COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

MIDDLESEX, ss **No.** 2018-P-0130

COMMONWEALTH OF MASSACHUSETTS,
Appellee

v.

MARK ADAMS,
Appellant

On Appeal from a Jury Trial and Verdict in the Lowell District Court

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BRIEF FOR THE APPELLANT

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Dated: March 2018

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Table of Authorities

[1] This is an unpublished decision and is set forth in the Record Appendix at 59-61.

Massachusetts Statutory Provisions and Rules

[2] This is an unpublished decision and is set forth in the Record Appendix at 57-58.

Federal Statutory Provisions and Rules

Other State's Statutory Provisions and Rules

Other Sources

ISSUES PRESENTED

I. Whether the Trial Court erred in denying the Motion to Dismiss when it ignored the clear statutory language of G.L. c. 140, §129D?

II. Whether the Motion for Required Finding of Not Guilty should have been allowed as there was a material dearth of evidence suggesting the Defendant violated the common law offense of Interfering with A Police Officer?

III. Whether the Defendant's Conviction Should be Overturned as the Jury Instructions Provided Were Woefully Inadequate?

STATEMENT OF THE CASE

On December 29, 2016, a four count Complaint issued against the Defendant, Mark Adams, in the Lowell District Court(R. 3[3]). Adams was charged with Failing to Surrender Firearms, in violation of G.L. c. 269, §10(i); Disorderly Conduct, in violation of G.L. c. 272, §53; Resisting Arrest, in violation of G.L. c. 268, §32B; and

[3] For purposes of this Memorandum, portions of the Record Appendix will be referenced as (R. __), the trial transcript shall be referenced as (T. Pg.__).

a common law violation of Interfering with a Police Officer[4].

In March of 2017, trial counsel filed a Motion to Dismiss with Exhibits (R. 9-32). A hearing was held on March 27, 2017, before the Honorable Ellis, J. (R. 7)[5]. Shortly thereafter, trial counsel filed a Supplemental Memorandum (R. 33-37). On June 22, 2017, in a written Memorandum, the Honorable Ellis, J., denied the Motion to Dismiss (R. 38-46).

On or about the same date, trial counsel filed a Motion to Suppress (R. 52). This Motion asked the Court to suppress any and all items seized from the Defendant's home based upon the warrantless search (R. 52). A hearing

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[4] See G.L. c. 279, §5.

[5] Prior to docketing this matter with this Honorable Court, it was learned that there was no recording of the hearing on the Motion to Dismiss as the recording device had malfunctioned (R. 47). On December 20, 2017, counsel filed a Motion pursuant to Rule 8(e) of the Rules of Appellate Procedure (R. 47-48), an Affidavit from Trial Counsel (R. 49-50) and a Proposed Appellate Record (R. 51). On December 28, 2017, the Court (Ellis, J.) adopted the Defendant's Proposed Appellate Record (R. 51).

on the Motion to Suppress was held on June 30, 2017 before the Honorable Pearson, J. (R. 7). The Court allowed the Motion (R. 52). On July 21, 2017, the Commonwealth dismissed the Failure to Surrender Firearms charge (R. 5).

The remaining three charges were tried by a jury, the Honorable Coffey, J., presiding, on September 21, 2017 (R. 7, T. 1/1). At the close of the Commonwealth's case, counsel argued a Motion for Required Finding of Not Guilty (R. 53). That Motion was denied by Court (R. 53). At the conclusion of all evidence, counsel renewed his Motion (R. 54). This Motion was also denied by the Court (R. 54).

On September 25, 2017, the jury returned not guilty verdicts on the Disorderly Conduct and Resisting Arrest charges (R. 5). The Defendant was found guilty of Interfering with a Police Officer (R. 5). On the same date, the Court sentenced Adams to probation for one year (R. 5).

A timely Notice of Appeal was filed on September 25, 2017 (R. 56). The case was entered in this Honorable Court on February 1, 2018.

STATEMENT OF RELEVANT FACTS

On December 28, 2016, Officers from the Tyngsboro Police Department went to 15 Scribner Hill Road for the purpose of serving a notice of firearms license suspension on the Defendant, Mark Adams (T. 1/77, T. 1/81-83). At 8:15 that night Sergeant Melanson knocked on the door, flanked by Sergeant Bourque and Officer Walsh (T. 1/84).

When Adams answered the door, Sergeant Melanson stated that the police were there to serve him with notification of the suspension and to seize any firearms or ammunition in the house (T. 1/86). The officers asked Adams to step outside, which he did (T. 1/88). According to the officers, Adams became upset and was talking in a loud tone of voice (T. 1/87). Adams kept telling the officers that he was not going to do anything until he had a chance to speak with his attorney (T. 1/89, 1/124).

At some point, Adams tried to re-enter his home, but Sergeant Melanson held the door shut so it could not be opened (T. 1/92). Law enforcement prevented Adams from re-entering his home despite the fact that he was not under arrest nor did the officers have a warrant for his arrest (T. 1/127, 1/133). Adams pulled on the door a little, so the officers decided to get him to walk down the steps and off the porch (T. 1/93-94, 1/134).

They escorted him approximately fifteen feet from the house (T. 1/96). Adams was yelling that he wanted to call his lawyer (T. 1/134).

He then tried to get back into the house (T. 1/97). When he did so, Sergeant Melanson determined that Adams was "interfering with a police officer during the investigation" (T. 1/140) and was "under arrest at that point . . . because he was interfering with a police investigation and I told him to stop" (T. 1/141). The officers then brought him down to the ground and placed him in handcuffs (T. 1/97). Although the officers were able to get one of Adams's hands cuffed, he struggled against the officers to point where they threatened to use a taser on him (T. 1/100). He then became compliant (T. 1/100-101) and was taken into custody.

ARGUMENT

I. IT WAS ERROR FOR THE TRIAL COURT TO DENY THE MOTION TO DISMISS

A. Standard of Review

"After the issuance of a [criminal] complaint, a motion to dismiss will lie for a failure to present sufficient evidence to the clerk-magistrate (or judge), see *Commonwealth v. McCarthy*, 385 Mass. 160 (1982), for

a violation of the integrity of the proceeding, see *Commonwealth v. O'Dell*, 392 Mass. 445 (1984), or for any other challenge to the validity of the complaint." *Commonwealth v. DiBennadetto*, 436 Mass. 310, 313 (2002). Where a judge denies a Motion to Dismiss a criminal complaint, the judge's decision shall be upheld absent an abuse of discretion. *Commonwealth v. Anderson*, 402 Mass. 576, 579 (1988). The judge's subsidiary findings of fact are accepted unless clearly erroneous. *Commonwealth v. Washington W.*, 462 Mass. 204, 213 (2012).

