

By Mr. Sisitsky, a petition (accompanied by bill, Senate, No. 1057) of Francis X. Bellotti, Attorney General, Alan D. Sisitsky, Arthur Joseph Lewis, Jr., and Michael F. Flaherty for legislation to authorize punishment for perjury and related offenses as defined herein. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT AUTHORIZING PUNISHMENT FOR PERJURY AND RELATED OFFENSES AS DEFINED HEREIN.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 268 of the General Laws is hereby amended by
2 striking out sections one, one A, two, three, four, five, six and
3 six A and inserting in the place thereof the following sections:

4 *Section 1. Definitions*

5 As used in Chapter 268, sections two through nine:

6 (a) "official proceeding" means: a proceeding or a portion
7 thereof, that is or may be heard before (i) a government
8 board or agency of the Commonwealth or of any political
9 subdivision of the Commonwealth, or (ii) a public servant
10 who is authorized to take oaths, including but not limited to
11 a judge, chairman of a legislative committee or subcommit-
12 tee, referee, master, hearing examiner, administrative law
13 judge, and notary. "Official proceeding" shall include but not
14 be limited to a proceeding before a court in either a civil or
15 a criminal matter or before a grand jury authorized by law
16 to take evidence under oath or affirmation.

17 (b) "material" means: without regard to admissibility,
18 capable of affecting the course or outcome of the proceeding;
19 materiality is a question of law.

20 (c) "testimony" means: an oral or written statement in-
21 cluding a statement of opinion, belief, or other state of mind;
22 in a prosecution for perjury or false swearing, written testi-
23 mony given "under oath or equivalent affirmation" includes
24 written testimony that, with the person's knowledge, pur-

25 ports to have been made under oath or equivalent affirmation;
26 such testimony shall include, but not be limited to, depositions.

27 (d) "government matter" means: a matter within the juris-
28 diction of a government agency or of an office, agency or
29 other establishment in the legislative or judicial branch of
30 government, and includes a government record.

31 (e) "government record" means: a record, document, or
32 object belonging to, or received and kept by, a government
33 for information or record purposes; or required to be kept by
34 a person pursuant to a statute, or a regulation, rule or order
35 issued pursuant thereto.

36 *Section 2. Perjury*

37 (a) A person is guilty of perjury if, under oath or equiva-
38 lent affirmation in an official proceeding or whenever a person
39 is required by law to take an oath or equivalent affirmation,
40 or whenever a written statement required by law is verified
41 by a written declaration that it is made under the penalty of
42 perjury, he wilfully: (i) gives a material testimony that is
43 false; or (ii) affirms the truth of a previously given material
44 testimony that is false.

45 (b) A person who commits perjury during a trial of a
46 violation of section 1 of chapter 265 of the General Laws
47 (first and second degree murder) and section 13 of chapter
48 265 of the General Laws (manslaughter), shall be punished
49 by imprisonment in the state prison for life or for any term
50 of years. A person who commits perjury in any other case
51 shall be punished by imprisonment in the state prison for not
52 more than twenty years or by a fine of not more than \$10,000,
53 or both, or by imprisonment in the house of correction for not
54 more than two and one-half years, or by both such fine and
55 imprisonment in the house of correction.

56 *Section 3. False Statement*

57 (a) A person is guilty of false statement if, in a matter
58 that is in fact a government matter, he wilfully: (i) certifies
59 a material written statement that is false; (ii) omits or con-
60 ceals a material fact in a written statement certified by him;
61 (iii) submits or invites reliance on a material writing or
62 record certified by him that is false, forged, altered, or other-
63 wise lacking in authenticity; (iv) submits or invites reliance

64 on a sample, specimen, map, photograph, boundary-mark, or
65 other object certified by him that is misleading in a material
66 respect; or (v) uses a trick, scheme, or device that is mislead-
67 ing in a material respect.

68 (b) A person who commits false statement shall be pun-
69 ished by imprisonment in the state prison for not more than
70 two years or by a fine of not more than \$5,000, or both, or
71 by imprisonment in the house of correction for not more than
72 one year, or by both such fine and imprisonment in the house
73 of correction.

