

HOUSE No. 47

Message from His Excellency the Governor recommending legislation relative to strengthening and enhancing firearms laws in the Commonwealth. The Judiciary. January 16, 2013.

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON, MA 02133

(617) 725-4000



DEVAL L. PATRICK

GOVERNOR

TIMOTHY P. MURRAY

LIEUTENANT GOVERNOR

January 16, 2013.

To the Honorable Senate and House of Representatives:

I am filing for your consideration legislation entitled “An Act To Strengthen and Enhance Firearms Laws in the Commonwealth.” Both proactively, and in the wake of too many tragedies, I have filed legislation tackling the problem of gun violence and illegal firearm possession. We can no longer allow gun violence to permeate our communities, and we must cease the incalculable pain it causes families of victims in the Commonwealth and throughout the nation.

This legislation echoes my commitment to gun safety, and includes the following provisions:

- It brings Massachusetts into compliance with the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, a federal law passed in the aftermath of the Virginia Tech shooting tragedy. It will require that the courts transmit all required mental health adjudications and orders to the state’s criminal justice information system to be provided to the Attorney General of the United States for the purpose of firearms licensing only. The legislation also creates a federally mandated relief from disabilities program, which allows individuals who have mental health disqualifications to once again become eligible for gun ownership by showing that they are not likely to act in a manner dangerous to public safety.

- It creates four new crimes: assault and battery by means of a firearm, assault by means of a firearm, being a felon in possession of a firearm, and commission of a violent misdemeanor while in possession of a weapon. These crimes will give police and prosecutors additional tools to protect the community from those who possess and use guns in a crime. Further, the bill increases the authorized minimum penalties for third and fourth offenses of illegal possession and carrying of firearms, shotguns, rifles, and machine guns, and increases the maximum punishment for a second offense. The bill also amends existing law addressing weapons on school grounds by creating tiered punishments for possessing weapons on school property and gives police the authority to arrest without a warrant in order to quickly diffuse a situation on school property.
- It amends the Commonwealth’s “criminal enterprise” statute to target broader illegal activity committed by traditional and non-traditional criminal enterprises and organizations, including street gangs and large-scale drug and human trafficking groups. It amends the state wiretap statute to allow law enforcement to utilize electronic surveillance as a tool to investigate and prosecute street gangs, even when there is no connection to traditional organized crime.
- It reduces access to high-powered rounds of ammunition.
- It better tracks weapon sales by (1) requiring dealers at organized gun shows to connect to the Massachusetts Instant Record Check System (MIRCS) when conducting a sale of a firearm; and (2) requiring private sales of firearms to occur at the business of a licensed dealer so that the sale can be tracked electronically.
- It limits gun buyers to one firearm purchase per month and prevents the furnishing of a machine gun to any person under 21 years of age.
- Finally, this bill would allow a rebuttable presumption that an individual charged with a felony involving firearms and physical force is dangerous for purposes of pretrial detention.

I urge your prompt consideration and enactment of this bill to help stop the terrible tragedy of gun violence in our Commonwealth. I look forward to working with the legislature on this effort.

Respectfully submitted,



DEVAL L. PATRICK

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to strengthen and enhance firearms laws in 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. Section 167A of chapter 6 of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by inserting the following paragraph:-

3 (h) Notwithstanding any general or special law or court order, including an order of
4 impoundment, to the contrary, the department shall transmit to the Attorney General of the
5 United States any information in its control required or permitted under federal law to be
6 included in the National Instant Background Check System or any successor system maintained
7 for the purpose of conducting background checks for firearms sales or licensing. No more
8 information than is necessary for the purposes stated above shall be transmitted, and such
9 information shall not be considered a public record under section 7 of chapter 4.

10 SECTION 2. Section 10 of chapter 66 of the General Laws, as so appearing, is hereby amended
11 by inserting after the word “request”, in line 62, the following words:- , but the commissioner of
12 the department of criminal justice information services, or the commissioner’s agent, may
13 disclose records pertaining to persons who own or possess rifles, shotguns, firearms, machine
14 guns, large capacity weapons or large capacity feeding devices, as defined in section 121 of

15 chapter 140, to licensees under section 122 of chapter 140 to comply with section 131E of
16 chapter 140.