B. The Trial Court Abused Its Discretion in Denying the Motion to Dismiss.

As set forth above, the Defendant filed a Motion to Dismiss, averring that the Complaint was not supported by Probable Cause (R. 9-32). That Motion was denied by the Court following a hearing (R. 38-46). The Court drafted a written Memorandum of Decision (R. 38-46). With all due respect to the Trial Court, the Defendant claims that the findings made by the Court were clearly erroneous and the Motion should have been allowed.

The Defendant's license to carry firearms was suspended by the Tyngsborough Police Department (T. 1/77, 1/81-83) in accordance with the provisions of G.L.

c. 140, §131. As such, per G.L. c. 140, §129D, Mr. Adams was required to turn over all firearms immediately. However, the statute carves out an exception that was completely ignored by the Trial Court. The statute reads that the firearms need only be turned over "unless an appeal of the revocation or suspension is pending". G.L. c. 140, §129D.

As such, although the Defendant did not have an appeal pending, it is patently obvious that the Legislature intended to create a safe harbor for those individuals who chose to exercise their right to appeal. However, since a person cannot appeal from the revocation or suspension of their license, until they receive notification of the revocation or suspension, the literal language of the statute can only apply in the impossible scenario where the appeal predates the decision under appeal. The interpretation of the statute argued in the Motion to Dismiss, one that would allow Mr. Adams to maintain possession of his firearms pending an appeal, is necessary to prevent the "unless an appeal is pending" clause from being superfluous, and the statute as a whole from being unconstitutionally ambiguous. See unpublished decision of *Commonwealth v. Ferguson*, 87 Mass. App. Ct. 1132 (2015) (R. 59-61).

It was impermissible for the Trial Court to simply ignore the "unless an appeal of the revocation or suspension is pending" portion of the statute. "The general and familiar rule is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Commonwealth v. Millican,* 449 Mass. 298, 300 (2007), quoting *Hanlon v. Rollins,* 286 Mass. 444, 447 (1934).

In construing a statute, all words are to be given meaning and no text is to be treated as mere surplusage. See *International Org. of Masters v. Woods Hole, Martha's Vineyard & Nantucket S.S. Auth.*, 392 Mass. 811, 813 (1984) ("Whenever possible, we give meaning to each word in the legislation; no word in a statute should be considered superfluous."); *Bolster v. Commissioner of Corps. & Taxation*, 319 Mass. 81, 84-85 (1946) ("None of the words of a statute is to be regarded as superfluous, but each is to be given its ordinary meaning without overemphasizing its effect upon other terms appearing in

the statute, so that the enactment considered as a whole shall constitute a consistent and harmonious statutory provision capable of effectuating the presumed intention of the Legislature."). See also *Civitarese v. Town of Middleborough*, 412 Mass. 695, 700 (1992) ("We will construe a statute according to the plain and ordinary meaning of its language. "All the words of a statute are to be given their ordinary and usual meaning, and each clause or phrase is to be construed with reference to every other clause or phrase without giving undue emphasis to any one group of words, so that, if reasonably possible, all parts shall be construed as consistent with each other so as to form a harmonious enactment effectual to accomplish its manifest purpose.' " *Worcester v. College Hill Properties, LLC*, 465 Mass. 134, 138 (2013), quoting from *Selectmen of Topsfield v. State Racing Commn.*, 324 Mass. 309, 312–313 (1949).").

When viewed through this lens, it is clear that the Defendant should have been able to take advantage of the safe harbor provision in the statute. Since any other interpretation of the statute would render the "pending appeal" portion superfluous, the Legislature must have intended to allow individuals to maintain possession of

their firearms pending appeal. As such, the Defendant's Motion to Dismiss should have been allowed.

II. THE MOTION FOR REQUIRED FINDING SHOULD HAVE BEEN ALLOWED AS THE DEFENDANT DID NOT INTERFERE WITH A POLICE OFFICER IN THE COURSE OF THEIR DUTIES

A. Standard of Review

In reviewing the denial of motions for a required finding on not guilty, this Honorable Court must consider and determine whether the evidence, in the light most favorable to the Commonwealth, is sufficient to permit the jury to infer the existence of the essential elements of the crime charged. *Commonwealth v. Latimore*, 378 Mass. 671, 676-677 (1979).

B. Since the Defendant Did Not Interfere with a Police Officer in Performance of Duties, the Motion for Required Finding Should Have Been Allowed.

As set forth above, members of the Tyngsborough Police Department went to the Defendant's home for the express purpose of serving him with the notice of his suspension of firearms license (T. 1/86). However, in addition to serving him with the notice, the Officers took it upon themselves to unlawfully seize the firearms in question. While first interacting with the Defendant, officers escorted the Defendant approximately fifteen

feet from the house (T. 1/96). Adams was yelling that he wanted to call his lawyer (T. 1/134). He then tried to get back into the house (T. 1/97). When he did so, Sergeant Melanson determined that Adams was "interfering with a police officer during the investigation" (T. 1/140) and was "under arrest at that point . . . because he was interfering with a police investigation and I told him to stop" (T. 1/141). The officers then brought him down to the ground and placed him in handcuffs (T. 1/97).

The Defendant contends that once he was served with the notice of the suspension of his firearms license, the Officers had completed their lawful task. Since the Commonwealth's own witnesses testified that the decision to place the Defendant under arrest for "interference" took place after the lawful act of serving the Defendant had been completed (T. 1/97, 1/140-141), the Motion for Required Finding should have been allowed.

There is no general obstruction of justice statute in Massachusetts as there is in the Federal system and in a number of other States. See, e.g., 18 U.S.C. § 1503(a) (2006) (whoever "corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to

influence, obstruct, or impede, the due administration of justice" shall be punished); Ark. Code. Ann. § 5-54-102 (1987) ("[a] person commits the offense of obstructing governmental operations if the person," inter alia, "[k]nowingly obstructs, impairs, or hinders the performance of any governmental function"); N.Y. Penal Law § 195.05 (McKinney 2010) ("A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by[, inter alia,] means of intimidation, physical force or interference").

