



LEGAL UPDATE

An Act Modernizing Firearms Laws

On July 25, 2024, the Governor signed into law An Act Modernizing Firearms Laws. This law takes significant action to update the state's firearm registration, licensing and possession laws, as well as enhancing firearm data collection, analysis and publication. The law is scheduled to go into effect on October 23, 2024.

This legal update is intended to highlight some of the most relevant sections of the new law as it pertains to law enforcement.

Current License to Carry (LTC), Firearm Identification Card (FID), and license to sell

Current LTCs, FIDs, and licenses to sell shall remain valid until the expiration, suspension or revocation of said license and shall entitle the holder to possess the firearms authorized by the license at the time it was last issued or renewed¹. (section 115).

Training for licensing authorities (MGL c 140 § 125)

Requires licensing authorities to complete training on certain topics as prescribed by EOPSS and individuals seeking a license to sell firearms to complete a dealer training program to be developed and offered online by EOPSS. This section goes into effect 18 months after the effective date of the law.

Commitment of Alcoholics or substance abusers (MGL c 123 §§ 35, 36A, 36C)

These statutes have updated some language and now requires courts to transmit certain court records to DCJIS which shall then share the information with licensing authorities for purposes of background checks for firearm sales and licensing.

¹ § 115 of c. 135 of the session laws of 2024

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Electronic Firearms Registration and Serialization

MGL c 140 § 121B requires DCJIS to create an electronic firearms registration system and establishes requirements for the registration of firearms. The system must be created within 1 year of the effective date of the legislation, and all firearms must be registered not later than 1 year after the registration system is completed and publicly available.

MGL c 140 § 121C requires all firearms to have a serial number and for DCJIS to develop and maintain a serial number request system. The system must be created within 1 year of the effective date of the legislation, and all firearms must be serialized not later than 1 year after the serial number request system is completed and publicly available.

Application process for LTC and FID (MGL c 140 § 131F)

This statute specifies the process, requirements and deadlines that must be met once an application for an LTC or FID has been submitted to the licensing authority.

Tracing of firearms used in crimes (MGL c 140 § 131Q)

In addition to tracing firearms used to carry out criminal activity, the licensing authority must also now track firearms used in the commission of a suicide.

Changes to Firearms Definitions (MGL c 140 § 121)

New Definitions. Several definitions have been added including: “assault-style firearm”, “covert firearm,” “frame,” “privately made firearm,” “rapid-fire trigger activator,” “secured in a locked container,” “self-defense spray,” “serialization,” “undetectable firearm.”

Updated Definitions. Several definitions have been amended including: “licensing authority,” and “shotgun.”

New Definitions. Several definitions have been struck and replaced including: “deceptive firearm device,” “extreme risk protective order,” firearm,” “large capacity feeding device,” “large capacity firearm,” and “petitioner.”

An appendix with the updated and new definitions is attached to this legal update.

Self-defense spray (MGL c 140 §§ 122C and 122D)

These sections have been rewritten and simplified. Section 122D prohibits individuals under 18 from purchasing or possessing self-defense spray without a permit, which can be issued by a local authority to those as young as 12 with parental consent.

Conditions and restrictions on FID cards and LTCs

The statutes related to conditions and restrictions for Firearm Identification cards (MGL c 140 § 129B) and LTCs (MGL c 140 § 131) have been rewritten and simplified.

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The language regarding temporary LTCs (MGL c 140 § 131F) has been updated. MGL c 140 §§ 131G (Carrying a firearm by non-residents) and 131H (ownership or possession of firearms by aliens) have been repealed.

The statute related to exceptions to licensing requirements for temporary possession of firearms (MGL c 140 § 129C) has been rewritten.

NOTE: The language in MGL c 140 § 129C that required an individual to exhibit their LTC or FID upon demand of a police officer has been removed. This does not prevent officers from **asking** to see an LTC or FID when appropriate, but it also raises 4th Amendment and 5th Amendment considerations.

