

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT  
STATE HOUSE • BOSTON 02133

WILLIAM F. WELD  
GOVERNOR

ARGEO PAUL CELLUCCI  
LIEUTENANT GOVERNOR

March 12, 1992

To the Honorable Senate and House of Representatives:

We are filing for your consideration the attached legislative proposal, entitled "An Act Further Strengthening And Clarifying The Immunity Laws Of The Commonwealth".

Our proposed legislation will permit the District Attorneys and the Attorney General of the Commonwealth to seek immunity for witnesses who refuse to testify either at trial or before the grand jury. Current law only provides such immunity for those witnesses that refuse to testify before the grand jury. The legislation also streamlines the process by allowing the proceeding to be ex parte which is similar to federal law. Other provisions of the bill include the expansion of the categories of matters for which said immunity may be requested to include investigations of all felonies and also permitting the Commonwealth to seek immunity orders from the Superior Courts and Appeals Court as well as the Supreme Judicial Court.

Prosecutors must often rely heavily on the testimony of reluctant witnesses in organized crime, drug trafficking, corruption and gang violence investigations and prosecutions. Immunity is a necessary tool in these efforts and the laws regarding immunity in the Commonwealth are outdated and not adequate to the needs of modern law enforcement.

We urge your speedy and favorable action on this bill.

Sincerely,

*William F. Weld*

William F. Weld  
Governor

*Argeo Paul Cellucci*  
Argeo Paul Cellucci  
Lieutenant Governor

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT FURTHER STRENGTHENING AND CLARIFYING THE IMMUNITY LAWS  
OF THE COMMONWEALTH.

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

1 SECTION 1. Chapter 233 of the General Laws, as appearing  
2 in the 1990 Official Edition, is hereby amended by striking out  
3 section 20C, and inserting in place thereof the following  
4 section: —

5 Section 20C. In any investigation or proceeding before a grand  
6 jury, or in a criminal proceeding in the superior court department  
7 of the trial court, the appeals court or supreme judicial court,  
8 involving any offense listed in section twenty D, a witness shall  
9 not be excused from testifying or from producing books, papers,  
10 or other evidence on the ground that the testimony or evidence  
11 required of him may tend to incriminate him or subject him to  
12 a penalty or forfeiture, if he has been granted immunity as  
13 provided in section twenty E.

1 SECTION 2. Section 20D of said chapter 233 of the General  
2 Laws, is hereby amended by striking out in line 1 the words, "A  
3 witness called to testify before a grand jury", and inserting in place  
4 thereof the following words: — An individual who is called or who  
5 may be called to testify before a grand jury or in a criminal  
6 proceeding in the superior court.

1 SECTION 3. Section 20D of said chapter 233 of the General  
2 Laws is hereby further amended by inserting after the word  
3 "uttering" in line 18, the words: — or any felony.

1 SECTION 4. Said chapter 233 of the General Laws is hereby  
2 further amended by striking out section 20E, and inserting in  
3 place thereof the following new section: —

4 Section 20E. A justice of the supreme judicial court, the  
5 appeals court or the superior court shall, at the request of the  
6 attorney general or a district attorney, issue an order granting  
7 immunity to an individual, provided that said justice finds the  
8 investigation or proceeding before the grand jury or the superior  
9 court involves an offense listed in section twenty D and that the  
10 witness did or will refuse to answer questions or produce evidence  
11 on the grounds that such testimony or such evidence might tend  
12 to incriminate him. If said justice so finds, said justice shall order  
13 the individual to answer the questions or produce the evidence  
14 requested and, if he so orders, the order shall become effective  
15 upon the individual's refusal, on the ground that the testimony  
16 or evidence may tend to incriminate him, to answer any question  
17 or produce any evidence requested.

18 An application pursuant to this section shall act to stay any  
19 court proceedings, but not grand jury proceedings, until such time  
20 as a justice of the supreme judicial court or appeals court acts upon  
21 said application, provided that a justice of the supreme judicial  
22 court, appeals court or superior court shall conduct an expedited  
23 hearing when such application is brought after the impanelment  
24 of a jury in the superior court.

25 The attorney general or a district attorney may apply for an  
26 order under this section when, in his judgment, the testimony or  
27 other evidence from such individual may be necessary to the public  
28 interest and such individual has refused or is likely to refuse to  
29 testify on the basis of his privilege against self-incrimination.  
30 When the attorney general or a district attorney brings such  
31 application, he shall, at least three days before the date fixed for  
32 hearing on his application, send by certified mail or deliver a copy  
33 of such application to the attorney general and each other district  
34 attorney in the commonwealth. The attorney general and any of  
35 the district attorneys may waive, either orally or in writing, his  
36 right to be served with such application. The attorney general and  
37 any such district attorney may file an appearance and have the  
38 right to be heard at the hearing as herein provided.

39 An affidavit of proof of service, or, in the alternative, waiver  
40 of service, upon each district attorney and the attorney general  
41 shall be filed with the court.

42 If, after a hearing, which shall not be public and to which the  
43 witness shall not be entitled to attend, the justice finds the

44 investigation or proceeding before the grand jury or the superior  
45 court department of the trial court involves an offense listed in  
46 section twenty D, and that the witness has refused or is likely to  
47 refuse to answer questions or produce evidence on the grounds  
48 that such testimony or evidence may tend to incriminate him, said  
49 justice shall order the witness to answer the questions or produce  
50 the evidence requested, and, if he so orders, he shall also issue  
51 a written order granting immunity; otherwise, he shall deny a  
52 grant of immunity. The appeals court and a single justice of the  
53 supreme judicial court shall hear petitions for review of the  
54 commonwealth as speedily as practicable.

1 SECTION 5. Said chapter 233 of the General Laws is hereby  
2 further amended by striking out section twenty F in its entirety.

1 SECTION 6. Section 20G of said chapter 233 of the General  
2 Laws is hereby further amended by striking out in line 2 the words  
3 “sections twenty E or twenty F” and inserting in place thereof the  
4 following words: — section twenty E.

1 SECTION 7. Section 20G of said chapter 233 of the General  
2 Laws is hereby further amended by striking out in line 10 the  
3 words “sections twenty C, twenty E or twenty F.” and inserting  
4 in place thereof the following words: — sections twenty C or  
5 twenty E.

1 SECTION 8. Section 20H of said chapter 233 of the General  
2 Laws is hereby further amended by inserting the words “appeals  
3 court” after the words “supreme judicial court” in line 3.

1 SECTION 9. Section 20H of said chapter 233 of the General  
2 Laws is hereby further amended by striking out the words “or  
3 twenty F” in line 2.