Instead, a patchwork of statutes and historical common law offenses establish various "crimes against public justice" and "crimes against public peace," some of which involve uttering false statements or interfering with governmental operations in different capacities. For example, the perjury statute, G.L. c. 268, § 1, prohibits willfully swearing or affirming falsely in a deposition or otherwise while under oath as to a matter material to the issue in question. It is also a criminal offense to, inter alia, knowingly and willfully furnish a false name or Social Security number

to a law enforcement officer following arrest, G.L. c. 268, § 34A; to fail to report crimes under certain circumstances, G.L. c. 268, § 40; and to knowingly and intentionally make a false report of crime, G.L. c. 269, § 13A.

The Defendant here was only found guilty of the common law crime of Interfering with the Duties of a Police Officer. While there is a suggestion that Massachusetts law does recognize this crime, there are no cases reported by either the Supreme Judicial Court or the Massachusetts Appeals Court that discuss or analyze the elements of this offense.

The only case on the subject is an unreported case from the Massachusetts Appeals Court, *Commonwealth v. Shave*, 81 Mass. App. Ct. 1131 (2012)(R. 57-58), in which the court, in passing, references the common-law offense of "intimidating, hindering, or interrupting an officer engaged in the lawful performance of his duties", *Shave* at 1131. But see *Commonwealth v. Devlin*, 366 Mass, 132 (1974)(Supreme Judicial Court stated that while the defendant's actions of wiping perpetrator's fingerprints off knife may have constituted what in some jurisdictions is crime of "obstruction of justice," it need not consider whether such a common-law crime exists

in Massachusetts, because defendant was not so charged). See also *Commonwealth v. Tobin*, 108 Mass. 426 (1871).

Upon review the only case to analyze the common law offense of "interfering with a police officer" is a federal case from the District of Massachusetts; *Cocroft v. Smith*, 95 F. Supp. 3d 119 (D. Mass. 2015)[6].

In *Cocroft*, the Plaintiff filed a federal civil rights claim against Worcester Police Officer Jeremy Smith. *Cocroft* at 122. Cocroft was the passenger in a car that Smith pulled over as it pulled into a gas station. *Id* at 123. Cocroft expressed displeasure at the language and tone used by Smith. *Id.* While Smith was writing the driver a ticket, Cocroft exited the car and walked into the gas station to purchase gas. *Ibid*.

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[6] There is another Federal case, *Wilber v. Curtis, et al.*, 872 F.3d 15 (D. Mass. 2017), which recognizes, based upon *Commonwealth v. Shave*, 81 Mass. App. Ct. 1131 (2012) and *Commonwealth v. Tobin*, 108 Mass. 426 (1871) the common law offense of interference with a police officer. Other than indicate that this common law offense apparently remains valid in the Commonwealth of Massachusetts, the *Wilber* case provides no further analysis of the issue.

Before she could begin pumping gas, Smith yelled at her to get back in the car, as she attempted to do so, Smith grabbed her from behind, threw her to the ground, and scraped her face against the pavement. *Ibid.* Cocroft was charged with disorderly conduct and resisting arrest. *Id.* at 124.

During a deposition, Smith testified that he believed Cocroft had committed the crimes of disorderly conduct and interfering with a police officer. *Ibid.* He testified that Cocroft's exiting the car and her return to the car caused him to stop writing a ticket to the driver, and this interfered with his duties as a police officer. *Ibid.*

In reviewing the common law offense of interfering with a police officer, the Court in *Cocroft* compared the common law offense to the Massachusetts Intimidation of a Witness statute, G.L. c. 268 §13B. *Id.* at 125. The court found that for there to be a violation of the Intimidation of a Witness statute, there would need to be some "proof of a defendant's specific intent to 'impede, obstruct, delay, harm, punish, or otherwise interfere' with a criminal investigation." *Id* at 126, citing *Commonwealth v. Morse*, 468 Mass. 360, 372 (2014). The Court found that "[l]ikewise, if Massachusetts were

to recognize the common law offense of obstructing a police officer in the performance of his duty, a conviction would require proof that the alleged violator acted with the specific intent to intimidate, hinder or interrupt the officer" *Cocroft* at 126.

Applying this analysis to the instant matter, there was no evidence presented during the course of the trial, even under the *Latimore* standard, that the Defendant had the specific intent to intimidate, hinder or interrupt the officer. The testimony was clear that the officers arrived on the scene to inform the Defendant that his firearm license was suspended. That portion of the officers' duty had concluded upon handing Mr. Adams the notice of his suspension. Once the officers informed Mr. Adams that his license had been suspended, their duty had ended. Anything that occurred after the fact could not be considered interference with the lawful performance of their duties.

As such, the required finding Motions should have been allowed.

III. The Defendant's Conviction Should be Overturned as the Jury Instructions Provided by the Court were woefully inadequate.

A. Standard of Review

No objection was raised to the jury instructions during the course of the trial. As such, this Honorable Court should review the challenged instruction for a substantial risk of a miscarriage of justice. See *Commonwealth v. Alphas,* 430 Mass. 8, 13 (1999).

B. The Instructions Provided by the Court were Woefully Inadequate as they Did Not Include a "Knowledge" Requirement

At the conclusion of the trial, the Court provided the jury with instructions on Resisting Arrest and Disorderly Conduct (T. 2/73-80). The Court appeared to read those instructions directly from the model jury instructions, informing the parties "[B]efore the jury comes in and while I have both counsel here, on the resisting arrest charge I was just going to give the model instructions in the totality" (T. 2/10). However, when it came to the Interfering with a Police Officer, the Court instructed the jury as follows:

"The third charge in the complaint is interfering with a police officer. In order to prove that charge, the Commonwealth must prove three things beyond a reasonable doubt. First, that the Defendant intimidated, hindered or interrupted; second, a police officer that has the same instructions on police officer and

resisting arrest apply; and that the police officer was in the lawful performance of his duty. The Commonwealth must prove that the Defendant knew the person he was hindering or interrupting was in fact a police officer" (T. 2/80). The Defendant avers that these instructions were woefully inadequate.

The Court's instructions discuss intimidation, hindering or interrupting, but do not provide any additional guidance to the jury as to what that conduct could consist of. No definition of "interfere" was ever provided.

"When a statute does not define its words we give them their usual and accepted meanings, as long as these meanings are consistent with the statutory purpose" *Bayless v. TTS Trio Corp.*, 474 Mass. 215, 219 (2016). Webster's Dictionary defines "interfere" as "to come in collision or be in opposition; to enter into or to take part in the concerns of others; to act reciprocally so as to augment, diminish or affect one another; to impose in a way that hinders or impedes; to enter or take part in the concerns of others." Webster's 7th Collegiate Dictionary 441 (1971); Webster's 10th Collegiate Dictionary 609 (2001). That specific definition was not provided to the jury, instead they were given other

ambiguous terms, such as "intimidated" and "interrupted".

