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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:

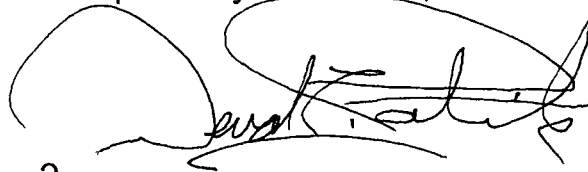
- It shrinks the supply of illegal guns by limiting gun buyers to one firearm purchase per month. This legislation is designed to reduce gun trafficking by "straw purchasers" who purchase firearms for convicted felons or other prohibited buyers. The bill also requires private sales of firearms to be 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 be "Paul J. ...", written over a horizontal line.

AN ACT TO REDUCE FIREARM VIOLENCE
SECTION-BY-SECTION SUMMARY
AND BACKGROUND

SECTION 1. Mandates that the Criminal History Systems Board (CHSB) transmit information to the U.S. Attorney General regarding firearms licensing background checks required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007 in order to achieve federal compliance.

Background: This Act was passed in response to the shooting tragedy that occurred at Virginia Tech University. Failure to comply with the provisions of this Act would cost the Commonwealth significant Byrne grant funding as well as funding through the National Criminal History Improvement Program (NCHIP) Grants. In addition, compliance with this Act will ensure that firearms are not placed in the hands of those who are otherwise disqualified by federal or state law from possessing them.

SECTION 2. Amends the exclusion from the public records law for individuals who own or possess weapons or are licensed to carry or possess weapons, so that CHSB may provide necessary information to licensed dealers to ensure compliance with the new “one-gun-a-month” law. (See Section 6).

SECTION 3 & 4. Requires the Administrative Office of the Trial Court (AOTC) to transmit information to CHSB required by the NICS Improvement Amendments Act of 2007, and that judges differentiate between commitments for alcoholism and substance abuse under G.L. c. 123, § 35, in order to attain compliance with federal standards for firearms licensing background checks.

Background: The NICS Improvement Amendments Act of 2007 requires that states submit information to the Attorney General regarding any records that identify a person who is an unlawful user of or addicted to any controlled substance. A commitment of a substance abuser pursuant to G.L. c. 123, § 35 qualifies as such a record, but is currently not transmitted to NICS. This section will assist the Commonwealth in achieving compliance with federal law to ensure that firearms are not falling into the hands of those disqualified from possessing them.

SECTION 5. Amends the Massachusetts definition of firearm to more closely parallel that of federal law, relieving the Commonwealth of using its resources to prove that a gun is considered operable.

Background: If the Supreme Court reverses the recent case, *Melendez-Diaz v. Massachusetts*, and holds that a lab report is “testimonial” in nature, experts will be required to testify as to the composition and weight of drugs, rather than rely on a certificate in court. Using analogous reasoning for gun cases, this legislative change will avoid a drain on staff and resources of the Commonwealth in prosecuting firearms charges.

SECTION 6. Limits the number of weapon sales by licensed dealers to not more than one per licensed individual in any 30-day period.

Background: This legislation is designed to reduce gun trafficking by “straw purchasers” who purchase firearms for convicted felons or other prohibited buyers. Massachusetts would become the fourth state in the nation to implement this type of law. (See also Section 16).

SECTION 7. Requires private sales of firearms to occur at the business of a licensed dealer so that the sale can be tracked electronically.

Background: Improves the state’s electronic database of secondary sales.

SECTION 8. Removes the requirement for the Department of Mental Health (DMH) to transmit mental health disqualifiers to the Colonel of the Department of State Police for the purpose of firearms licensing. This information will now be transmitted electronically from the courts and DMH to CHSB.

SECTION 9. Clarifies that the exemption in G.L. c. 140, § 129C(m) for the temporary holding, handling, or firing of a firearm for examination, trial, or instruction in the presence of a holder of a license to carry firearms does *not* apply to the temporary holding of a machine gun.

Background: Following the death of a young boy that occurred at a machine gun shoot in 2008, it clarifies that only an individual with a valid machine gun license may possess a machine gun. This section allows such a license to be obtained only by a law enforcement officer, a firearms instructor, or a bona fide firearms collector. 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.