17 SECTION 3. Section 121 of chapter 140 of the General Laws, as so appearing, is hereby
18 amended by striking out, in line 54, the word (i)

19 SECTION 4. Said section 121 of chapter 140 of the General Laws, as so appearing, is hereby
20 further amended by inserting after the word “strip” in line 55, the following word:- , belt

21 SECTION 5. Said section 121 of chapter 140 of the General Laws, as so appearing, is hereby
22 further amended by inserting after the word “device” in line 55, the following word:- : (i)

23 SECTION 6. Said section 121 of chapter 140 of the General Laws, as so appearing, is hereby
24 further amended by striking out, in lines 57-62, the words “a large capacity ammunition feeding
25 device as defined in the federal Public Safety and Recreational Firearms Use Protection Act, 18
26 U.S.C. section 921(a)(31) as appearing in such section on September 13, 1994.” and inserting in
27 place thereof the following words:- containing more than seven rounds of ammunition; or (iii)
28 obtained after the effective date of this act and capable of accepting, or that can be readily
29 restored or converted to accept, more than seven rounds of ammunition.

30 SECTION 7. Section 35 of chapter 123 of the General Laws, as amended by section 18 of
31 chapter 142 of the acts of 2011, is hereby amended by inserting after the word “continues.”, in
32 the fourth paragraph, the following words:- The court in its order shall specify whether such
33 commitment is based upon a finding that said person is an alcoholic, a substance abuser, or both,
34 and this information shall be entered in the record to permit transmission to the department of
35 criminal justice information services for the purposes and under the conditions set forth in the
36 second paragraph of section 36A.

37 SECTION 8. Section 36A of chapter 123, as so appearing, is hereby amended by inserting after
38 the first paragraph the following paragraph:-

39 Notwithstanding the foregoing, the administrative office of the trial court shall transmit
40 information contained in court records maintained under this section to the department of
41 criminal justice information services for the purposes of (a) providing licensing authorities as
42 defined under section 121 of chapter 140 with information required or permitted to be considered
43 under state or federal law for the purpose of conducting background checks for firearms sales or
44 licensing and (b) providing the Attorney General of the United States with information required
45 or permitted under federal law to be included in the National Instant Criminal Background Check
46 System or any successor system maintained for the purpose of conducting background checks for
47 firearms sales or licensing. The commissioner of the department of criminal justice information
48 services shall determine which court records shall be transmitted for said purposes, provided that
49 the commissioner shall require no more information than is necessary to be transmitted, and such
50 information shall not be considered a public record under section 7 of chapter 4.

51 SECTION 9. Section 121 of chapter 140 of the General Laws, as so appearing, is hereby
52 amended by striking out, in line 39, the words “from which a shot or bullet can be discharged”,
53 and inserting in place thereof the following words:- which will or is designed to or may readily
54 be converted to expel a projectile by the action of an explosive

55 SECTION 10. Chapter 140 of the General Laws, as so appearing, is hereby amended by
56 inserting after section 122B the following section:-

57

58 Section 122C. (a) As used in this section, the following terms shall have the following meanings:

59 “Dealer”, a firearms dealer licensed under section 122 of chapter 140.

60 “Gun show”, an event including participation by one or more dealers for the purpose of selling,
61 renting, leasing or transferring weapons and/or ammunition.

62 “Gun show organizer”, any person, public or private entity, organization or association that is
63 primarily responsible for sponsoring, hosting or facilitating the organization of a gun show.

64 (b) Not less than 60 days prior to a scheduled gun show, a gun show organizer shall notify the
65 commissioner of the department of criminal justice information services in writing of the date,
66 time, place, and the names and license numbers of dealers expected to attend the gun show and
67 shall submit a registration fee of \$500 payable to the department of criminal justice information
68 services.

69 (c) A gun show organizer shall provide dealers with access to an electronic communication link
70 for the submission of records to the commissioner of the department of criminal justice
71 information services of all sales, rentals, leases and transfers of firearms by dealers in accordance
72 with section 123 of chapter 140.