Furthermore, the jury was never instructed that the actions taken by the Defendant must be willful and purposeful.

In order to be found guilty, the jury would need to find that the actions of the Defendant were purposeful. That is, a conviction would require that he *intended* to interfere with a police officer in the lawful performance of his duty. By leaving out this essential element, the Court gave the jury the ability to determine guilt based on what could have been accidental or otherwise innocuous conduct.

As set forth above, there are no cases that appear to analyze this common law offense. However, decisions surrounding the Intimidation of a Witness statute; G.L. c. 268, §13B are similar and useful for guidance.

In *Commonwealth v. Paquette*, 475 Mass. 793 (2016) the court was asked to review jury instructions when an individual lied to police during a criminal investigation. Specifically, the Defendant in *Paquette* hosted a party in Westhampton. At the party two guests were involved in an altercation that led to an assault with a bottle. *Id* at 794. The Defendant was present

during the assault. *Ibid.* During the ensuing investigation, the Defendant was interviewed and did not inform police that he was present when the assault occurred. *Id.* at 795. The Defendant was subsequently indicted for misleading a police officer. *Id.* at 796.

The Court held that a working definition of "misleads" must suggest a "knowing or intentional act calculated to lead another astray." *Id* at 801. Similarly, intimidating or harassing conduct would also "involve malicious acts calculated to produce certain effects on a third party." *Id* at 801. See also *Commonwealth v. Morse*, 468 Mass. 360, 372 (2014). The statute requires that there be an intent element, and that the intent be to knowing lead another astray.

When applied to the instant matter, it is clear that the instruction provided to the jury did not include an element of intent to interfere. The instructions provided in the instant matter could lead to an absurd result; for example, an individual knowingly walking up to a uniformed police officer who was writing a traffic citation and asking them for directions could lead to a violation under the instructions provided by the court as all three elements would be met.

These faulty instructions created prejudicial error. See *Commonwealth v. Kaeppeler*, 473 Mass. 396, 406 (2015). As such, this Honorable Court should order a new trial.

CONCLUSION

For the reasons outlined above, this Honorable Court should vacate the Defendant's conviction or, in the alternative, order a new trial.

Respectfully submitted,
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By his attorney,

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Dated: March, 2018

CERTIFICATION OF COMPLIANCE

I, William A. Korman, hereby certify that this brief and all its attachments are in compliance with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R.A.P. 16(a)(6); Mass. R.A.P. 16(e); Mass. R.A.P. 16(f); Mass. R.A.P. 16(h); Mass. R.A.P. 18; and Mass. R.A.P. 20.

/s/ William A. Korman

Dated: March 19, 2018

CERTIFICATE OF SERVICE

I, William A. Korman, do hereby certify that I have served a copy of the foregoing, along with a copy of the record appendix upon the Office of the District Attorney, Appellate Division, via electronic mail, on this the 19th day of March, 2018.

/s/ William A. Korman

ADDENDUM

Massachusetts General Laws

G.L. c. 140, Section 129D: **Surrender of firearms and ammunition to licensing authority upon denial of application for, or revocation of, identification card or license; right to transfer; sale by colonel of state police; rules and regulations**

Upon revocation, suspension or denial of an application for a firearm identification card pursuant to section 129B or for any firearms license if the firearm identification card is not then in force or for any machine gun license, the person whose application was so revoked, suspended or denied shall without delay deliver or surrender to the licensing authority where the person resides all firearms, rifles, shotguns and machine guns and ammunition which the person then possesses unless an appeal of the revocation or suspension is pending. The person or the person's legal representative shall have the right, at any time up to 1 year after the delivery or surrender, to transfer the firearms, rifles, shotguns and machine guns and ammunition to any licensed dealer or any other person legally permitted to purchase or take possession of the firearms, rifles, shotguns and machine guns and ammunition and, upon notification in

writing by the purchaser or transferee and the former owner, the licensing authority shall within 10 days deliver the firearms, rifles, shotguns and machine guns and ammunition to the transferee or purchaser and the licensing authority shall observe due care in the receipt and holding of any such firearm, rifle, shotgun or machine gun and ammunition; provided, however, that the purchaser or transferee shall affirm in writing that the purchaser or transferee shall not in violation of section 129C transfer the firearms, rifles, shotguns or machine guns or ammunition to the former owner. The licensing authority shall at the time of delivery or surrender inform the person in writing of the authority's ability, within 1 year after delivery or surrender, to transfer the firearms, rifles, shotguns and machine guns and ammunition to any licensed dealer or other person legally permitted to purchase or take possession.

The licensing authority, after taking possession of any firearm, rifle, shotgun, machine gun or ammunition by any means, may transfer possession of such weapon for storage purposes to a federally and state licensed dealer of such weapons and ammunition who operates a bonded warehouse on the licensed premises that is

equipped with a safe for the secure storage of firearms and a weapon box or similar container for the secure storage of other weapons and ammunition; provided, however, that the licensing authority shall not transfer to such dealer possession of any weapon that is or may be evidence in any current or pending criminal case concerning a violation of any general or special law, rule or regulation governing the use, possession or ownership of such weapon. Any such dealer that takes possession of a weapon under the provisions of this section shall: (i) inspect such weapon; (ii) issue to the owner a receipt indicating the make, model, caliber, serial number and condition of each weapon so received; and (iii) store and maintain all weapons so received in accordance with such regulations, rules or guidelines as the secretary of the executive office of public safety may establish under this section. The owner shall be liable to such dealer for reasonable storage charges and may dispose of any such weapon as provided under this section by transfer to a person lawfully permitted to purchase or take possession of such weapon.

Firearms, rifles, shotguns or machine guns and ammunition not disposed of after delivery or surrender according to the provisions of this section shall be

sold at public auction by the colonel of the state police to the highest bidding person legally permitted to purchase and possess said firearms, rifles, shotguns or machine guns and ammunition and the proceeds shall be remitted to the state treasurer. Any such weapon that is stored and maintained by a licensed dealer as provided under this section may be so auctioned at the direction of: (i) the licensing authority at the expiration of one year following initial surrender or delivery to such licensing authority; or (ii) the dealer then in possession, if the storage charges for such weapon have been in arrears for 90 days; provided, however, that in either case, title shall pass to the licensed dealer for the purpose of transferring ownership to the auctioneer; and provided further, that in either case, after deduction and payment for storage charges and all necessary costs associated with such surrender and transfer, all surplus proceeds, if any, shall be immediately returned to the owner of such weapon; provided, however, that no firearm, rifle, shotgun or machine gun or ammunition classified as having been used to carry out a criminal act pursuant to section 131Q shall be sold at public auction pursuant to this section.