SECTION 10. Allows the Colonel of the Department of State Police to destroy, rather than auction, weapons that have been surrendered because of the revocation, suspension, or denial of a firearms license.

Background: Under G.L. c. 140, § 129D, weapons must be surrendered to a local licensing authority following the revocation, suspension, or denial of a firearms license. The weapons are then either stored with the licensing authority or transferred to a bonded dealer. Following the passage of one year of possession at the licensing authority or 90 days of arrears at a bonded warehouse, the weapons may be transferred to the Colonel for public auction. Rather than insert these weapons back into the stream of commerce and waste the resources of the State Police, this section will allow them to simply dispose of them.

SECTION 11. Prevents the furnishing of a machine gun to any person under 21 years of age.

Background: A current prohibition exists on furnishing machine guns to a person under 18 years of age. While a prohibition exists under G.L. c. 140, § 130 on furnishing a firearm, large capacity rifle or shotgun, or ammunition, there is no prohibition on furnishing machine guns to individuals between ages 18 and 21.

SECTION 12. Further clarifies current prohibitions relating to possession of a machine gun. (See also Sections 9 & 15).

SECTION 13. Creates a Relief from Disabilities Subcommittee of the FLRB.

Background: This section will assist the Commonwealth in achieving compliance with the NICS Improvement Amendments Act of 2007. This subcommittee will allow individuals

formally adjudicated as mentally defective in the Commonwealth or committed involuntarily to a mental institution in the Commonwealth to petition the subcommittee for relief from this “disability” by putting forth evidence that he or she is not likely to act in a manner dangerous to public safety and that granting relief will not be contrary to the public interest. (See Section 1).

SECTION 14. Removes requirement of the Colonel of the State Police to inquire with DMH as to whether an applicant for a firearms license is disqualified. This step is no longer necessary because CHSB, on behalf of the Colonel, will be receiving this information electronically from the courts and DMH.

SECTION 15. Further clarifies the laws relating to who may obtain a machine gun license. *Background:* Currently, a machine gun license may be obtained by a certified firearms instructor of the Municipal Police Training Committee or a bona fide collector of firearms. This section allows a third group to obtain a machine gun license – a law enforcement officer employed by the licensing authority or the colonel, or a law enforcement officer appointed as special state police officer by the Colonel of the State Police.

SECTION 16. Prohibits any individual from purchasing more than one weapon in a period of 30 days; also known as a “one-gun-a-month” law. It carves out several exemptions; for example, law enforcement, U.S. military, and any person who wishes to exchange one weapon for another. It includes penalties for both a purchaser and a dealer who violate this section.

Background: This legislation is designed to reduce gun trafficking in and outside of Massachusetts by “straw purchasers” who purchase firearms for convicted felons or other prohibited buyers. Massachusetts would become the fourth state in the nation to implement this type of law.

SECTION 17. Requires the court to enter a notation upon the record when any misdemeanor offense that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, was committed against a family or household member of the defendant, as defined in section 1 of chapter 209A.

Background: This information will also assist the Commonwealth in complying with the NICS Improvement Amendments Act of 2007, as CHSB will also transmit this information to the U.S. Attorney General for inclusion in the national database used for conducting background checks for firearms sales and licensing. (See Section 1).

SECTION 18. Adds a new offense for the commission of a violent misdemeanor – one that has as an element the use, threatened use, or attempted use of force of another – while in possession of a weapon.

SECTIONS 19 & 20. Authorizes proceeding for pre-trial detention under G.L. c. 276, § 58A (often referred to as a “dangerousness hearing”) for any person charged with a felony involving the unlawful possession, use, or trafficking of a firearm and establishes a presumption of dangerousness for felonies involving the use of force and a firearm. The presumption of dangerousness would impose a burden on a defendant to convince a judge that, notwithstanding the general presumption in favor of detention for gun crimes, he should nevertheless be released.

Background: Currently, G.L. c. 276, § 58A provides that a judge may hold a defendant without bail if he has been arrested for certain offenses designated in the statute and the Commonwealth demonstrates, by clear and convincing evidence, that no conditions of release will guarantee the safety of a particular person or the community at large. This statute is modeled after 18 U.S.C. § 3142, the federal detention statute. It would continue to allow a defendant to be represented by an attorney for the detention hearing, to challenge evidence, and to cross-examine witnesses.

