

IMPROPER STORAGE OF A FIREARM

G.L. c. 140, § 131L

The defendant is charged with improperly storing a (firearm) (rifle) (shotgun). To prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First, that the item in question was a (rifle) (firearm) (shotgun);

Second, that the defendant knowingly kept or stored that (rifle) (firearm) (shotgun); and

Third, that the (rifle) (firearm) (shotgun) was unsecured.

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the item in question was a (rifle) (firearm) (shotgun). (A “firearm” is defined in our law as a weapon that is capable of discharging a shot or bullet with a barrel length of less than 16 inches.) (A rifle is defined 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.) (A shotgun is defined 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.)

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the (rifle) (firearm) (shotgun) was knowingly kept or stored by the defendant. A weapon is not kept or stored when it is carried by the defendant or when it is under his (her) immediate control.

One carries a (firearm) (rifle) (shotgun) when one has actual physical possession of it. If there is not actual physical possession of the (firearm) (rifle) (shotgun), it is not being carried.

One has control of a (firearm) (rifle) (shotgun) when one is sufficiently near it to immediately prevent its unauthorized use. If one is not close enough to the (firearm) (rifle) (shotgun) to immediately prevent its unauthorized use, one is not in control of it. You may consider evidence, if any, about the location of the (firearm) (rifle) (shotgun), the location of the defendant, and any other relevant evidence to determine whether the defendant had control of the

(firearm) (rifle) (shotgun).

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the firearm was unsecured. A firearm is unsecured when it is accessible to a person not authorized by law.

A firearm is properly secured when it is either stored in a locked container or when it has an engaged tamper-resistant mechanical lock or other safety device. 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.

Commonwealth v. Cantelli, 83 Mass. App. Ct. 156 (2013).

If the Commonwealth proved all the elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth failed to prove any element beyond a reasonable doubt, you must find the defendant not guilty.

SUPPLEMENTAL INSTRUCTIONS**1. 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. In determining whether a particular storage container is a securely locked container, you may consider evidence, if any, about the nature of the locking mechanism, whether the container was itself within a place, a compartment, or a container that was itself locked and whether under all the circumstances it was secured adequately to deter all but the most persistent person from gaining access.

2. If the object was stored in a vehicle

I instruct you that a locked motor vehicle is not itself a secure storage container.

3. Non-firing firearm, rifle, or shotgun

A weapon that was originally a (firearm) (rifle or shotgun) may become so defective or damaged that it will no longer fire a projectile, and then the law no longer considers it to be a (firearm) (rifle or shotgun). But a weapon remains a (firearm) (rifle or shotgun) within the meaning of the law when a slight repair, replacement or adjustment will again make it an effective weapon.

Commonwealth v. Colton, 333 Mass. 607, 608 (1956) (insertion of ammo clip); *Commonwealth v. Bartholomew*, 326 Mass. 218, 220 (1950) (insertion of firing pin); *Commonwealth v. Raedy*, 24 Mass. App. Ct. 648, 652-656 (1987) (jury question whether gun that could be fired if inverted was “firearm”; judge who distinguishes between “major” and “minor” repairs need not instruct that Commonwealth must prove that this particular defendant had ability and knowledge to repair gun); *Commonwealth v. Rhodes*, 21 Mass. App. Ct. 968, 969-970 (1986) (not a firearm where bent part rendered inoperable until repaired). See *Commonwealth v. Gutierrez*, 82 Mass. App. Ct. 1118 (No. 11-P-1612, October 25, 2012) (unpublished opinion under Appeals Ct. Rule 1:28) (noting objective “slight repair” standard for operability of firearm).

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. **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).
3. **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). Pellet guns and BB guns are not firearms as defined by G.L. c. 140, § 141. *Commonwealth v. Sayers*, 438 Mass. 238 (2002).
4. **Locked motor vehicle.** A locked motor vehicle does not qualify as a secure container for the storage of firearms, however a locked trunk does. *Commonwealth v. Reyes*, 464 Mass. 245, 254-55 (2013). Whether a locked glove box qualifies is a question of fact, and is addressed in Supplemental Instruction 1.. *Id.* at 255.
5. **Question of Law.** Whether a weapon satisfies the physical requirements of G.L. c. 141,

§ 121, is a factual determination for the jury. However, when the issue is whether the item which is not a firearm by design may be deemed a “weapon” subject to regulation, a question of law is presented. A motion to dismiss or for a required finding may be in order. *Commonwealth v. Sampson*, 383 Mass. 750, 761 (1981).

6. **Conventional Firearms.** If it is 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). *Commonwealth v. Papa*, 17 Mass. App. Ct. 987, 988-989 (1984). Otherwise the definition from G.L. c. 140, § 121 should be provided to the jury.