serious organized crimes such as arson, forgery, murder, larceny, fraud and hazardous waste dumping. Key components of the bill are:

- 1) A person could be charged with racketeering if he or she committed two or more acts that fall into the organized crime categories.
- 2) Prosecutors would be allowed to seize the profits and assets of defendants' "legitimate" businesses, to the extent that such assets are the proceeds of racketeering activity.
- 3) Defendants would be subject to increased criminal penalties, including imprisonment in state prison for not more than 20 years and, if death results, the penalty could be a state prison sentence for life. A fine of up to \$250,000 could also be included.

30. Increase Penalties For Major Frauds, Thefts And Embezzlements, H. 4686: This bill would categorize larcenies according to their dollar value, and raise the penalties accordingly. This bill creates two new categories in addition to current law: larceny over \$1,000,000 which would carry a maximum 15 years imprisonment and \$250,000 penalty; and larceny over \$100,000, which would carry a maximum 10 years imprisonment and \$100,000 penalty.

31. Check Cashing, H. 1029: This bill would require the Commissioner of Banks to license and monitor check cashing establishments. It would prevent convicted felons from operating a check cashing business as well as those who fail to show and economic benefit to the community where the business is proposed. It would also require the posting of licenses and rates and that the customer be provided with a receipt. The Commissioner would have the authority to issue licenses, promulgate regulations and rescind licenses in specific situations.