If the licensing authority cannot reasonably ascertain a lawful owner within 180 days of acquisition by the authority, the authority may, in its discretion, trade or dispose of surplus, donated, abandoned or junk firearms, rifles, shotguns or machine guns or ammunition to properly licensed distributors or firearms dealers. The proceeds of the sale or transfer shall be remitted or credited to the municipality in which the authority presides to purchase weapons, equipment or supplies or for violence reduction or suicide prevention; provided, however, that no firearm, rifle, shotgun or machine gun or ammunition classified as having been used to carry out a criminal act pursuant to section 131Q shall be considered surplus, donated, abandoned or junk for the purposes of this section.

The secretary of the executive office of public safety may make and promulgate such rules and regulations as are necessary to carry out the provisions of this section.

G.L. c. 140Section 131: **Licenses to carry firearms; conditions and restrictions**

All licenses to carry firearms shall be designated Class A or Class B, and the issuance and possession of any such license shall be subject to the following conditions and restrictions:

(a) A Class A license shall entitle a holder thereof to purchase, rent, lease, borrow, possess and carry: (i) firearms, including large capacity firearms, and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority deems proper; and (ii) rifles and shotguns, including large capacity weapons, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as it deems proper. A violation of a restriction imposed by the licensing authority under the provisions of this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than $1,000 nor more than $10,000; provided, however, that the provisions of section 10 of chapter 269 shall not apply to such violation.

The colonel of state police may, after an investigation, grant a Class A license to a club or facility with an on-site shooting range or gallery, which club is incorporated under the laws of the commonwealth for the possession, storage and use of large capacity weapons, ammunition therefor and large capacity feeding devices for use with such weapons on the premises of such club; provided, however, that not less than one shareholder of such club shall be qualified and suitable to be issued such license; and provided further, that such large capacity weapons and ammunition feeding devices may be used under such Class A club license only by such members that possess a valid firearm identification card issued under section 129B or a valid Class A or Class B license to carry firearms, or by such other persons that the club permits while under the direct supervision of a certified firearms safety instructor or club member who, in the case of a large capacity firearm, possesses a valid Class A license to carry firearms or, in the case of a large capacity rifle or shotgun, possesses a valid Class A or Class B license to carry firearms. Such club shall not permit shooting at targets that depict human figures, human effigies, human silhouettes or any human

images thereof, except by public safety personnel performing in line with their official duties.

No large capacity weapon or large capacity feeding device shall be removed from the premises except for the purposes of: (i) transferring such firearm or feeding device to a licensed dealer; (ii) transporting such firearm or feeding device to a licensed gunsmith for repair; (iii) target, trap or skeet shooting on the premises of another club incorporated under the laws of the commonwealth and for transporting thereto; (iv) attending an exhibition or educational project or event that is sponsored by, conducted under the supervision of or approved by a public law enforcement agency or a nationally or state recognized entity that promotes proficiency in or education about semiautomatic weapons and for transporting thereto and therefrom; (v) hunting in accordance with the provisions of chapter 131; or (vi) surrendering such firearm or feeding device under the provisions of section 129D. Any large capacity weapon or large capacity feeding device kept on the premises of a lawfully incorporated shooting club shall, when not in use, be secured in a locked container, and shall be unloaded during any lawful transport. The clerk or other corporate officer of such club shall annually

file a report with the colonel of state police and the commissioner of the department of criminal justice information services listing all large capacity weapons and large capacity feeding devices owned or possessed under such license. The colonel of state police or his designee, shall have the right to inspect all firearms owned or possessed by such club upon request during regular business hours and said colonel may revoke or suspend a club license for a violation of any provision of this chapter or chapter 269 relative to the ownership, use or possession of large capacity weapons or large capacity feeding devices.

(b) A Class B license shall entitle a holder thereof to purchase, rent, lease, borrow, possess and carry: (i) non-large capacity firearms and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of such firearm as the licensing authority deems proper; provided, however, that a Class B license shall not entitle the holder thereof to carry or possess a loaded firearm in a concealed manner in any public way or place; and provided further, that a Class B license shall not entitle the holder thereof to possess a large capacity firearm, except under a Class A club license

issued under this section or under the direct supervision of a holder of a valid Class A license at an incorporated shooting club or licensed shooting range; and (ii) rifles and shotguns, including large capacity rifles and shotguns, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as he deems proper. A violation of a restriction provided under this paragraph, or a restriction imposed by the licensing authority under the provisions of this paragraph, shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than $1,000 nor more than $10,000; provided, however, that the provisions of section 10 of chapter 269 shall not apply to such violation.

A Class B license shall not be a valid license for the purpose of complying with any provision under this chapter governing the purchase, sale, lease, rental or transfer of any weapon or ammunition feeding device if such weapon is a large capacity firearm or if such ammunition feeding device is a large capacity feeding

device for use with a large capacity firearm, both as defined in section 121.

(c) Either a Class A or Class B license shall be valid for the purpose of owning, possessing, purchasing and transferring non-large capacity rifles and shotguns, and for purchasing and possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate, consistent with the entitlements conferred by a firearm identification card issued under section 129B.

(d) Any person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police, an application for a Class A license to carry firearms, or renewal of the same, which the licensing authority or the colonel may issue if it appears that the applicant is not a prohibited person, as set forth in this section, to be issued a license and has good reason to fear injury to the applicant or the applicant's property or for any other reason, including the carrying

of firearms for use in sport or target practice only, subject to the restrictions expressed or authorized under this section.