73 (d) A gun show organizer who violates any provision of this section shall be subject to a civil
74 fine of not less than \$1,000 nor more than \$10,000.

75 (e) The commissioner of the department of criminal justice information services may promulgate
76 rules and regulations to carry out this section.

77 SECTION 11. Section 123 of chapter 140 of the General Laws, as so appearing, is hereby
78 amended by inserting after the first sentence in the third paragraph the following sentence: - No
79 person licensed under section 122 shall sell, rent or lease, to another person, other than to an

80 exempt person under subsection (c) of section 131E, more than 1 rifle, shotgun, firearm, machine
81 gun, large capacity weapon or large capacity feeding device in any 30-day period.

82 SECTION 12. Section 128A of chapter 140 of the General Laws, as so appearing, is hereby
83 amended by adding the following 2 sentences:- Any sale or transfer conducted under this section
84 shall comply with section 131E and shall take place at the location of a dealer licensed under
85 section 122, who shall transmit the information required by this section for the purchases and
86 sales by utilizing the electronic verification link established by the commissioner of the
87 department of criminal justice information services. A licensed dealer may charge the seller a
88 fee not to exceed \$25 for each sale or transfer electronically submitted on behalf of the seller to
89 the department of criminal justice information services.

90 SECTION 13. Section 129B of chapter 140 of the General Laws, as so appearing, is hereby
91 amended by striking out, in line 85, the words “department of mental health,”.

92 SECTION 14. Section 129C of chapter 140, as so appearing, is hereby amended by inserting
93 after the word “purpose”, in line 82, the following words:- , provided, however, that nothing in
94 this subsection shall allow for the holding, handling, or firing of a machine gun by any person
95 other than a person licensed to possess a machine gun under section 131(o) or police personnel
96 receiving instruction from a firearm instructor certified by the municipal police training
97 committee or the colonel of the state police

98 SECTION 15. Section 129D of chapter 140 of the General Laws, as so appearing, is hereby
99 amended by inserting after the word “be”, in line 43, the following words:- destroyed by the
100 colonel of the state police or the licensing authority or

101 SECTION 16. Section 130 of chapter 140 of the General Laws, as so appearing, is hereby
102 amended by inserting after the word “shotgun”, in line 8, the following words:- or machine gun

103 SECTION 17. Section 130 of chapter 140 is hereby further amended by inserting after the word
104 “years”, in line 28, the following words:- ; and provided further, that nothing in this section shall
105 allow for the holding, handling, or firing of a machine gun by any person other than a person
106 licensed to possess a machine gun under section 131(o) or police personnel receiving instruction
107 from a firearm instructor certified by the municipal police training committee or the colonel of
108 the state police

109 SECTION 18. Section 130B of chapter 140 of the General Laws, as so appearing, is hereby
110 amended by inserting the following subsection:-

111 (h) There shall be, within the firearm licensing review board, a relief from disabilities
112 subcommittee comprised of 3 members, designated from time to time, as follows: 1 member of
113 the firearm licensing review board designated by the chair, 1 person designated by the
114 commissioner of the department of mental health, and 1 person designated by the secretary of
115 public safety and security, who shall chair the subcommittee.

116 An applicant who has been formally adjudicated as mentally defective in the
117 commonwealth or committed involuntarily to a mental institution in the commonwealth, within
118 the meaning of 18 U.S.C. § 922, may petition the subcommittee for relief from the firearms
119 prohibitions or disabilities imposed by federal law as the result of such adjudication or
120 commitment.

121 The applicant shall have the opportunity to submit evidence to the subcommittee and to
122 be heard by the subcommittee in support of the application. All hearings shall be conducted in

123 an informal manner, but otherwise according to the rules of evidence, and all witnesses shall be
124 sworn by the subcommittee chair. If requested by the petitioner and payment for stenographic
125 services, as determined by the subcommittee, accompanies such request, the subcommittee shall
126 cause a verbatim transcript of the hearing to be made. The subcommittee's decisions and
127 findings of facts shall be communicated in writing to the petitioner and to the licensing authority
128 to which the petitioner has applied or intends to apply within 60 days of rendering a decision.
129 The subcommittee shall maintain the records of its proceedings and of all materials submitted or
130 considered by the subcommittee for the purposes of judicial review for a minimum of 3 years
131 following the date of its decision. The records of the subcommittee shall not be considered a
132 public record under section 7 of chapter 4.

