

# HOUSE . . . . . No. 4102

Message from His Excellency the Governor recommending legislation to reduce firearm violence. May 6, 2009.

## The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT  
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DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

May 6, 2009

To the Honorable Senate and House of Representatives:

I am filing for your consideration legislation entitled, “An Act To Reduce Firearm Violence.”

Gun violence plagues citizens in many of the Commonwealth’s neighborhoods, claiming lives and causing immeasurable pain to the families of victims. Illegal firearms flow into the Commonwealth and end up in the hands of felons and young people. Gangs threaten the safety and security of many neighborhoods and create a climate of fear that jeopardizes efforts by police, prosecutors, and social service providers to keep our citizens safe. We simply cannot allow violence committed with illegal guns to continue.

This legislation tackles the problem of violence and illegal firearm possession in several ways:

- It shrinks the supply of illegal guns by limiting gun buyers to one firearm purchase per month. This legislation is designed to reduce gun trafficking by “straw purchasers”

who purchase firearms for convicted felons or other prohibited buyers. The bill also requires private sales of firearms to be recorded at a dealer location, so that the record of the sale will be included in the Massachusetts Instant Record Checking System. Passing this legislation would make Massachusetts the fourth state in the nation to adopt a one-gun-per-month law.

- It recognizes the danger that illegal guns pose to the public by providing that, upon motion by the district attorney, defendants charged with felonies involving the unlawful possession, use, or trafficking of a firearm are eligible for pre-trial detention and defendants charged with felonies involving the use of force and a firearm are presumptively ineligible for bail pending trial.
- In the wake of the senseless death of a young boy that occurred at the machine gun shoot in Westfield in 2008, this bill clarifies the law to strictly prohibit the handling of a machine gun by anyone other than a licensed machine gun operator. The Secretary of Public Safety and Security will also file regulations in conjunction with this legislation to regulate any gun shows that are open to the general public in order to ensure that appropriate safety procedures are undertaken.
- Finally, this legislation brings Massachusetts into compliance with the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, a federal law passed in the aftermath of the Virginia Tech shooting tragedy. It will require that the courts transmit all required mental health adjudications and orders to the state's criminal justice information system to be provided to the Attorney General of the United States for the purpose of firearms licensing only. The legislation also creates a federally mandated relief from disabilities program, which allows individuals who have been adjudicated as mentally defective or committed to mental institutions to once again become eligible for gun ownership by showing that they are not likely

to act in a manner dangerous to public safety. Passage of this piece is critical, as noncompliance with the law will subject the Commonwealth to a loss of valuable federal grant funding.

The attached summary provides the details and background for each section of the bill. I urge your favorable consideration of this legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval Patrick", written in a cursive style.

DEVAL L. PATRICK,  
*Governor.*

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

## AN ACT TO REDUCE FIREARM VIOLENCE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1                   SECTION 1. Section 168 of chapter 6 of the General Laws, as appearing in the 2006  
2 Official Edition, is hereby amended by inserting the following paragraph:-  
3 Notwithstanding any general or special law or court order, including an order of impoundment, to the  
4 contrary, the board shall transmit to the Attorney General of the United States any information in its control  
5 required or permitted under federal law to be included in the National Instant Background Check System or  
6 any successor system maintained for the purpose of conducting background checks for firearms sales or  
7 licensing. No more information than is necessary for the purposes stated above shall be transmitted, and  
8 such information shall not be considered a public record under section 7 of chapter 4.

9  
10                   SECTION 2. Section 10 of chapter 66 of the General Laws, as so appearing, is hereby amended by  
11 inserting after the word “request”, in line 62, the following words:- , but the executive director of the  
12 criminal history systems board, or the executive director’s agent, may disclose records pertaining to  
13 persons who own or possess rifles, shotguns, firearms, machine guns, large capacity weapons or large  
14 capacity feeding devices, as defined in section 121 of chapter 140, to licensees under section 122 of chapter  
15 140 to comply with section 131E of chapter 140.

16  
17                   SECTION 3. Section 35 of chapter 123 of the General Laws, as so appearing, is hereby amended  
18 by inserting after the word “days.”, in line 38, the following words:- The court in its order shall  
19 specify whether such commitment is based upon a finding that said person is an alcoholic, a  
20 substance abuser, or both, and this information shall be entered in the record to permit

HOUSE — No. 4102

21 transmission to the criminal history systems board for the purposes and under the conditions set  
22 forth in the second paragraph of section 36A.