A prohibited person shall be a person who:

(i) has, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in section 52 of chapter 119, for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years ; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in section 1 of chapter 94C including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33);

(ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than

2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in said section 1 of said chapter 94C including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33);

(iii) is or has been (A) committed to a hospital or institution for mental illness, alcohol or substance abuse, except a commitment pursuant to sections 35 or 36C of chapter 123, unless after 5 years from the date of the confinement, the applicant submits with the application an affidavit of a licensed physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that in the physician's or psychologist's opinion, the applicant is not disabled by a mental illness, alcohol or substance abuse in a manner that shall prevent the applicant from possessing a firearm, rifle or shotgun; (B) committed by

a court order to a hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court order pursuant to said section 36C of said chapter 123 and submits a copy of the court order with the application; (C) subject to an order of the probate court appointing a guardian or conservator for a incapacitated person on the grounds that the applicant lacks the mental capacity to contract or manage the applicant's affairs, unless the applicant was granted a petition for relief of the order of the probate court pursuant to section 56C of chapter 215 and submits a copy of the order of the probate court with the application; or (D) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said section 35 of said chapter 123, unless the applicant was granted a petition for relief of the court order pursuant to said section 35 and submits a copy of the court order with the application;

(iv) is younger than 21 years of age at the time of the application;

(v) is an alien who does not maintain lawful permanent residency;

(vi) is currently subject to: (A) an order for suspension or surrender issued pursuant to sections 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or (B) a permanent or temporary protection order issued pursuant to said chapter 209A or a similar order issued by another jurisdiction, including any order described in 18 U.S.C. 922(g)(8);

(vii) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;

(viii) has been discharged from the armed forces of the United States under dishonorable conditions;

(ix) is a fugitive from justice; or

(x) having been a citizen of the United States, has renounced that citizenship.

The licensing authority may deny the application or renewal of a license to carry, or suspend or revoke a license issued under this section if, in a reasonable exercise of discretion, the licensing authority determines that the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on: (i) reliable and credible information that the applicant or

licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety. Upon denial of an application or renewal of a license based on a determination of unsuitability, the licensing authority shall notify the applicant in writing setting forth the specific reasons for the determination in accordance with paragraph (e). Upon revoking or suspending a license based on a determination of unsuitability, the licensing authority shall notify the holder of a license in writing setting forth the specific reasons for the determination in accordance with paragraph (f). The determination of unsuitability shall be subject to judicial review under said paragraph (f).

(e) Within seven days of the receipt of a completed application for a license to carry or possess firearms, or renewal of same, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of the

applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a license to carry or possess firearms. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. The colonel shall inquire of the commissioner of the department of mental health relative to whether the applicant is disqualified from being so licensed. If the information available to the colonel does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within said 30 day period.

The licensing authority may also make inquiries concerning the applicant to: (i) the commissioner of the department of criminal justice information services relative to any disqualifying condition and records of purchases, sales, rentals, leases and transfers of

weapons or ammunition concerning the applicant; (ii) the commissioner of probation relative to any record contained within the department of probation or the statewide domestic violence record keeping system concerning the applicant; and (iii) the commissioner of the department of mental health relative to whether the applicant is a suitable person to possess firearms or is not a suitable person to possess firearms. The director or commissioner to whom the licensing authority makes such inquiry shall provide prompt and full cooperation for that purpose in any investigation of the applicant.

The licensing authority shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such license shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law.

The licensing authority shall provide to the applicant a receipt indicating that it received the application. The receipt shall be provided to the applicant within 7

days by mail if the application was received by mail or immediately if the application was made in person; provided, however, that the receipt shall include the applicant's name and address; current license number and license expiration date, if any; the date the licensing authority received the application; the name, address and telephone number of the licensing authority; the agent of the licensing authority that received the application; the type of application; and whether the application is for a new license or a renewal of an existing license. The licensing authority shall keep a copy of the receipt for not less than 1 year and shall furnish a copy to the applicant if requested by the applicant.

(f) A license issued under this section shall be revoked or suspended by the licensing authority, or his designee, upon the occurrence of any event that would have disqualified the holder from being issued such license or from having such license renewed. A license may be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefor. Upon revocation or

suspension, the licensing authority shall take possession of such license and the person whose license is so revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended license may be reinstated only upon the termination of all disqualifying conditions, if any.

Any applicant or holder aggrieved by a denial, revocation, suspension or restriction placed on a license, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receiving notice of the denial, revocation or suspension or within 90 days after the expiration of the time limit during which the licensing authority shall respond to the applicant or, in the case of a restriction, any time after a restriction is placed on the license pursuant to this section, file a petition to obtain judicial review in the district court having jurisdiction in the city or town in which the applicant

filed the application or in which the license was issued. If after a hearing a justice of the court finds that there was no reasonable ground for denying, suspending, revoking or restricting the license and that the petitioner is not prohibited by law from possessing a license, the justice may order a license to be issued or reinstated to the petitioner or may order the licensing authority to remove certain restrictions placed on the license.

(g) A license shall be in a standard form provided by the executive director of the criminal history systems board in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain a license number which shall clearly indicate whether such number identifies a Class A or Class B license, the name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the licensee. Such license shall be marked ''License to Carry Firearms'' and shall clearly indicate whether the license is Class A or Class B. The application for such license shall be made in a standard form provided by the executive director of the criminal history systems board, which form shall require

the applicant to affirmatively state under the pains and penalties of perjury that such applicant is not disqualified on any of the grounds enumerated above from being issued such license.

(h) Any person who knowingly files an application containing false information shall be punished by a fine of not less than $500 nor more than $1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

(i) A license to carry or possess firearms shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue and shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of issue; provided, however, that, if the licensee applied for renewal before the license expired, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. If a licensee is on active duty with the armed forces of the United States on the expiration date of the license, the license shall remain valid until the licensee is released from active duty

and for a period not less than 180 days following the release; provided, however, that, if the licensee applied for renewal prior to the end of that period, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. An application for renewal of a Class B license filed before the license has expired shall not extend the license beyond the stated expiration date; provided, that the Class B license shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of issue. Any renewal thereof shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years but not more than 6 years from the effective date of such license. Any license issued to an applicant born on February 29 shall expire on March 1. The fee for the application shall be $100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain $25 of the fee; $50 of the fee shall be deposited into the general fund of the commonwealth and not less than $50,000 of the funds deposited into the General Fund shall be allocated to the Firearm Licensing Review Board, established in

section 130B, for its operations and that any funds not expended by said board for its operations shall revert back to the General Fund; and $25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. For active and retired law enforcement officials, or local, state, or federal government entities acting on their behalf, the fee for the application shall be set at $25, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain $12.50 of the fee, and $12.50 of the fee shall be deposited into the general fund of the commonwealth. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit such portion of the license application fee into the Firearms Record Keeping Fund quarterly, not later than January 1, April 1, July 1 and October 1 of each year. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly such portion of the license application fee as is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. For the purposes of section 10 of chapter 269, an expired license to carry firearms shall be deemed to be valid for a

period not to exceed 90 days beyond the stated date of expiration, unless such license to carry firearms has been revoked.

(j)(1) No license shall be required for the carrying or possession of a firearm known as a detonator and commonly used on vehicles as a signaling and marking device, when carried or possessed for such signaling or marking purposes.