133 If the majority of the subcommittee determines that the applicant has shown by clear and
134 convincing evidence that the applicant will not be likely to act in a manner dangerous to public
135 safety and that granting relief will not be contrary to the public interest, the subcommittee may
136 grant relief and direct the department of criminal justice information services to notify the
137 Attorney General of the United States and to remove the record of the prohibition or disability
138 from any database that the department of criminal justice information services, the
139 commonwealth or the federal government maintains and makes available to the National Instant
140 Criminal Background Check System or any successor system maintained for the purpose of
141 conducting background checks for firearms sales or licensing.

142

143 In determining whether to grant relief, the subcommittee shall consider the circumstances
144 regarding the firearms disabilities imposed; the applicant's record, including the applicant's

145 mental health and criminal history records; and the applicant's reputation developed, at a
146 minimum, through character witness statements, testimony, or other character evidence. The
147 applicant shall have the burden to produce evidence concerning these matters and the burden of
148 persuading the subcommittee to grant relief. The subcommittee may promulgate regulations
149 governing the application process and the conduct of its hearings.

150 The decision of the subcommittee shall be a final decision. An applicant who is denied
151 relief by the subcommittee may, within 30 days of the receipt of the denial, seek review of the
152 subcommittee's decision by filing a complaint in the district court. The district court's review of
153 the subcommittee's decision shall be de novo, and the court may in its discretion receive
154 additional evidence necessary to conduct an adequate review.

155 The firearm licensing review board shall establish a fee to file an application for relief
156 under this section, which fees shall be retained by the department of criminal justice information
157 services.

158 SECTION 19. Section 131 of chapter 140 of the General Laws, as so appearing, is hereby
159 amended by striking out, in lines 155-157, the words "The colonel shall inquire of the
160 commissioner of the department of mental health relative to whether the applicant is disqualified
161 from being so licensed."

162 SECTION 20. Section 131 of chapter 140 is hereby further amended by striking out, in lines
163 346-352, subsection (o) and inserting in place thereof the following subsection:-

164 (o) No person shall be issued a license to carry or possess a machine gun in the commonwealth,
165 except that a licensing authority or the colonel of the state police may issue a machine gun
166 license to an individual who possesses a valid license to carry under this section and is:

- 167 (i) a firearm instructor certified by the municipal police training committee for the sole
168 purpose of firearm instruction to police personnel;
- 169 (ii) a bona fide collector of firearms upon application or upon application for renewal of such
170 license; or
- 171 (iii) a law enforcement officer employed by such licensing authority or a law enforcement
172 officer employed by or appointed as a special state police officer by the colonel.

173 SECTION 21. Section 131E of chapter 140 of the General Laws, as so appearing, is hereby
174 amended by inserting after subsection (b) the following subsection:-

175 (c) No person, other than an exempt person as defined in this subsection, shall purchase, rent or
176 lease more than 1 rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity
177 feeding device in any 30-day period.

178 This subsection shall not apply to the following persons and uses:

- 179 (i) any law enforcement agency or authority;
- 180 (ii) any branch of the United States military, including the National Guard;
- 181 (iii) any persons in any branch of the United States military, police officers or other peace
182 officers who are acquiring firearms for the purposes of performing their official duties or when
183 duly authorized by their employer to purchase them;
- 184 (iv) any licensed watch, guard or patrol agency or their licensed employees for the purposes
185 of performing duties in the course of employment under sections 22 and 25 of chapter 147;

- 186 (v) a federal, state or local historical society, museum or institutional collector open to the
187 public;
- 188 (vi) any person who purchases, rents or leases a rifle, shotgun, firearm, machine gun, large
189 capacity weapon or large capacity feeding device and then exchanges it for another rifle,
190 shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device provided
191 by a licensed dealer within a 30-day period; and
- 192 (vii) a firearms surrender program authorized by and in compliance with section 131O.

