



June 22, 2010

Re: Oppose H.4102, The Lawful Citizens Imprisonment Act

- **The bill will imprison lawfully licensed citizens for purchasing more than one gun in a thirty day period.** The proponents of the bill claim that by limiting lawful gun owners to one purchase in a thirty day period that the flow of illegally possessed guns will be reduced. - **OPPOSE**

Fact Points:

- The number of lawfully licensed citizens has been decreased by nearly 85% since the Gun Control Act of 1998. If limiting lawful gun owners was a legitimate means of controlling gun crime there should have been a massive reduction over the last twelve years and that is not the case.
- Since the 1998 law gun related homicides have increased nearly 70% and gun related assaults have increased approximately 200% according to the Massachusetts Department of Public Health. Over a decade's worth of evidence that placing restrictions on lawful citizens has no positive effect on reducing crime.
- Proponents believe there are no "tools" to stem the flow of illegal guns in the Commonwealth. This is simply not the case.
 - Section 128B of Chapter 140 provides up to a ten year prison sentence for any citizen who receives a gun from anyone other than a licensed dealer and does not report it to the state within seven days. This includes guns coming from out of state.
 - Section 131E of Chapter 140 is the current "straw purchase" law that provides for up to 10 years in prison for purchasing a gun for a prohibited person.

- Section 10E of Chapter 269 is currently the law providing severe punishments for anyone conducting unlawful multiple transactions, in bulk or in single multiple transactions. Violation of this law carries a punishment of up to life in prison.
- There are many other pages of laws providing severe punishments for illegal possession, transfers, sales, carrying, transporting, storage, etc.
- Massachusetts laws are so severe that an unlicensed citizen in possession of an empty brass shell casing can be punished by two years in prison. This being the case, how can any rational person believe there are no “tools” in place dealing with the flow of illegal flow of guns?
- Lawful citizens go through an extensive and complicated background check system to become licensed to own a firearm and to purchase one.
- The Bureau of Alcohol Tobacco Firearm and Explosives (BATFE) mandates that if more than one handgun is being purchased from a licensed dealer within a five day period the dealer is required to fill out BATFE Form 3310.4 and submit a copy to the BATFE and the state agency in charge of licensing before the close of business on the day of the second sale. This system is already in place to track any problems that might exist with multiple purchases.
- **The bill would eliminate private transfers between lawfully licensed citizens. - OPPOSE**

Fact Points:

- Massachusetts citizens go through an extensive background check system to be licensed in Massachusetts. Handgun licenses can be denied for no reason at the “discretion” of the local licensing authority.
- All private transfers can only be conducted between lawfully licensed citizens.
- Under federal law (18 U.S. Code 923), handgun transfers cannot be conducted between private citizens across state lines. All such transfers/sales can only be conducted through dealers licensed by the federal government.
- Private transfers are limited under Section 128A of Chapter 140 to four in a calendar year.

- Any such transfers must be reported to the Executive Director of the Criminal History Systems Board via an FA-10 form. The report must include the names and addresses of the seller and the purchaser, a complete description of the gun, the caliber, make, serial number and firearm license information of the seller and buyer.
 - Section 128B of Chapter 140 provides up to a ten year prison sentence for any citizen who conducts a private transfer and does not report it to the state within seven days.
 - Doing away with very limited and highly regulated private transfers would further restrict the ability of lawful citizens to acquire high quality handguns. The arbitrary Massachusetts Attorney General Regulations 940 CMR 16.00 and the handgun sales requirement for licensed dealers under Section 123 of Chapter 140 have unnecessarily restricted the transfer of handguns that are available throughout the nation. These regulations and laws greatly restrict the makes and models of handguns that can legally be sold in Massachusetts. Massachusetts remains the only state in the nation where a lawfully licensed citizen cannot purchase a single shot Olympic target pistol.
- **Changes the definition of a handgun actually called a “firearm” in Section 121 of Chapter 140. - OPPOSE**

Fact Points:

- Under Massachusetts law the term “Firearm” actually means handgun. This term conflicts with federal definitions where “Firearm” means basically any type of gun.
 - The proposed definition change will include items that are not a functioning gun. The language “***which will or is designed to or may readily be converted***” is extraordinarily loose language that could include parts or anything that cannot in its present form fire a projectile. The language “which will” is a very peculiar component of the proposed law. How would one prove in a court of law what “will” or would have happened if it had not already? It is important to keep in mind that Massachusetts laws are already so overly strict that mere possession of ammunition components carries a two year prison sentence. Such existing laws have apparently failed to prevent gun crime.
- **Bans the instruction and firing of machine guns by adult citizens. - OPPOSE**

Fact Points:

- This bill sets unreasonable restrictions regarding the use and training of machine guns to adult citizens. The language would restrict such use and

training to only those licensed to own a machine gun or a certified police instructor and law enforcement under training.