(2) No license to carry shall be required for the possession of an unloaded large capacity rifle or shotgun or an unloaded feeding device therefor by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service, or by the members of any such organization when on official parade duty or during ceremonial occasions. For purposes of this subparagraph, an ''unloaded large capacity rifle or shotgun'' and an ''unloaded feeding device therefor'' shall include any large capacity rifle, shotgun or feeding device therefor loaded with a blank cartridge or blank cartridges, so-called, which contain no projectile within such blank or

blanks or within the bore or chamber of such large capacity rifle or shotgun.

(k) Whoever knowingly issues a license in violation of this section shall be punished by a fine of not less than $500 nor more than $1,000 or by imprisonment for not less than six months nor more than two years in a jail or house of correction, or by both such fine and imprisonment.

(l) The executive director of the criminal history systems board shall send electronically or by first class mail to the holder of each such license to carry firearms, a notice of the expiration of such license not less than 90 days prior to such expiration and shall enclose therein a form for the renewal of such license. The form for renewal shall include an affidavit in which the applicant shall verify that the applicant has not lost any firearms or had any firearms stolen from the applicant since the date of the applicant's last renewal or issuance. The taking of fingerprints shall not be required in issuing the renewal of a license if the renewal applicant's fingerprints are on file with the department of the state police. Any licensee shall notify, in writing, the licensing authority who issued

said license, the chief of police into whose jurisdiction the licensee moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of said license. The commissioner of criminal justice information services shall provide electronic notice of expiration only upon the request of a cardholder. A request for electronic notice of expiration shall be forwarded to the department on a form furnished by the commissioner. Any electronic address maintained by the department for the purpose of providing electronic notice of expiration shall be considered a firearms record and shall not be disclosed except as provided in section 10 of chapter 66.

(m) Notwithstanding the provisions of section 10 of chapter 269, any person in possession of a firearm, rifle or shotgun whose license issued under this section is invalid for the sole reason that it has expired, not including licenses that remain valid under paragraph (i) because the licensee applied for renewal before the license expired, but who shall not be disqualified from renewal upon application therefor pursuant to this

section, shall be subject to a civil fine of not less than $100 nor more than $5,000 and the provisions of section 10 of chapter 269 shall not apply; provided, however, that the exemption from the provisions of said section 10 of said chapter 269 provided herein shall not apply if: (i) such license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such license has been denied. Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or shotgun after such person's license has expired, meaning after 90 days beyond the stated expiration date on the license, has been revoked or suspended, solely for failure to give notice of a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended license then in possession and such officer, shall forward such license to the licensing authority by whom it was issued as soon as practicable. The officer shall, at the time of confiscation, provide

to the person whose firearm, rifle or shotgun has been confiscated, a written inventory and receipt for all firearms, rifles or shotguns confiscated and the officer and his employer shall exercise due care in the handling, holding and storage of these items. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended license within one year of such confiscation or may be otherwise disposed of in accordance with the provisions of section 129D. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131F.

(n) Upon issuance of a license to carry or possess firearms under this section, the licensing authority shall forward a copy of such approved application and license to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a license under this section.

(o) No person shall be issued a license to carry or possess a machine gun in the commonwealth, except that

a licensing authority or the colonel of state police may issue a machine gun license to:

(i) a firearm instructor certified by the municipal police training committee for the sole purpose of firearm instruction to police personnel;

(ii) a bona fide collector of firearms upon application or upon application for renewal of such license.

(p) The executive director of the criminal history systems board shall promulgate regulations in accordance with chapter 30A to establish criteria for persons who shall be classified as bona fide collectors of firearms.

(q) Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

(r) The secretary of the executive office of public safety or his designee may promulgate regulations to carry out the purposes of this section.

G. L. c. Section 1: **Perjury**

Section 1. Whoever, being lawfully required to depose the truth in a judicial proceeding or in a proceeding in a course of justice, wilfully swears or affirms falsely in a matter material to the issue or point in question, or whoever, being required by law to take an oath or affirmation, wilfully swears or affirms falsely in a matter relative to which such oath or affirmation is required, shall be guilty of perjury. Whoever commits perjury on the trial of an indictment for a capital crime shall be punished by imprisonment in the state prison for life or for any term of years, and whoever commits perjury in any other case shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars or by imprisonment in jail for not more than two and one half years, or by both such fine and imprisonment in jail.

An indictment or complaint for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury proceedings relating to an indictment or complaint for the commission of a violent crime, as defined in section 121 of chapter 140, the defendant under oath has knowingly made 2 or more declarations, which are inconsistent to the degree that

1 of them is necessarily false, need not specify which declaration is false if: (1) each declaration was material to the point in question and (2) each declaration was made within the period of the statute of limitations for the offense charged under this section. In any prosecution under this section, the falsity of a declaration set forth in the indictment or complaint shall be established sufficient for conviction by proof that the defendant, while under oath, made irreconcilably contradictory declarations material to the point in question. If, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits to such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed. It shall be a defense to an indictment or complaint made pursuant to this section that the defendant, at the time he made each declaration, believed each such declaration to be true or its falsity was the result of a good faith mistake or error.

G.L. c. 268, Section 13B: **Intimidation of witnesses, jurors and persons furnishing information in connection with criminal proceedings**

(1) Whoever, directly or indirectly, willfully

(a) threatens, or attempts or causes physical injury, emotional injury, economic injury or property damage to;

(b) conveys a gift, offer or promise of anything of value to; or

(c) misleads, intimidates or harasses another person who is:

(i) a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type;

(ii) a person who is or was aware of information, records, documents or objects that relate to a violation of a criminal statute, or a violation of conditions of probation, parole or bail;

(iii) a judge, juror, grand juror, prosecutor, police officer, federal agent, investigator, defense attorney, clerk, court officer, probation officer or parole officer;

(iv) a person who is furthering a civil or criminal proceeding, including criminal investigation, grand jury

proceeding, trial, other criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court ordered mediation, any other civil proceeding of any type; or

(v) a person who is or was attending or had made known his intention to attend a civil or criminal proceeding, including criminal investigation, grand jury proceeding, trial, other criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation, any other civil proceeding of any type with the intent to impede, obstruct, delay, harm, punish or otherwise interfere thereby, or do so with reckless disregard, with such a proceeding shall be punished by imprisonment in a jail or house of correction for not more than 2 and one-half years or by imprisonment in a state prison for not more than 10 years, or by a fine of not less than $1,000 nor more than $5,000, or by both such fine and imprisonment.