193 Upon receipt of a record of a sale, rental or lease of a rifle, shotgun, firearm, machine
194 gun, large capacity weapon or large capacity feeding device from a licensee as required under
195 section 123 or a person without a license under section 128A, the commissioner of the
196 department of criminal justice information services, or the commissioner's agent, shall determine
197 whether a person has purchased, rented or leased more than 1 rifle, shotgun, firearm, machine
198 gun, large capacity weapon or large capacity feeding device in any 30-day period in violation of
199 this subsection. If a person has purchased, rented or leased in violation of this subsection, the
200 commissioner of the department of criminal justice information services, or the commissioner's
201 agent, shall forward any records demonstrating the relevant acquisition history to the colonel of
202 the state police or the colonel's agent, the prosecutor, and the chief of police in the city or town
203 in which the person resides or where the second rifle, shotgun, firearm, machine gun, large
204 capacity weapon or large capacity feeding device was obtained in violation of this subsection.

205 A non-exempt person who purchases, rents or leases more than 1 rifle, shotgun, firearm,
206 machine gun, large capacity weapon or large capacity feeding device in any 30-day period shall
207 be punished by a fine of not more than \$1,000, or by imprisonment for not more than 2 ½ years,

208 or both, for a first offense; and for any subsequent offense shall be punished by a fine of not less
209 than \$1,000 and not more than \$5,000, or by imprisonment for not more than 2 ½ years in a
210 house of correction or not more than 5 years in the state prison, or by both such fine and
211 imprisonment.

212 Any licensed dealer under section 122 or any other individual who sells, rents or leases a
213 rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device to a
214 non-exempt person under this section, having sold, rented or leased a rifle, shotgun, firearm,
215 machine gun, large capacity weapon or large capacity feeding device to the person within the
216 previous 30 days or with actual knowledge that the person has purchased, rented or leased a rifle,
217 shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device within the
218 previous 30 days, shall be punished by a fine of not more than \$5,000, or by imprisonment of not
219 more than 2 ½ years, or both, for a first offense; and for any subsequent offense shall be
220 punished by a fine of not less than \$1,000 and not more than \$10,000, or by imprisonment for
221 not more than 2 ½ years in a house of correction or not more than 5 years in the state prison, or
222 by both such fine and imprisonment.

223 SECTION 22. Section 131M of chapter 140 of the General Laws, as so appearing, is hereby
224 amended by striking out, in line 2, the words "or a large capacity feeding device".

225 SECTION 23. Said section 131M of chapter 140 of the General Laws, as so appearing, is hereby
226 further amended by inserting after the word "possess" in line 1 the words:- : (i)

227 SECTION 24. Said section 131M of chapter 140 of the General Laws, as so appearing, is hereby
228 further amended by striking out, in line 3, the word "1994." and inserting in place thereof the
229 following words:- 1994; or (ii) a large capacity feeding device that has a capacity of, or that can

230 be readily restored or converted to accept, more than ten rounds of ammunition; or (iii) a large
231 capacity feeding device that such person lawfully possessed before the effective date of this act
232 that has a capacity of, or that can readily be restored or converted to accept, more than seven but
233 no more than ten rounds of ammunition, where such device contains more than seven rounds of
234 ammunition.”

235 SECTION 25. Said section 131M of chapter 140 of the General Laws, as so appearing, is hereby
236 further amended by adding the following paragraph:-

237 Any large capacity feeding device that has or can readily be restored or converted to
238 accept more than ten rounds of ammunition that was legally possessed by an individual prior to
239 the enactment of this act must be sold or otherwise lawfully disposed of within one year of the
240 act’s effective date. Such large capacity feeding devices may only be sold or disposed of to a
241 purchaser authorized to possess such weapons.