74 *Section 4. Tampering with a Government Record*

75 (a) A person is guilty of tampering with a government
76 record if he wilfully: (i) makes a false entry in or a false
77 alteration of a government record; or (ii) destroys, conceals,
78 removes or otherwise impairs the integrity or availability of
79 a government record.

80 (b) A person who commits tampering with a government
81 record shall be punished by imprisonment in the state prison
82 for not more than three years, or by a fine of not more than
83 \$1,000, or both, or by imprisonment in the house of correc-
84 tion for not more than one year, or by both such fine and im-
85 prisonment in the house of correction.

86 *Section 5. Subornation of Perjury or a Related Offense*

87 (a) A person is guilty of subornation of perjury, false state-
88 ment or tampering with a government record by procuring
89 another to commit the said offense.

90 (b) A person who commits subornation of perjury, false
91 statement or tampering with a government record shall be
92 punished as for the said offense.

93 *Section 6. Incitement to Perjury or a Related Offense*

94 (a) A person is guilty of incitement to perjury, false state-
95 ment or tampering with a government record by attempting
96 to incite or procure another person to commit the said
97 offense.

98 (b) A person who commits incitement to perjury, false
99 statement or tampering with a government record shall be
100 punished as for the said offense, but in no case shall incite-
101 ment to perjury be punished for more than five years im-
102 prisonment in the state prison or two and a half years in the

103 house of correction.

104 *Section 7.*

105 In a prosecution for perjury, false statement, tampering
106 with a government record, subornation or incitement:

107 (a) Proof beyond a reasonable doubt is sufficient for con-
108 viction.

109 (b) Proof of the falsity of a testimony need not be made
110 by any particular number of witnesses or by documentary,
111 direct, or any other particular kind of evidence.

112 (c) If, in one or more official proceedings, a person under
113 oath or equivalent affirmation, gives or affirms testimonies
114 which are inconsistent to the degree that one of them is neces-
115 sarily false, both having been made within the applicable
116 period of time limitations, the indictment, information or
117 other charge may set forth the testimonies in a single count
118 alleging that one or the other of the testimonies was false.
119 Proof that the defendant gave such testimony gives rise to a
120 presumption that one or the other of the testimonies was false,
121 and such proof is sufficient for conviction. In a prosecution for
122 perjury both such testimonies must be material.

123 (d) It is a defense to a prosecution for perjury, false state-
124 ment or tampering with a government record that the de-
125 fendant, and in the case of subornation, that the person sub-
126 orned, clearly and expressly retracted the falsification in the
127 course of the same official proceeding in which it was made,
128 if he did so before it became manifest that the falsification
129 had been or would be exposed and before the falsification
130 substantially impaired, affected, impeded, or otherwise influ-
131 enced the course, outcome, or disposition of the official pro-
132 ceeding or of a government matter ancillary to the official
133 proceeding.

134 (e) It is not a defense to prosecution for perjury, false
135 statement, tampering with a government record, subornation
136 or incitement that the oath or affirmation was administered
137 or taken in an irregular manner, or that the declarant was
138 not authorized to give the testimony.

139 *Section 8. Commitment on Presumption of Perjury;*

140 *Detention of Papers, etc.*

141 (a) If it appears to a court of record that a party or a

142 witness who has been legally sworn and examined, or has
143 made an affidavit, in an official proceeding has so testified as
144 to create a reasonable presumption that he has committed
145 perjury therein, the court may forthwith commit him or may
146 require him to recognize with sureties for his appearance to
147 answer to an indictment for perjury; and thereupon the wit-
148 nesses to establish such perjury may, if present, be bound
149 over to the superior court, and notice of the proceedings shall
150 forthwith be given to the district attorney.

151 (b) If perjury is reasonably presumed, as aforesaid, papers,
152 books or documents which have been produced and are con-
153 sidered necessary to be used on a prosecution for such per-
154 jury may by order of the court be detained from the person
155 who produces them so long as may be necessary for their use
156 in such prosecution.