23

24 SECTION 4. Section 36A of chapter 123 of the General Laws, as so appearing, is hereby amended by  
25 inserting the following paragraph:-

26 Notwithstanding the foregoing, the administrative office of the trial court shall transmit information  
27 contained in court records maintained under this section to the criminal history systems board for the  
28 purposes of (a) providing licensing authorities as defined under chapter 121 of chapter 140 with  
29 information required or permitted to be considered under state or federal law for the purpose of conducting  
30 background checks for firearms sales or licensing and (b) providing the Attorney General of the United  
31 States with information required or permitted under federal law to be included in the National Instant  
32 Criminal Background Check System or any successor system maintained for the purpose of conducting  
33 background checks for firearms sales or licensing. The executive director of the criminal history systems  
34 board shall determine which court records shall be transmitted for said purposes, provided that the  
35 executive director shall require no more information than is necessary to be transmitted, and such  
36 information shall not be considered a public record under section 7 of chapter 4.

37

38 SECTION 5. Section 121 of chapter 140 of the General Laws, as so appearing, is hereby amended by  
39 striking out, in line 39, the words “from which a shot or bullet can be discharged”, and inserting in place  
40 thereof the following words:- which will or is designed to or may readily be converted to expel a projectile  
41 by the action of an explosive

42

43 SECTION 6. Section 123 of chapter 140 of the General Laws, as so appearing, is hereby amended by  
44 inserting after the first sentence in the third paragraph the following sentence:- No person licensed under  
45 section 122 shall sell, rent or lease, to another person, other than to an exempt person under subsection (c)  
46 of section 131E, more than 1 rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity  
47 feeding device in any 30-day period.

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## HOUSE — No. 4102

49 SECTION 7. Section 128A of chapter 140 of the General Laws, as so appearing, is hereby amended by  
50 adding the following 2 sentences:- Any sale or transfer conducted under this section shall comply with  
51 section 131E and shall take place at the location of a dealer licensed under section 122, who shall transmit  
52 the information required by this section for the purchases and sales by utilizing the electronic verification  
53 link established by the executive director of the criminal history systems board. A licensed dealer may  
54 charge the seller a fee not to exceed \$25 for each sale or transfer electronically submitted on behalf of the  
55 seller to the criminal history systems board.

56

57 SECTION 8. Section 129B is hereby further amended by striking out, in line 85, the words “department of  
58 mental health,”

59

60 SECTION 9. Section 129C of chapter 140, as so appearing, is hereby amended by inserting after the word  
61 “purpose”, in line 84, the following words:- , provided, however, that nothing in this subsection shall allow  
62 for the holding, handling, or firing of a machine gun by any person other than a person licensed to possess a  
63 machine gun under section 131(o) or police personnel receiving instruction from a firearm instructor  
64 certified by the municipal police training committee or the colonel of the state police

65

66 SECTION 10. Section 129D of chapter 140 of the General Laws, as so appearing, is hereby amended by  
67 inserting after the word “be”, in line 43, the following words:- destroyed by the colonel of the state police  
68 or the licensing authority or

69

70 SECTION 11. Section 130 of chapter 140 of the General Laws, as so appearing, is hereby amended by  
71 inserting after the word “shotgun”, in line 8, the following words:- or machine gun

72

73 SECTION 12. Section 130 is hereby further amended by inserting after the word “years”, in line 28, the  
74 following words:- ; and provided further, that nothing in this section shall allow for the holding, handling,  
75 or firing of a machine gun by any person other than a person licensed to possess a machine gun under

HOUSE — No. 4102

76 section 131(o) or police personnel receiving instruction from a firearm instructor certified by the municipal  
77 police training committee or the colonel of the state police

78

79 SECTION 13. Section 130B of chapter 140 of the General Laws, as so appearing, is hereby amended by  
80 inserting at the end the following subsection:-

81 (h) There shall be, within the firearm licensing review board, a relief from disabilities subcommittee  
82 comprised of 3 members, designated from time to time, as follows: 1 member of the firearm licensing  
83 review board designated by the chair, 1 person designated by the commissioner of the department of mental  
84 health, and 1 person designated by the secretary of public safety and security, who shall chair the  
85 subcommittee.