If an officer were to physically take possession of an LTC or FID card from an individual, the court may find that person to be seized in the Constitutional sense. See Commonwealth v. Lyles, 453 Mass. 811 (2009) (consensual encounter transformed to a seizure of the defendant when officer requested the defendant's identification and took it to run a check for outstanding warrants without the defendant's consent.) For a seizure to be lawful, the officer must have reasonable suspicion that the person has committed, is committing or is about to commit a crime.

Officers must also be mindful of the circumstances when asking an individual if they have an LTC or FID card. If a person is in possession of a firearm and in custody for Miranda purposes, asking them if they have an LTC or and FID card would likely be considered interrogation. Any statements made would be subject to suppression if their Miranda rights were violated.

Extreme Risk Protection Orders (ERPO) (MGL c 140 §§ 131R-131Y)

The list of potential petitioners for an ERPO has been expanded. Originally only family or household members or the licensing authority where the respondent lived were authorized to petition the court for an ERPO. An ERPO may now be requested by:

- (i) a family or household member of the respondent;
- (ii) the licensing authority of the municipality wherein the respondent resides;
- (iii) a law enforcement agency or officer, as defined in section 1 of chapter 6E that has interacted with the respondent in an official capacity within the preceding 30 days;
- (iv) a health care provider that provided health care services to the respondent within the preceding 6 months; provided, that for the purposes of this clause "health care provider" shall include a: licensed physician, licensed physician assistant, registered nurse, licensed practical nurse, certified nurse practitioner, certified clinical nurse specialist, certified psychiatric clinical nurse specialist, licensed psychiatrist, licensed psychologist, licensed mental health counselor, licensed marriage and family therapist, licensed alcohol and drug counselor, licensed independent clinical social worker or licensed certified social worker; or
- (v) a principal or assistant principal of an elementary school or secondary school, or an administrator of a college or university where the respondent is enrolled.

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If the court finds probable cause after a hearing that the respondent has access to firearms or ammunition and they fail to surrender them within 24 hours of being served, the court shall issue a warrant for law enforcement to search the person and any identified place to seize the firearms or ammunition.

Harassment Prevention Orders (HPO) (MGL c 258E §§ 4A, 4B,4C).

The court is now authorized to order the immediate suspension and surrender of any LTC, FID, firearms and ammunition if the plaintiff demonstrates a substantial likelihood of immediate danger of harassment.

Three sections have been added to MGL c 258E.

§ 4A – Upon the issuance of a temporary or emergency HPO, if the plaintiff demonstrates a substantial likelihood of immediate danger of harassment, the court shall order the immediate suspension and surrender of any LTC, FID, firearms and ammunition.

§ 4B – The court shall order or continue to order the suspension and surrender of any LTC, FID, firearms and ammunition upon the continuation or modification of a temporary HPO if the court determines that the return of the items presents a likelihood of harassment to the plaintiff.

§4C – Requires the court to transmit certain information about any order of suspension to DCJIS.

Changes to Criminal Laws

Carrying firearms on snow vehicles or recreational vehicles (MGL c 90B § 26).

Subsection (g) has been updated and now reads:

(g) No person shall carry a firearm, as defined in section 121 of chapter 140, in or on a snow vehicle or recreation vehicle or on a trailer or sled attached thereto unless such person possesses the required license to carry or firearm identification card issued under sections 129B or 131, of chapter 140 and carries such firearm in compliance with section 131C of chapter 140. Any violation of this subsection shall be penalized in accordance with section 131C of chapter 140. This section shall not apply to a law enforcement officer or other person with enforcement powers authorized in section 32, or to a paraplegic as provided in section 65 of chapter 131.