SECTION 21. Requires the AOTC to transmit to CHSB any probate orders appointing a guardian or conservator to an individual on the ground that the person lacks the capacity to contract or manage his or her own affairs, as well as orders terminating such appointments.

Background: This information will also assist the Commonwealth in complying with the NICS Improvement Amendments Act of 2007, as CHSB will also transmit this information to the U.S. Attorney General for inclusion in the national database used for conducting background checks for firearms sales and licensing. (See Section 1).

SECTION 22. Requires DMH to transmit to CHSB information regarding any persons it knows to have been confined to a hospital or mental institution within the past 20 years, and on a quarterly basis going forward, for the purpose of firearms licensing in Massachusetts.

Background: This bill will no longer require police chiefs to contact DMH directly for information regarding those who are disqualified from obtaining a firearms license in the Commonwealth because of mental health disqualifiers, as DMH will transmit its records to CHSB under this legislation.

SECTION 23. Delays by 6 months the effective date of Sections 8 and 14, which remove the requirement that DMH transmit health disqualifiers to the Colonel of the State Police, to allow DMH time to begin transmitting that information to CHSB electronically.



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:

SECTION 1. Section 168 of chapter 6 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting the following paragraph:-

Notwithstanding any general or special law or court order, including an order of impoundment, to the contrary, the board shall transmit to the Attorney General of the United States any information in its control required or permitted under federal law to be included in the National Instant Background Check System or any successor system maintained for the purpose of conducting background checks for firearms sales or licensing. No more information than is necessary for the purposes stated above shall be transmitted, and such information shall not be considered a public record under section 7 of chapter 4.

SECTION 2. Section 10 of chapter 66 of the General Laws, as so appearing, is hereby amended by inserting after the word "request", in line 62, the following words:- , but the executive director of the criminal history systems board, or the executive director's agent, may disclose records pertaining to persons who own or possess rifles, shotguns, firearms, machine guns, large capacity weapons or large

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capacity feeding devices, as defined in section 121 of chapter 140, to licensees under section 122 of chapter 140 to comply with section 131E of chapter 140.

SECTION 3. Section 35 of chapter 123 of the General Laws, as so appearing, is hereby amended by inserting after the word “days.”, in line 38, the following words:- The court in its order shall specify whether such commitment is based upon a finding that said person is an alcoholic, a substance abuser, or both, and this information shall be entered in the record to permit transmission to the criminal history systems board for the purposes and under the conditions set forth in the second paragraph of section 36A.

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

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

SECTION 5. Section 121 of chapter 140 of the General Laws, as so appearing, is hereby amended by striking out, in line 39, the words “from which a shot or bullet can be discharged”, and inserting in place

thereof the following words:- which will or is designed to or may readily be converted to expel a projectile by the action of an explosive

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

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

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

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

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

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

SECTION 12. Section 130 is hereby further amended by inserting after the word “years”, in line 28, the following words:- ; and provided further, that nothing in this section shall allow for the holding, handling, or firing of a machine gun by any person other than a person licensed to possess a machine gun under section 131(o) or police personnel receiving instruction from a firearm instructor certified by the municipal police training committee or the colonel of the state police

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

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

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

The applicant shall have the opportunity to submit evidence to the subcommittee and to be heard by the subcommittee in support of the application. All hearings shall be conducted in an informal

manner, but otherwise according to the rules of evidence, and all witnesses shall be sworn by the subcommittee chair. If requested by the petitioner and payment for stenographic services, as determined by the subcommittee, accompanies such request, the subcommittee shall cause a verbatim transcript of the hearing to be made. The subcommittee's decisions and findings of facts shall be communicated in writing to the petitioner and to the licensing authority to which the petitioner has applied or intends to apply within 60 days of rendering a decision. The subcommittee shall maintain the records of its proceedings and of all materials submitted or considered by the subcommittee for the purposes of judicial review for a minimum of 3 years following the date of its decision. The records of the subcommittee shall not be considered a public record under section 7 of chapter 4.