86 An applicant who has been formally adjudicated as mentally defective in the commonwealth or  
87 committed involuntarily to a mental institution in the commonwealth, within the meaning of 18 U.S.C. §  
88 922, may petition the subcommittee for relief from the firearms prohibitions or disabilities imposed by  
89 federal law as the result of such adjudication or commitment.

90 The applicant shall have the opportunity to submit evidence to the subcommittee and to be heard  
91 by the subcommittee in support of the application. All hearings shall be conducted in an informal manner,  
92 but otherwise according to the rules of evidence, and all witnesses shall be sworn by the subcommittee  
93 chair. If requested by the petitioner and payment for stenographic services, as determined by the  
94 subcommittee, accompanies such request, the subcommittee shall cause a verbatim transcript of the hearing  
95 to be made. The subcommittee's decisions and findings of facts shall be communicated in writing to the  
96 petitioner and to the licensing authority to which the petitioner has applied or intends to apply within 60  
97 days of rendering a decision. The subcommittee shall maintain the records of its proceedings and of all  
98 materials submitted or considered by the subcommittee for the purposes of judicial review for a minimum  
99 of 3 years following the date of its decision. The records of the subcommittee shall not be considered a  
100 public record under section 7 of chapter 4.

101 If the majority of the subcommittee determines that the applicant has shown by clear and  
102 convincing evidence that the applicant will not be likely to act in a manner dangerous to public safety and  
103 that granting relief will not be contrary to the public interest, the subcommittee may grant relief and direct

## HOUSE — No. 4102

104 the criminal history systems board to notify the Attorney General of the United States and to remove the  
105 record of the prohibition or disability from any database that the criminal history systems board, the  
106 commonwealth or the federal government maintains and makes available to the National Instant Criminal  
107 Background Check System or any successor system maintained for the purpose of conducting background  
108 checks for firearms sales or licensing.

109

110 In determining whether to grant relief, the subcommittee shall consider the circumstances  
111 regarding the firearms disabilities imposed; the applicant's record, including the applicant's mental health  
112 and criminal history records; and the applicant's reputation developed, at a minimum, through character  
113 witness statements, testimony, or other character evidence. The applicant shall have the burden to produce  
114 evidence concerning these matters and the burden of persuading the subcommittee to grant relief. The  
115 subcommittee may promulgate regulations governing the application process and the conduct of its  
116 hearings.

117 The decision of the subcommittee shall be a final decision. An applicant who is denied relief by  
118 the subcommittee may, within 30 days of the receipt of the denial, seek review of the subcommittee's  
119 decision by filing a complaint in the district court. The district court's review of the subcommittee's  
120 decision shall be de novo, and the court may in its discretion receive additional evidence necessary to  
121 conduct an adequate review.

122 The firearm licensing review board shall establish a fee to file an application for relief under this  
123 section, which fees shall be retained by the criminal history systems board.

124

125 SECTION 14. Section 131 is hereby further amended by striking out, in lines 154-156, the words "The  
126 colonel shall inquire of the commissioner of the department of mental health relative to whether the  
127 applicant is disqualified from being so licensed."

128

129 SECTION 15. Section 131 is hereby further amended by striking out, in lines 341-347, subsection (o) and  
130 inserting in place thereof the following subsection:-

HOUSE — No. 4102

131 (o) No person shall be issued a license to carry or possess a machine gun in the commonwealth, except that  
132 a licensing authority or the colonel of the state police may issue a machine gun license to an individual who  
133 possesses a valid license to carry under this section and is:

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

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

138 (iii) a law enforcement officer employed by such licensing authority or a law enforcement  
139 officer employed by or appointed as a special state police officer by the colonel.

140

141 SECTION 16. Section 131E of chapter 140 of the General Laws, as so appearing, is hereby amended by  
142 inserting after subsection (b) the following subsection:-

143 (c) No person, other than an exempt person as defined in this subsection shall purchase, rent or lease more  
144 than 1 rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device in any  
145 30-day period.