Carrying firearms by intoxicated individuals (MGL c 131 § 62)

This statute has updated language regarding intoxication and specifies the penalty for a violation. Section 62 now reads:

A person, with a percentage, by weight, of alcohol in their blood of eight one hundredths or greater, or while under the influence of intoxicating liquor, or of marihuana, narcotic

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drugs, depressant or stimulant substances, all as defined in section 1 of chapter 94C, or who intentionally smells or inhales the fumes of any substance having the property of releasing toxic vapors in violation of section 18 of chapter 270, shall not hunt or carry a firearm, bow and arrow or other firearm while engaged in hunting or target shooting. A violation of this section shall be punished by a fine of not more than \$5,000 or by imprisonment in the house of correction for not more than 2 ½ years, or by both such fine and imprisonment.

3-D printers to manufacture firearms (MGL 140 § 121D)

This statute creates a criminal offense for individuals who do not have an LTC to use a 3-D printer to manufacture or assemble a firearm.

Carrying firearms in vehicles (MGL c 140 § 131C)

This statute now requires a properly licensed individual who possesses a large capacity firearm in a vehicle to keep the firearm unloaded and secured in a locked container.

“Secured in a locked container” means: secured in a container that is capable of being unlocked only by means of a key, combination or similar means, including in an unoccupied motor vehicle, a locked trunk not accessible from the passenger compartment, a locked console or locked glovebox and for purposes of a common carrier in the course of the regular and ordinary transport of firearms, locked access to any area containing firearms.

Carrying loaded firearms while under the influence (MGL c 269 § 10H)

This statute now includes language prohibiting persons who from carrying a loaded firearm if their blood alcohol content is .08 or greater.

Possession or control of a firearm with serial number removed or mutilated (MGL c 269 § 11B)

This statute has updated language to “untraceable firearm.”

Removed or mutilated serial number (MGL c 269 § 11C)

This statute has updated the language to “untraceable firearm.”

Discharging a firearm within 500 ft of a building (MGL c 269 § 12E)

Now includes language that this section does not exempt people from complying with noise control laws.

Intentional or reckless discharge striking a dwelling (MGL c 269 § 12G)

This is a new law. The statute reads:

Whoever by intentional or reckless discharge of a firearm, as defined in section 121 of chapter 140, strikes a dwelling or other building in use shall be punished by imprisonment in the house of correction for not more than 2 ½ years or in state prison for not more than 5 years or by a fine of not more than \$10,000, or both such imprisonment and fine. This section shall not apply to persons acting in the lawful defense of life or property or any law enforcement officer acting

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in the discharge of their duties. This section shall not apply for dwellings or buildings within the property of: (a) persons using underground or indoor target or test ranges with the consent of the owner or legal occupant thereof; (b) persons using outdoor skeet, trap, target or test ranges with the consent of the owner or legal occupant of the land on which the range is established; or (c) persons using shooting galleries, licensed and defined in section 56A of chapter 140. Nothing in this section shall exempt any persons from compliance with noise control laws, ordinances or by-laws in effect or from the prohibitions of section 58 of chapter 131.

Changes to MGL c 269 § 10

§ 10 (j) has been amended to exempt qualified law enforcement officer or qualified retired law enforcement officers from prohibition from carrying firearms on school property. The prohibition areas have been extended to include transport used for students.

§ 10(k) is a new section prohibiting firearms in certain areas. An officer may arrest and detain a person in violation of this statute without a warrant. Subsection (k) reads:

(1) Whoever possesses a firearm, loaded or unloaded, as defined in section 121 of chapter 140, in a prohibited area, and knows or reasonably should know such location is a prohibited area, shall be punished by a fine of not more than \$1,000 or by imprisonment in the house of correction for not more than 2 ½ years, or both such fine and imprisonment.