If the majority of the subcommittee determines that the applicant has shown by clear and convincing evidence that the applicant will not be likely to act in a manner dangerous to public safety and that granting relief will not be contrary to the public interest, the subcommittee may grant relief and direct the criminal history systems board to notify the Attorney General of the United States and to remove the record of the prohibition or disability from any database that the criminal history systems board, the commonwealth or the federal government maintains and makes available to the National Instant Criminal Background Check System or any successor system maintained for the purpose of conducting background checks for firearms sales or licensing.

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

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

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

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

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

(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 the state police may issue a machine gun license to an individual who possesses a valid license to carry under this section and is:

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

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

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

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

- any law enforcement agency or authority;
- any branch of the United States military, including the National Guard;
- any persons in any branch of the United States military, police officers or other peace officers who are acquiring firearms for the purposes of performing their official duties or when duly authorized by their employer to purchase them;
- any licensed watch, guard or patrol agency or their licensed employees for the purposes of performing duties in the course of employment under sections 22 and 25 of chapter 147;
- a federal, state or local historical society, museum or institutional collector open to the public;
- any person who purchases, rents or leases a rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device and then exchanges it for another rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device provided by a licensed dealer within a 30-day period; and
- a firearms surrender program authorized by and in compliance with section 131O.

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

person resides or where the second rifle, shotgun, firearm, machine gun, large capacity weapon or large capacity feeding device was obtained in violation of this subsection.

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

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

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

Section 13N. Upon entry of a conviction for any misdemeanor offense that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, the court shall determine whether the victim or intended victim was a family or household member of the defendant, as defined in section 1 of chapter 209A. If the victim or intended victim was a family or household member of the defendant, the court shall enter the offense, the chapter, section and subsection, if any, of the offense, and

the relationship of the defendant to the victim upon the record, and this entry shall be forwarded to the criminal history systems board for inclusion in the criminal justice information system and for the purpose of providing the Attorney General of the United States with information required or permitted under federal law to be included in the National Instant Criminal Background Check System or any successor system maintained for the purpose of conducting background checks for firearms sales or licensing.

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

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

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

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony that has as an element of the offense the use, attempted use, or threatened use of physical force against the person of another, or any other felony offense that by its nature involves a substantial risk that physical force against the person of another may result, including the crime of burglary and arson whether or not a person has been placed at risk thereof; or a violation of an order pursuant to section 18, 34B, or 34C of chapter 208, section 32 of chapter 209, section 3, 4, or 5 of chapter 209A, section 7 or 10 of chapter 209A½, or section 15 or 20 of chapter 209C; or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A or while an order

of protection issued under chapter 209A was in effect against said person; or arrested and charged with a misdemeanor or felony involving harassment as defined in section 1 of chapter 209A½ or while a harassment prevention order issued under chapter 209A½ was in effect against said person; or arrested and charged with a violation of section 13B of chapter 268; or a third or subsequent conviction for a violation of section 24 of chapter 90; or an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C; or any felony offense involving the unlawful possession, use, or trafficking of a firearm, including a violation of section 10, 10A, or 10E of chapter 269.

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

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

SECTION 21. Notwithstanding any general or special law or court order, including an order of impoundment, to the contrary, the administrative office of the trial court shall transmit any order of the probate court appointing a guardian or conservator for an incapacitated person under part 3 or part 4 of article V of the Massachusetts Uniform Probate Code on the ground that the person lacks the mental capacity to contract or manage his own affairs, and any subsequent order terminating or rescinding such appointment, to the criminal history systems board for the purpose of providing the Attorney General of the United States with information required or permitted under federal law to be included in the National Instant Criminal Background Check System or any successor system maintained for the purpose of conducting background checks for firearms sales or licensing. The criminal history systems board shall

transmit no more information than is necessary for the purpose stated above, and such information shall not be considered a public record under section 7 of chapter 4.

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

- (a) No later than 6 months from the effective date of this act, the department of mental health shall transmit to the criminal history systems board sufficient information to identify all persons known to the department of mental health who have been confined to any hospital or institution for mental illness within 20 years of the effective date or who are so confined at the time of transmission; and
- (b) Thereafter, the department of mental health shall transmit such information to the criminal history systems board on a quarterly basis concerning individuals who have been so confined in the 3-month period preceding the date of each transmission.

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

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