

Unlawful Possession of a Large Capacity Weapon [feeding device]

This instruction applies to offenses committed before October 2, 2024.¹

DFT is charged with unlawfully possessing a large capacity weapon [feeding device] on [DATE].

To prove the defendant guilty of this offense, the Commonwealth must prove four [five] elements beyond a reasonable doubt:

1. DFT knowingly possessed the object in question [or knowingly had the object under his control in a vehicle];²
2. The object met the legal definition of a “large capacity weapon” [“large capacity feeding device”];
3. DFT knew that the object met the legal definition of a large capacity weapon [large capacity feeding device] or was capable of holding more than ten rounds of ammunition [more than five shotgun shells];³ and

¹ G.L. c. 269, § 10(m) provides: “Notwithstanding the provisions of [G.L. c. 269, §§ 10(a) & (h)], any person not exempted by statute who knowingly has in his possession, or knowingly has under his control in a vehicle, a large capacity weapon or large capacity feeding device therefor who does not possess a valid license to carry firearms issued under [G.L. c. 140, §§ 131 or 131F], except as permitted or otherwise provided under this section or chapter 140, shall be punished . . .” Effective October 2, 2024, the definitions of firearm, feeding device, large capacity feeding device, and large capacity weapon, in G.L. c. 140, § 121, and the definition of a license to carry, in G.L. c. 140, § 131, were amended. See St. 2024, c. 135 §§ 20, 21, 22, 49. In addition, G.L. c. 140, § 131M, provides: “No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of [G.L. c. 140, § 122 (to sell, rent, or lease a firearm)] violates the provisions of this section shall be punished . . .” Section 131M was amended, effective October 2, 2024. See St. 2024, c. 135, § 71.

² If the indictment specifies a particular object, the judge should consider substituting the language in the indictment for “object in question” throughout the instruction.

³ *Commonwealth v. Cassidy*, 479 Mass. 527, 536 (2018) (Commonwealth must prove defendant knew weapon or feeding device qualified as large capacity or that it was capable of holding more than ten rounds of ammunition). See also *id.* at 541 (Appendix) (model jury instruction for § 10[m] offenses).

4. DFT did not have a valid license to carry firearms at the time he possessed the weapon [feeding device].⁴

< If there is evidence that defendant was exempt from licensing requirements, then add the following.⁵ >

5. DFT did not qualify for one of the legal exemptions that allow someone to possess a large capacity weapon [feeding device] without a license.

⁴ This instruction includes proof of lack of a valid license as an essential element even though, to date, neither the United States Supreme Court nor the Supreme Judicial Court has recognized a Second Amendment right to possess large capacity weapons or feeding devices. See *Commonwealth v. Guardado II*, 493 Mass. 1, 4 n.2 (2023) (“We leave for another day . . . the question whether large capacity feeding devices are ‘arms’ protected by the Second Amendment following” *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2122 (2022)); *Commonwealth v. Cassidy*, 479 Mass. 527, 540 (2018) (pre-*Bruen*, SJC held no Second Amendment right to possess large capacity magazine). See also *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 41–50 (1st Cir. 2024) (State law barring possession of large capacity feeding devices or magazines did not violate Second Amendment); *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (State law barring possession of military-style assault weapons did not violate Second Amendment); *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175 (7th Cir. 2023) (split decision affirming trial courts’ refusals to enjoin state and municipal laws banning assault weapons and high-capacity magazines on ground that the record showed such items were much more like machineguns and military-grade weaponry than like firearms in common use for the lawful purpose of individual self-defense). *Accord National Ass’n for Gun Rights v. Lamont*, 2023 WL 4975979, at *1 (D. Conn. Aug. 3, 2023). In *United States v. Rahimi*, 144 S. Ct. 1889 (2024), the United States Supreme Court refined the *Bruen* inquiry concerning whether a modern firearm regulation passes constitutional muster to focus on whether the regulation is “relevantly similar” to laws that our tradition is understood to permit.

⁵ G.L. c. 269, § 10(m) exempts from the licensing requirement (1) any of the following persons, so long as he is authorized by a competent authority to acquire, possess, or carry a large capacity semiautomatic weapon and is acting within the scope of his duties: (a) any federal or state employee, agent, or officer, including local law enforcement personnel; (b) any state or federal military or other service personnel; and (c) any Massachusetts municipal law enforcement officer, agent, or employee; (2) any federally licensed gunsmith; and (3) any federal, state, or local museum, historical society, or institution collection open to the public. See also G.L. c. 140, § 131(j)(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 [including one loaded with blanks] by a veteran’s organization . . . when on official parade duty or during ceremonial occasions.”

First, the Commonwealth must prove that DFT knowingly possessed the object in question [or knowingly had the object under his control in a vehicle]. *<If a further instruction on knowledge is appropriate, the judge may use the language in the Supplemental Instruction that follows this model instruction.>* A person can possess an object by having direct physical control over it. For example, you possess whatever you have in your pocket. [*<If there is evidence of constructive possession.>* A person can also possess an object if the person:

- knows of the object;
- has the ability to exercise control over it, either directly or through another person; and
- has the intent to exercise control over it.⁶

For example, under the law, you possess items that you keep in your dresser drawer at home.⁷]

You must determine whether DFT possessed the object in question from all of the facts and the reasonable inferences that you may draw from those facts. Merely being present near an object [*<add as appropriate:>* being associated with a person who controls an object or controls a place where an object is found, living in an apartment where an object is found, or being in a vehicle where an object is present] does not amount to possession. To find that someone possessed an object, you must find that the person knew of the object and had the ability and intent to exercise control over it.