146 This subsection shall not apply to the following persons and uses:

147 - any law enforcement agency or authority;

148 - any branch of the United States military, including the National Guard;

149 - any persons in any branch of the United States military, police officers or other peace officers who  
150 are acquiring firearms for the purposes of performing their official duties or when duly authorized  
151 by their employer to purchase them;

152 - any licensed watch, guard or patrol agency or their licensed employees for the purposes of  
153 performing duties in the course of employment under sections 22 and 25 of chapter 147;

154 - a federal, state or local historical society, museum or institutional collector open to the public;

155 - any person who purchases, rents or leases a rifle, shotgun, firearm, machine gun, large capacity  
156 weapon or large capacity feeding device and then exchanges it for another rifle, shotgun, firearm,  
157 machine gun, large capacity weapon or large capacity feeding device provided by a licensed dealer  
158 within a 30-day period; and

HOUSE — No. 4102

159 - a firearms surrender program authorized by and in compliance with section 131O.

160 Upon receipt of a record of a sale, rental or lease of a rifle, shotgun, firearm, machine gun, large  
161 capacity weapon or large capacity feeding device from a licensee as required under section 123 or a person  
162 without a license under section 128A, the executive director of the criminal history systems board, or the  
163 executive director's agent, shall determine whether a person has purchased, rented or leased more than 1  
164 rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device in any 30-day  
165 period in violation of this subsection. If a person has purchased, rented or leased in violation of this  
166 subsection, the executive director of the criminal history systems board, or the executive director's agent,  
167 shall forward any records demonstrating the relevant acquisition history to the colonel of the state police or  
168 the colonel's agent, the prosecutor, and the chief of police in the city or town in which the person resides or  
169 where the second rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity feeding  
170 device was obtained in violation of this subsection.

171 A non-exempt person who purchases, rents or leases more than 1 rifle, shotgun, firearm, machine  
172 gun, large capacity weapon or large capacity feeding device in any 30-day period shall be punished by a  
173 fine of not more than \$1,000, or by imprisonment for not more than 2 ½ years, or both, for a first offense;  
174 and for any subsequent offense shall be punished by a fine of not less than \$1,000 and not more than  
175 \$5,000, or by imprisonment for not more than 2 ½ years in a house of correction or not more than 5 years in  
176 the state prison, or by both such fine and imprisonment.

177 Any licensed dealer under section 122 or any other individual who sells, rents or leases a rifle,  
178 shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device to a non-exempt  
179 person under this section, having sold, rented or leased a rifle, shotgun, firearm, machine gun, large  
180 capacity weapon or large capacity feeding device to the person within the previous 30 days or with actual  
181 knowledge that the person has purchased, rented or leased a rifle, shotgun, firearm, machine gun, large  
182 capacity weapon or large capacity feeding device within the previous 30 days, shall be punished by a fine  
183 of not more than \$5,000, or by imprisonment of not more than 2 ½ years, or both, for a first offense; and  
184 for any subsequent offense shall be punished by a fine of not less than \$1,000 and not more than \$10,000,  
185 or by imprisonment for not more than 2 ½ years in a house of correction or not more than 5 years in the  
186 state prison, or by both such fine and imprisonment.

187

188 SECTION 17. Chapter 265 of the General Laws is hereby amended by inserting after section 13M, as  
189 inserted by chapter 534 of the acts of 2008, the following section:-

190 Section 13N. Upon entry of a conviction for any misdemeanor offense that has as an element the  
191 use or attempted use of physical force, or the threatened use of a deadly weapon, the court shall  
192 determine whether the victim or intended victim was a family or household member of the  
193 defendant, as defined in section 1 of chapter 209A. If the victim or intended victim was a family  
194 or household member of the defendant, the court shall enter the offense, the chapter, section and  
195 subsection, if any, of the offense, and the relationship of the defendant to the victim upon the  
196 record, and this entry shall be forwarded to the criminal history systems board for inclusion in the  
197 criminal justice information system and for the purpose of providing the Attorney General of the  
198 United States with information required or permitted under federal law to be included in the  
199 National Instant Criminal Background Check System or any successor system maintained for the  
200 purpose of conducting background checks for firearms sales or licensing.

201

202 SECTION 18. Chapter 265 of the General Laws, as so appearing, is hereby amended by inserting after  
203 section 18C the following section:-

204 Section 18D. Whoever, while in the commission or attempted commission of a misdemeanor that has as an  
205 element the use, attempted use, or threatened use of physical force against the person of another, has in his  
206 possession or under his control a firearm, rifle, or shotgun, shall, in addition to the penalty for such offense,  
207 be punished by imprisonment in the state prison for not more than 10 years, or in the house of correction  
208 for not more than 2 ½ years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.