(2) As used in this section, ''investigator'' shall mean an individual or group of individuals lawfully authorized by a department or agency of the federal

government, or any political subdivision thereof, or a department or agency of the commonwealth, or any political subdivision thereof, to conduct or engage in an investigation of, prosecution for, or defense of a violation of the laws of the United States or of the commonwealth in the course of his official duties.

(3) As used in this section, ''harass'' shall mean to engage in any act directed at a specific person or persons, which act seriously alarms or annoys such person or persons and would cause a reasonable person to suffer substantial emotional distress. Such act shall include, but not be limited to, an act conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including but not limited to any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

(4) A prosecution under this section may be brought in the county in which the criminal investigation, grand

jury proceeding, trial or other criminal proceeding is being conducted or took place, or in the county in which the alleged conduct constituting an offense occurred.

Section 32B: **Resisting arrest**

(a) A person commits the crime of resisting arrest if he knowingly prevents or attempts to prevent a police officer, acting under color of his official authority, from effecting an arrest of the actor or another, by:

(1) using or threatening to use physical force or violence against the police officer or another; or

(2) using any other means which creates a substantial risk of causing bodily injury to such police officer or another.

(b) It shall not be a defense to a prosecution under this section that the police officer was attempting to make an arrest which was unlawful, if he was acting under color of his official authority, and in attempting to make the arrest he was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A police officer acts under the color of his official authority when, in the regular course of assigned duties, he is called upon to make, and does

make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him.

(c) The term ''police officer'' as used in this section shall mean a police officer in uniform or, if out of uniform, one who has identified himself by exhibiting his credentials as such police officer while attempting such arrest.

(d) Whoever violates this section shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years or a fine of not more than five hundred dollars, or both.

G.L. c. 268, Section 34A: **Furnishing false name or Social Security number to law enforcement officer or official; penalty; restitution**

Whoever knowingly and willfully furnishes a false name or Social Security number to a law enforcement officer or law enforcement official following an arrest shall be punished by a fine of not more than $1,000 or by imprisonment in a house of correction for not more than one year or by both such fine and imprisonment. Such sentence shall run from and after any sentence imposed as a result of the underlying offense. The court may order that restitution be paid to persons whose identity

has been assumed and who have suffered monetary losses as a result of a violation of this section.

G.L. c. 268, Section 40: **Reports of crimes to law enforcement officials**

Section 40. Whoever knows that another person is a victim of aggravated rape, rape, murder, manslaughter or armed robbery and is at the scene of said crime shall, to the extent that said person can do so without danger or peril to himself or others, report said crime to an appropriate law enforcement official as soon as reasonably practicable. Any person who violates this section shall be punished by a fine of not less than five hundred nor more than two thousand and five hundred dollars.

G.L. c. 269, Section 10(i): **Carrying dangerous weapons; possession of machine gun or sawed-off shotguns; possession of large capacity weapon or large capacity feeding device; punishment**

(i) Whoever knowingly fails to deliver or surrender a revoked or suspended license to carry or possess firearms or machine guns issued under the provisions of section one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty, or firearm identification card, or receipt for the fee for such card, or a firearm, rifle, shotgun or machine gun, as provided in section one hundred and twenty-nine D of

chapter one hundred and forty, unless an appeal is pending, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars.

G.L. c. 269, Section 13A: **False reports to police officers**

Whoever intentionally and knowingly makes or causes to be made a false report of a crime to police officers shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment in a jail or house of correction for not more than one year, or both.

G.L. c. 272, Section 53: **Penalty for certain offenses**

(a) Common night walkers, common street walkers, both male and female, persons who with offensive and disorderly acts or language accost or annoy another person, lewd, wanton and lascivious persons in speech or behavior, keepers of noisy and disorderly houses, and persons guilty of indecent exposure shall be punished by imprisonment in a jail or house of correction for not more than 6 months, or by a fine of not more than $200, or by both such fine and imprisonment.

(b) Disorderly persons and disturbers of the peace, for the first offense, shall be punished by a fine of not more than $150. On a second or subsequent offense, such person shall be punished by imprisonment in a jail or house of correction for not more than 6 months, or by a fine of not more than $200, or by both such fine and imprisonment.

G.L. c. 279, Section 5: **Sentence if no punishment is provided by statute**

Section 5. If no punishment for a crime is provided by statute, the court shall impose such sentence, according to the nature of the crime, as conforms to the common usage and practice in the commonwealth. If a person is convicted of a misdemeanor punishable by imprisonment, he may, unless otherwise expressly provided, be sentenced to imprisonment either in the jail or in the house of correction.

Massachusetts Rules of Appellate Procedure, Rule 8(e) Correction or modification of the record

If any difference arises as to whether the record truly discloses what occurred in the lower court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If

anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the lower court, either before or after the record is transmitted to the appellate court, or the appellate court, or a single justice, on proper suggestion or on its own motion, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to a single justice.

18 U.S. Code § 1503(a) - Influencing or injuring officer or juror generally

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer,

magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

Ark. Code. Ann. § 5-54-102 - **Obstructing governmental operations.**

(a) A person commits the offense of obstructing governmental operations if the person:

(1) Knowingly obstructs, impairs, or hinders the performance of any governmental function;

(2) Knowingly refuses to provide information requested by an employee of a governmental agency relating to the investigation of a case brought under Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq., and is the physical custodian of the child in the case;

(3) Fails to submit to court-ordered scientific testing by a noninvasive procedure to determine the paternity of a child in a case brought under Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq.; or

(4) Falsely identifies himself or herself to a law enforcement officer or a code enforcement officer.

(b) (1) Obstructing governmental operations by using or threatening to use physical force is a Class A misdemeanor.

(2) A second or subsequent offense of obstructing governmental operations under subdivision (a)(4) of this section is a Class A misdemeanor.

(3) Otherwise, obstructing governmental operations is a Class C misdemeanor.

(c) This section does not apply to:

(1) Unlawful flight by a person charged with an offense;

(2) Refusal to submit to arrest;

(3) Any means of avoiding compliance with the law not involving affirmative interference with a governmental function unless specifically set forth in this section; or

(4) Obstruction, impairment, or hindrance of what a person reasonably believes is a public servant's unlawful action.

(d) (1) As used in this section, "code enforcement officer" means an individual charged with the duty of enforcing a municipal code, municipal ordinance, or municipal regulation as defined by a municipal code, municipal ordinance, or municipal regulation.

(2) "Code enforcement officer" includes a municipal animal control officer.

N.Y. Penal Law 195.05 **Obstructing governmental administration in the second degree.**

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs

or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

Obstructing governmental administration is a class A misdemeanor.