[*<Add if relevant:>* The possession does not have to be exclusive to one person. Someone can possess an item jointly with another person.⁸]

⁶ "Possession implies 'control and power,' . . . exclusive or joint . . . , or, in the case of 'constructive possession,' knowledge coupled with the ability and intention to exercise dominion and control." *Commonwealth v. Brzezinski*, 405 Mass. 401, 409 (1989) (citations omitted).

⁷ If the case involves a firearm found in a dresser drawer, the judge should consider using a different example to avoid an appearance of commenting on the evidence. Alternatives include: "I am in possession of my car keys, even though they are next door on my desk."

⁸ *Brzezinski*, 405 Mass. at 409.

Second, the Commonwealth must prove that the object in question met the legal definition of a "large capacity weapon" ["large capacity feeding device"].

A "large capacity weapon" is: *<instruct only as applicable>*

- any firearm, rifle, or shotgun that is semiautomatic and has a fixed large capacity feeding device or is capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; or
- any firearm, rifle, or shotgun that employs a rotating cylinder capable of accepting more than ten rounds of ammunition or more than five shotgun shells, or that is an assault weapon.⁹

[*< If defendant is charged with illegal possession of a large capacity feeding device:>* A "large capacity feeding device" is a fixed or detachable magazine, box, drum, feed strip, or similar device capable of accepting, or that can be readily converted to accept, more than ten rounds of ammunition or more than five shotgun shells.¹⁰]

Third, the Commonwealth must prove either that DFT **knew** that the weapon [feeding device] met the legal definition of a "large capacity weapon" or that DFT **knew** that the weapon [feeding device] was capable of accepting, or readily modifiable to accept, more than ten rounds of ammunition or more than five shotgun shells. In determining what DFT knew, you may consider his actions and words, all of the surrounding

⁹ G.L. c. 140, § 121. "The term 'large capacity weapon' shall be a secondary designation and shall apply to a weapon in addition to its primary designation as a firearm, rifle or shotgun," under G.L. c. 140, § 121. "Large capacity weapon" does not include any weapon (1) made in or before 1899; (2) operated by manual bolt, pump, lever or slide action; (3) that constitutes a single-shot weapon; (4) rendered permanently inoperable or unable to be designated a large capacity weapon; or (5) any antique, relic, theatrical prop, or other weapon incapable of firing a projectile, not intended to be used as a functional weapon, and unable readily to be modified into an operable large capacity weapon. G.L. c. 140, § 121. "Assault weapon" is defined in G.L. c. 140, § 121.

¹⁰ G.L. c. 140, § 121.

circumstances, and the reasonable inferences that you draw from the evidence.

Fourth, the Commonwealth must prove that DFT did not have a valid license to carry a firearm.

[< *If there is a question about the difference between a license to carry and an FID card*:> A "license to carry a firearm" is not the same thing as a "firearms identification card," or "FID card." A license to carry a firearm allows a person to possess a firearm [rifle/shotgun] [stun gun] either inside or outside his home or place of business.¹¹ An FID card allows a person to possess a firearm [stun gun] only inside his home or place of business.¹²]

[< *If there is evidence that defendant was exempt from licensing requirements, then add the following*:>

Fifth, the Commonwealth must prove that DFT did not qualify for a statutory exemption from the requirement to have a license to carry a large capacity weapon [feeding device].]

Supplemental Instructions

(a) "Knowingly"

DFT acted "knowingly" if he did something voluntarily and intentionally, and not because of mistake, accident, negligence or other innocent reason. You must determine what DFT himself actually did or did not know at the time, not what a reasonable person would have known.

¹¹ G.L. c. 269, § 10(a) ("No person having in effect a license to carry firearms for any purpose, issued under [G.L. c. 140, §§ 131 or 131F] shall be deemed to be in violation of [G.L. c. 269, § 10]).

¹² *Commonwealth v. Powell*, 459 Mass 572, 587 (2011) ("An FID card allows the holder to own or possess a firearm within the holder's residence or place of business, but not to carry it to or in any other place."); *Phipps v. Police Comm'r of Boston*, 94 Mass. App. Ct. 725, 731 n.10 (2019) ("A person may . . . apply for a firearm identification card, which allows holders to own or possess a firearm, but only within their residence or place of business. See G.L. c. 140, §§ 129B, 129C.").

This requires you to make a decision about DFT's state of mind. It is obviously impossible to look directly into a person's mind. But in our everyday affairs, we often look to the actions of others to decide what their state of mind is. You should consider all of the evidence, and any reasonable inferences you draw from the evidence, in determining whether the defendant acted with the knowledge that [he possessed the object] [the object was a large capacity weapon [feeding device]].

(b) Ignorance of the Law

You have heard evidence that DFT did not know that he was required to have a license to carry before possessing a large capacity weapon [feeding device]. The Commonwealth does not have to prove that DFT knew that the law required him to have a license to carry before possessing a large capacity weapon [feeding device]. For that reason, the evidence that DFT did not know of these requirements is not relevant to your deliberations and you should not discuss it at all during your deliberations.