209

210 SECTION 19. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by  
211 striking out subsection (1) and inserting in place thereof the following subsection:-

212 (1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on  
213 conditions for a felony that has as an element of the offense the use, attempted use, or threatened use of

HOUSE — No. 4102

214 physical force against the person of another, or any other felony offense that by its nature involves a  
215 substantial risk that physical force against the person of another may result, including the crime of burglary  
216 and arson whether or not a person has been placed at risk thereof; or a violation of an order pursuant to  
217 section 18, 34B, or 34C of chapter 208, section 32 of chapter 209, section 3, 4, or 5 of chapter 209A,  
218 section 7 or 10 of chapter 209A½, or section 15 or 20 of chapter 209C; or arrested and charged with a  
219 misdemeanor or felony involving abuse as defined in section 1 of chapter 209A or while an order of  
220 protection issued under chapter 209A was in effect against said person; or arrested and charged with a  
221 misdemeanor or felony involving harassment as defined in section 1 of chapter 209A½ or while a  
222 harassment prevention order issued under chapter 209A½ was in effect against said person; or arrested and  
223 charged with a violation of section 13B of chapter 268; or a third or subsequent conviction for a violation  
224 of section 24 of chapter 90; or an offense for which a mandatory minimum term of 3 years or more is  
225 prescribed in chapter 94C; or any felony offense involving the unlawful possession, use, or trafficking of a  
226 firearm, including a violation of section 10, 10A, or 10E of chapter 269.

227

228 SECTION 20. Subsection (3) of said section 58A of said chapter 276, as so appearing, is hereby further  
229 amended by inserting after the first sentence the following sentence:-

230 Subject to rebuttal by the person, in a case involving any felony offense that has as an element the use,  
231 attempted use, or threatened use of physical force against the person of another and involves the use of a  
232 firearm, it shall be presumed that no condition or combination of conditions will reasonably assure the  
233 safety of any other person or the community if the judicial officer finds that there is probable cause to  
234 believe that the person committed the offense.

235

236 SECTION 21. Notwithstanding any general or special law or court order, including an order of  
237 impoundment, to the contrary, the administrative office of the trial court shall transmit any order of the  
238 probate court appointing a guardian or conservator for an incapacitated person under part 3 or part 4 of  
239 article V of the Massachusetts Uniform Probate Code on the ground that the person lacks the mental  
240 capacity to contract or manage his own affairs, and any subsequent order terminating or rescinding such  
241 appointment, to the criminal history systems board for the purpose of providing the Attorney General of the

HOUSE — No. 4102

242 United States with information required or permitted under federal law to be included in the National  
243 Instant Criminal Background Check System or any successor system maintained for the purpose of  
244 conducting background checks for firearms sales or licensing. The criminal history systems board shall  
245 transmit no more information than is necessary for the purpose stated above, and such information shall not  
246 be considered a public record under section 7 of chapter 4.

247

248 SECTION 22. Notwithstanding the provisions of section 36 of chapter 123 of the General Laws, and for  
249 the sole purpose of providing licensing authorities as defined under section 121 of chapter 140 of the  
250 General Laws with information required or permitted to be considered under state law for the purpose of  
251 conducting background checks for firearms sales or licensing and of providing the Attorney General of the  
252 United States with information required or permitted under federal law to be included in the National  
253 Instant Criminal Background Check System or any successor system maintained for the purpose of  
254 conducting background checks for firearms sales or licensing:

255 (a) No later than 6 months from the effective date of this act, the department of mental health shall  
256 transmit to the criminal history systems board sufficient information to identify all persons known  
257 to the department of mental health who have been confined to any hospital or institution for  
258 mental illness within 20 years of the effective date or who are so confined at the time of  
259 transmission; and

260 (b) Thereafter, the department of mental health shall transmit such information to the criminal history  
261 systems board on a quarterly basis concerning individuals who have been so confined in the 3-  
262 month period preceding the date of each transmission.

263 The criminal history systems board shall provide such licensing authorities or transmit no more information  
264 than is necessary for the purpose stated above and such information shall not be considered a public record  
265 under section 7 of chapter 4.

266

267 SECTION 23. Sections 8 and 14 shall take effect 6 months after the effective date of this act.

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