242 SECTION 26. Section 26 of chapter 218 of the General Laws, as so appearing, is hereby
243 amended by inserting after the words “fifteen A”, in line 18, the following words:- , 15D(a),
244 15E(a)

245 SECTION 27. Section 26 of chapter 218 is hereby further amended by inserting after the words
246 “sixty-six,” in line 21, the following words:- section 10(p) of chapter 269

247 SECTION 28. Chapter 265 of the General Laws is hereby amended by inserting after section
248 13M the following section:-

249 Section 13N. Upon entry of a conviction for any misdemeanor offense that has as an element the
250 use or attempted use of physical force, or the threatened use of a deadly weapon, the court shall

251 determine whether the victim or intended victim was a family or household member of the
252 defendant, as defined in section 1 of chapter 209A. If the victim or intended victim was a family
253 or household member of the defendant, the court shall enter the offense, the chapter, section and
254 subsection, if any, of the offense, and the relationship of the defendant to the victim upon the
255 record, and this entry shall be forwarded to the department of criminal justice information
256 services for inclusion in the criminal justice information system and for the purpose of providing
257 the Attorney General of the United States with information required or permitted under federal
258 law to be included in the National Instant Criminal Background Check System or any successor
259 system maintained for the purpose of conducting background checks for firearms sales or
260 licensing.

261 SECTION 29. Chapter 265 of the General Laws, as so appearing, is hereby amended by
262 inserting after section 15C the following sections:-

263 Section 15D. (a) Whoever commits an assault and battery upon another by means of a firearm,
264 large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun or assault weapon as
265 defined in section 121 of chapter 140 shall be punished by imprisonment in the state prison for
266 not more than 15 years or by imprisonment in the house of correction for not more than 2½
267 years, or by a fine of not more than \$10,000, or by both such fine and imprisonment.

268 (b) Any person convicted of violating subsection (a) after 1 or more prior convictions under
269 subsection (a), section 15E, or a law of another jurisdiction that necessarily includes the elements
270 of subsection (a) or section 15E shall be punished by imprisonment in the state prison for not less
271 than 3 years nor more than 20 years. The sentence imposed shall not be reduced to less than a
272 term of 3 years imprisonment, nor suspended, nor shall a person sentenced under this subsection

273 be eligible for probation, parole, work release or furlough, or receive any deduction from the
274 sentence for good conduct, until having served 3 years of the sentence; provided, however, that
275 the commissioner of correction may, on the recommendation of the warden, superintendent, or
276 other person in charge of a correctional institution, grant to an offender committed under this
277 subsection a temporary release in the custody of an officer of such institution for the following
278 purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain
279 emergency medical or psychiatric service unavailable at said institution.

280 (c) Prosecutions commenced under this section shall not be suspended, continued without a
281 finding or placed on file. A sentence imposed under this section shall begin from and after the
282 expiration of any sentence imposed under section 10(a), 10(c), 10(d), 10(h), 10(m) or 10(n) of
283 chapter 269 arising out of the same incident.

284 Section 15E. (a) Whoever commits an assault upon another by means of a firearm, large
285 capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun or assault weapon as defined in
286 section 121 of chapter 140 shall be punished by imprisonment in the state prison for not more
287 than 10 years or by imprisonment in the house of correction for not more than 2½ years, or by a
288 fine of not more than \$5,000, or by both such fine and imprisonment.

289 (b) Any person convicted of violating subsection (a) after 1 or more prior convictions under
290 subsection (a), section 15D, or a law of another jurisdiction that necessarily includes the
291 elements of subsection (a) or section 15D shall be punished by imprisonment in the state prison
292 for not less than 2 years nor more than 15 years. The sentence imposed shall not be reduced to
293 less than a term of 2 years imprisonment, nor suspended, nor shall a person sentenced under this
294 subsection be eligible for probation, parole, work release or furlough, or receive any deduction

295 from the sentence for good conduct, until having served 2 years of the sentence; provided,
296 however, that the commissioner of correction may, on the recommendation of the warden,
297 superintendent, or other person in charge of a correctional institution, grant to an offender
298 committed under this subsection a temporary release in the custody of an officer of such
299 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
300 ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution.

301 (c) Prosecutions commenced under this section shall not be suspended, continued without a
302 finding or placed on file. A sentence imposed under this section shall begin from and after the
303 expiration of any sentence imposed under section 10(a), 10(c), 10(d), 10(h), 10(m) or 10(n) of
304 chapter 269 arising out of the same incident.