(2) For the purposes of this subsection, “prohibited area” shall mean any of the following locations:

(i) a place owned, leased, or under the control of state, county or municipal government and used for the purpose of government administration, judicial or court administrative proceedings, or correctional services, including in or upon any part of the buildings, grounds, or parking areas thereof; provided, however, that a “prohibited area” shall not include any state-owned public land available to the public for hunting and provided further that a municipality may vote pursuant to section 4 of chapter 4 to exclude its administrative buildings from being a “prohibited area”; or

(ii) a location in use at the time of possession for the storage or tabulation of ballots during the hours in which voting or tabulation is occurring or a polling place or early voting site while open for voting or within 150 feet of the building entrance door to such polling place or early voting site.

(3) A law enforcement officer may arrest without a warrant and detain a person found in violation of this subsection.

(4) It shall be a defense to a violation of this subsection that a person with the necessary license or card issued under sections 129B, 131 or 131F of chapter 140 to possess the

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firearm securely stored said firearm in a vehicle while within the prohibited area in accordance with sections 131C and 131L of chapter 140.

(5) This subsection shall not apply to a qualified law enforcement officer or a qualified retired law enforcement officer, as defined in the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. sections 926B and 926C, respectively, as amended or to a security guard employed at the prohibited area while at the location of their employment and during the course of their employment. Nothing in this paragraph shall limit the authority of any municipality, county or department, division, commission, board, agency or court of the commonwealth to adopt policies further restricting the possession of firearms in areas under their control.

The terms “ammunition” and “firearm” are now taken from MGL c 140 § 121.

Silencers (MGL c 269 § 10A)

This statute has been amended to include “any combination of parts designed or redesigned and intended for use in assembling or fabricating any such instrument, attachment, weapon or appliance and any part intended only for use in such assembly or fabrication.”

Updating language

Some statutes have been updated merely to update the language so that it is consistent. For instance, some statutes listed “firearm, rifle or shotgun” or used the word “weapon.” These statutes were updated to replace those phrases simply with the word “firearm.” Statute that had such language updated include:

MGL	Description
c 140 § 131K	Firearms or large capacity weapons without safety devices; liability
c 140 § 131K	Weapons stored or kept by owner; inoperable by any person other than owner or lawfully authorized user; punishment
c 140 § 131O	Colonel of state police; statewide firearm surrender program
c 209A § 3B	Order for suspension and surrender of firearms license, firearms
c 209A § 3C	Continuation or modification of order for surrender or suspension
c 265 § 15E	Assault and battery by discharge of firearm
c 265 § 15F	Attempt to commit assault and battery by discharge of firearm
c 265 § 17	Armed Robbery
c 265 § 18	Assault with intent to rob or murder
c 265 § 18A	Assault in a dwelling house with a dangerous weapon
c 265 § 18B	Use of firearms while committing a felony
c 265 § 21A	Assault, confinement of a person for purpose of stealing a motor vehicle (Carjacking)
c 265 § 22	Rape
c 265 § 24	Assault with intent to commit rape
c 265 § 24B	Assault with intent to commit rape of a child

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c 265 § 26	Kidnapping
c 265 § 39	Assault or battery for purpose of intimidation based on protected class
c 265 § 58	Possession of deceptive weapon device during commission of violent crime
c 266 § 14	Burglary
c 266 § 17	Entering without breaking at night; B&E daytime
c 266 § 18	Entering a dwelling house; B&E daytime with intent to commit a felony
c 269 § 10E	Firearm Sales, Distributions, or transfers
c 269 § 10F	Illegal sale, gifts, or transfers of large capacity firearms or large capacity feeding devices
c 269 § 10K	Breaking and entering building in which firearm retailer conducts business
c 269 § 12D	Rifle or shotgun loaded; carrying on a public way
c 269 § 12F	Airport secure areas
c 269 § 14	Deadly weapons, explosives or other deadly device; threatened use or presence of; threat to hijack; disruption of school, public building or transport
c 276 § 58A	Conditions of release of persons accused of certain offenses involving physical force or abuse (Dangerousness statute)
c 279 § 25	Punishment for habitual criminals

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