

## IMPROPER STORAGE OF A FIREARM

G.L. c. 140, § 131L

The defendant is charged with improperly storing a (firearm) (rifle) (shotgun).

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

*First:* That the defendant stored or kept a (firearm) (rifle) (shotgun);

*Second:* That the defendant was not carrying the (firearm) (rifle) (shotgun) or did not have the (firearm) (rifle) (shotgun) under (his) (her) immediate control; and

*Third:* That the (firearm) (rifle) (shotgun) was not secured in one of two ways — either by storing the (firearm) (rifle) (shotgun) in a locked container, or with a properly engaged tamper-resistant mechanical lock or other safety device.

A (firearm) (rifle) (shotgun) is carried when there is actual physical possession of the (firearm) (rifle) (shotgun). A (firearm) (rifle) (shotgun) is also under the control of a person if the person is sufficiently near the (firearm) (rifle) (shotgun) to immediately prevent its unauthorized use.

A safety device is properly engaged if it renders the (firearm) (rifle)

**(shotgun) inoperable by any person other than the owner or other lawfully authorized user.**

*Here, define "Possession" (Instruction 3.220).*

**A "firearm" is defined in our law as:**

**"a pistol, revolver or other weapon . . .  
loaded or unloaded,  
from which a shot or bullet can be discharged  
and . . . the length of [whose] barrel . . . is less than sixteen  
inches."**

**That definition can be broken down into two requirements: *First*, it must be a weapon capable of discharging a shot or bullet; and *Second*, it must have a barrel length of less than 16 inches. The term "barrel length" refers to "that portion of a firearm . . . through which a shot or bullet is driven, guided or stabilized, and [includes] the chamber."**

*G.L. c. 140, § 121. Commonwealth v. Tuitt, 393 Mass. 801, 810 (1985) (jury can determine from inspection that a weapon is a "firearm"); Commonwealth v. Fancy, 349 Mass. 196, 204 (1965) (same). See Commonwealth v. Sperrazza, 372 Mass. 667, 670 (1977) (testimony about "revolver" or "handgun" will support inference that barrel was under 16 inches); Commonwealth v. Bartholomew, 326 Mass. 218, 219 (1950) (not necessary that firearm be loaded).*

**A "rifle" is defined in our law as: "A weapon having a rifled bore with a barrel length equal to or greater than 16 inches and capable of**

**discharging a shot or bullet for each pull of the trigger.” The term “barrel length” refers to “that portion of a . . . rifle . . . through which a shot or bullet is driven, guided or stabilized, and [includes] the chamber.”**

G.L. c. 140, § 121.

**A “shotgun” is defined in our law as: “A weapon having a smooth bore with a barrel length equal to or greater than 18 inches with an overall length equal to or greater than 26 inches, and capable of discharging a shot or bullet for each pull of the trigger.” The term “barrel length” refers to “that portion of a . . . shotgun . . . through which a shot or bullet is driven, guided or stabilized, and [includes] the chamber.”**

G.L. c. 140, § 121.

**The Commonwealth must prove beyond a reasonable doubt that the defendant stored the item *and* also knew that the item was a (firearm) (rifle) (shotgun) within the common meaning of that term. If it was a conventional (firearm) (rifle) (shotgun), with its obvious dangers, the Commonwealth is not required to prove that the defendant knew that the item met the legal definition of a (firearm) (rifle) (shotgun).**

*See Instruction 3.140 (Knowledge).*

## SUPPLEMENTAL INSTRUCTION

*Securely locked container.*

**To qualify as a securely locked container, the container must be capable of being unlocked only by means of a key, combination, or other similar means.**

**Examples of securely locked containers may include safes, (firearm) (rifle) (shotgun) boxes, locked cabinets, gun cases, and lock boxes. In determining whether a particular storage container is a securely locked container, you may consider all the circumstances presented by the evidence including the nature of the locking mechanism, whether the container was itself within a place, a compartment, or a container that was itself locked and alarmed, and whether under all the circumstances it was secured adequately to deter all but the most persistent persons from gaining access.**

## NOTES:

1. **A weapon not stored if “carried” or “under the control.”** The weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user. G.L. c. 140, § 131L(a). “Carried” requires actual physical possession of the firearm, and “under the control” requires that a person be sufficiently nearby the firearm to prevent immediately its unauthorized use. *Commonwealth v. Reyes*, 464 Mass. 245, 258 n.19 (2013), citing *Commonwealth v. Patterson*, 79 Mass. App. Ct. 316, 319 (2011).
2. **Non-firing firearm.** See the first supplemental instruction to Instruction 7.600 (Carrying a Firearm).

3. **Jurisdiction.** There is no District Court jurisdiction for violations of G.L. c. 140, § 131L involving a large capacity weapon or machine gun, as defined in G.L. c. 140, § 121, or in other cases in which minors may have access. G.L. c. 140, § 131L(b)-(e).

4. **Statute not applicable to certain weapons.** The statute does not apply to the storage or keeping of any firearm, rifle, or shotgun with matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or prior to the year 1899, or to any replica of any such firearm, rifle, or shotgun if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition. G.L. c. 140, § 131L(f).