305 SECTION 30. Chapter 265 of the General Laws, as so appearing, is hereby amended by
306 inserting after section 18C the following section:-

307 Section 18D. Whoever, while in the commission or attempted commission of a misdemeanor that
308 has as an element the use, attempted use, or threatened use of physical force against the person of
309 another, has in his possession or under his control a firearm, rifle, or shotgun, shall, in addition to
310 the penalty for such offense, be punished by imprisonment in the state prison for not more than
311 10 years, or in the house of correction for not more than 2 ½ years, or by a fine of not more than
312 \$5,000, or by both such fine and imprisonment.

313 SECTION 31. Section 10 of chapter 269 of the General Laws, as so appearing, is hereby
314 amended by striking out, in lines 103-107, the words “seven years; for a third such offense, by
315 imprisonment in the state prison for not less than seven years nor more than ten years; and for a
316 fourth such offense, by imprisonment in the state prison for not less than ten years nor more than

317 fifteen years”, and inserting in place thereof the following words:- 10 years; for a third such
318 offense, by imprisonment in the state prison for not less than 10 years nor more than 15 years;
319 and for a fourth such offense, by imprisonment in the state prison for not less than 15 years nor
320 more than 20 years

321 SECTION 32. Section 10 of chapter 269 of the General Laws, as so appearing, is hereby further
322 amended by striking out subsection (j) and inserting in place thereof the following subsection:-

323 (j) Whoever, not being a law enforcement officer, and notwithstanding any license obtained
324 under chapter 140, knowingly has in possession or knowingly has under control in a vehicle a
325 firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun, assault weapon
326 or ammunition as defined in section 121 of chapter 140, in any building or on the grounds of a
327 public or private elementary or secondary school, college or university without the prior written
328 authorization of the board or officer in charge of such elementary or secondary school, college or
329 university shall be punished by a fine of not more than \$1,000 or by imprisonment in the house
330 of correction for not more than 2 years, or both, and may be arrested without a warrant.

331 Whoever, not being a law enforcement officer, knowingly possesses or knowingly has
332 under control in a vehicle a dangerous weapon, or an air gun, so-called BB gun, paintball gun, air
333 rifle or air pistol or other smoothbore arm capable of discharging a shot or pellet by whatever
334 means or replica of a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine
335 gun, assault weapon in any building or on the grounds of a public or private elementary or
336 secondary school, college or university without the prior written authorization of the board or
337 officer in charge of such elementary or secondary school, college or university shall be punished

338 by a fine of not more than \$500 or by imprisonment in the house of correction for not more than
339 1 year, or both, and may be arrested without a warrant.

340 Whoever knowingly possesses or knowingly has under control in a vehicle a destructive
341 or incendiary device or substance, as defined in section 101 of chapter 266 in any building or on
342 the grounds of a public or private elementary or secondary school, college or university shall be
343 punished by a fine of not more than \$10,000 or by imprisonment in the state prison for not more
344 than 10 years, or both.

345 Any officer in charge of a public or private elementary or secondary school, college or
346 university or any faculty member or administrative officer of a public or private elementary or
347 secondary school, college or university failing to report violations of this subsection shall be
348 guilty of a misdemeanor and punished by a fine of not more than \$500.

349 SECTION 33. Section 10 of chapter 269 of the General Laws, as so appearing, is hereby further
350 amended by adding the following paragraph:-

351 (p) Whoever, having been previously convicted in any court of this or another state or
352 the United States or a military, territorial or Indian tribal authority, of a crime punishable by
353 imprisonment for a term exceeding 1 year, knowingly possesses or knowingly has under control
354 in a vehicle, a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun,
355 assault weapon or ammunition as defined in section 121 of chapter 140 shall be punished by
356 imprisonment in the state prison for not more than 10 years or by imprisonment in the house of
357 correction for not more than 2½ years. Prosecutions commenced under this subsection shall not
358 be suspended, continued without a finding or placed on file. A sentence imposed under this

359 subsection shall begin from and after the expiration of any sentence imposed under section 10(a),
360 10(c), 10(d), 10(h), 10(m), 10(n) or 10E arising out of the same incident.

361 SECTION 34. Section 2 of chapter 271A of the General Laws, as inserted by section 68 of
362 chapter 194 of the acts of 2011, is hereby amended by striking out, in subsection (1), the words
363 “which is engaged in, or the activities of which affect, licensed gaming under chapter 23K or
364 ancillary industries which do business with a gaming establishment”.

365 SECTION 35. Section 2 of chapter 271A is hereby further amended by striking out, in
366 subsection (2), the words “to be used in connection with licensed gaming”.

367 SECTION 36. Section 2 of chapter 271A is hereby further amended by striking out, in
368 subsection (2), the words “which is engaged in, or the activities which affect, licensed gaming
369 operations or ancillary industries which do business with a gaming establishment”.

370 SECTION 37. Section 2 of chapter 271A is hereby further amended by striking out, in
371 subsection (3), the words “which affect licensed gaming operations or ancillary industries which
372 do business with a gaming establishment”.

373 SECTION 38. Section 99 of chapter 272 of the General Laws, as so appearing, is hereby
374 amended by striking out, in line 66, the words “in connection with organized crime as defined in
375 the preamble”.

376 SECTION 39. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby
377 amended by striking out, in subsection (1), the words “paragraph (a), (c) or (m) of section 10 of
378 chapter 269” and inserting in place thereof the following words: paragraph (a), (c), (m) or (p) of
379 section 10 of chapter 269.

380 SECTION 40. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby
381 further amended by inserting after the word “10”, in line 18, the following words:- ,10A or 10E

382 SECTION 41. Subsection (3) of said section 58A of said chapter 276 is hereby further amended
383 by inserting after the first sentence the following sentence:-

384 Subject to rebuttal by the person, in a case involving any felony offense that has as an element
385 the use, attempted use, or threatened use of physical force against the person of another and
386 involves the use of a firearm, it shall be presumed that no condition or combination of conditions
387 will reasonably assure the safety of any other person or the community if the judicial officer
388 finds that there is probable cause to believe that the person committed the offense.

389 SECTION 42. Notwithstanding any general or special law or court order, including an order of
390 impoundment, to the contrary, the administrative office of the trial court shall transmit any order
391 of the probate court appointing a guardian or conservator for an incapacitated person under part 3
392 or part 4 of article V of the Massachusetts Uniform Probate Code on the ground that the person
393 lacks the mental capacity to contract or manage his or her own affairs, and any subsequent order
394 terminating or rescinding such appointment, to the department of criminal justice information
395 services for the purpose of providing the Attorney General of the United States with information
396 required or permitted under federal law to be included in the National Instant Criminal
397 Background Check System or any successor system maintained for the purpose of conducting
398 background checks for firearms sales or licensing. The department of criminal justice
399 information services shall transmit no more information than is necessary for the purpose stated
400 above, and such information shall not be considered a public record under section 7 of chapter 4.

401 SECTION 43. Notwithstanding section 36 of chapter 123 of the General Laws, and for the sole
402 purposes of providing licensing authorities as defined under section 121 of chapter 140 of the
403 General Laws with information required or permitted to be considered under state law for the
404 purpose of conducting background checks for firearms sales or licensing and of providing the
405 Attorney General of the United States with information required or permitted under federal law
406 to be included in the National Instant Criminal Background Check System or any successor
407 system maintained for the purpose of conducting background checks for firearms sales or
408 licensing:-

409 (a) No later than 6 months from the effective date of this act, the department of mental health
410 shall transmit to the department of criminal justice information services sufficient information to
411 identify all persons known to the department of mental health who have been confined to any
412 hospital or institution for mental illness within 20 years of the effective date or who are so
413 confined at the time of transmission; and

414 (b) Thereafter, the department of mental health shall transmit such information to the department
415 of criminal justice information services on a quarterly basis concerning individuals who have
416 been so confined in the 3-month period preceding the date of each transmission.

417 The department of criminal justice information services shall provide such licensing
418 authorities or transmit no more information than is necessary for the purpose stated above and
419 such information shall not be considered a public record under section 7 of chapter 4.

420 SECTION 44. Sections 13 and 19 shall take effect 6 months after the effective date of this act.