- Currently the United States allows adults 18 years of age to join the military and use a variety of powerful weapons systems. It has been the tradition of our country to have a “citizen” military. That being the case, why would Massachusetts restrict access to lawful adults?
- The language in GOAL’s Civil Rights and Public Safety Bill H.2259 provides much more reasonable and clear language that would allow anyone 18 years or older to receive training with a machine gun as long as they are under the direct supervision of the person licensed for that particular gun.

- **Changes the public record laws. - OPPOSE**

Fact Points:

- Currently under the public record laws of the Commonwealth (Section 10 of Chapter 66) the names and addresses of firearm owners are not available as public information. These records are considered confidential information for public safety reasons.
- Particularly, this information was protected through a 1982 legislative action due to a threat from certain media outlets to publish the names of lawful gun owners. This bill would make an unnecessary exemption for the release of this information to licensed firearm retailers.
- The intended purpose of which is to make available this information as part of the governor’s attempt to imprison lawful citizens who purchase more than one gun or high capacity magazine a month.

- **Amends the “Dangerousness Statute”. – OPPOSE as written**

Fact Points:

- The bill amends the current “dangerousness” statute (Chapter 276, Section 58A) that would allow the court to hold defendants without bail or set certain conditions of release if the defendant meets the criteria set forth. The proposed section adds language regarding protection orders, but also adds language that would provide for labeling a defendant dangerous for unlicensed possession, use or trafficking of a firearm.
- The House has already dealt with this issue in the “CORI” H.4703 legislation debates.

- The House decided on the following *H.4703 amending Section 58A of Chapter 276: The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for any convicted felon, person on bail, person on probation who is arrested and charged with violation of paragraph (a), (c) or (m) of section 10 f chapter 269 or arrested and charged with a violation of section 10G of said chapter 269; provided, however, that the commonwealth may not move for an order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of large capacity weapon.*
- When considering any changes to the “Dangerousness Statute” there is important case law that must be referenced. While there certainly would be conditions under which felony use or trafficking should be considered for not releasing a defendant, the mere possession issue has already been ruled out through a Massachusetts Supreme Judicial Court ruling in Commonwealth v. Young.

The MSJC in a four to one decision, ruled in favor of the defendant:

Conclusion: In holding that unlicensed possession of a firearm is not a predicate offense for purposes of § 58A, we are not unmindful of the dangers relating to unlicensed possession of firearms. Nevertheless, in the absence of clear legislative intent to the contrary, we cannot rewrite or torture the statute's language to include this offense.

In the official discussion of the case, the court also stated the following:

“While we are cognizant that unlicensed possessors of firearms may use firearms unlawfully, unlicensed possession of a firearm itself is a regulatory crime. It is passive and victimless.”

“Unlicensed possession of a firearm does not, by its nature, involve a substantial risk that physical force against another may result. That a person possesses a firearm without a valid license does not itself pose a substantial risk that physical force against another may result. Rather, it is the unlawful use of a firearm that involves a substantial risk that physical force against another may result.”

“The elements of unlicensed possession of a firearm, see note 9, supra, do not require proof that a defendant purposefully evaded firearm licensing requirements, see Commonwealth v. Jackson, supra, let alone proof that a defendant's failure to obtain a license was motivated by a desire to use the firearm for an illicit purpose.”

It is clear from this ruling that simply adding unlawful possession language to 58A would not pass muster with the court. Any changes in the law regarding guns must be done very carefully and with respect to civil rights.

- **The bill would provide a 10 year prison sentence for a person in possession of a firearm, rifle, or shotgun while in the commission or attempted commission of a misdemeanor for which there was use, attempted use or threatened use of physical force. - OPPOSE**

Fact Points:

- The proposed language does not contain the word convicted. In fact the language is so loose that it uses the phrase attempted commission. This begs the question how does one attempt to threaten another without actually committing the act of threatening?
- Scenario: A lawfully licensed citizen is heading home from a day of duck hunting. At a traffic signal she is approached by another driver in an act of road rage who is screaming and pounding on her window. The hunter notifies the aggressor that if he doesn't return to his vehicle she will consider any further offensive movements to be an attack and will defend herself appropriately. Her duck hunting gun is locked in the trunk, but under this proposal the woman duck hunter would now be subject to 10 years in prison for stating she would defend herself.

- **The bill would allow for the destruction of guns by the state police. - OPPOSE**

Fact Points:

- There is a great deal of controversy surrounding the laws and regulations regarding the temporary surrender of guns. Many law abiding citizens have to turn their property over during investigations. In certain cases these are false charges filed by a begrudged family member or former spouse. Many of these citizens are eventually found innocent of any wrong doing. However it may take years to sort the case out in the courts. As a result the storage fees being charged to these citizens continue to grow and in some cases is more than the value of the property.
- Section 129D of Chapter 140 already allows for the auctioning of guns: *“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.”*

- This new proposal would add language that would allow for the destruction of private property if the accused is found innocent, but cannot afford the storage fees.
 - GOAL would urge the Massachusetts Legislature to conduct a full and careful review of the firearm surrender and storage process. This review should include a particular focus on those who are found innocent of any wrong doing, but are being charged fees to have someone store their property and in some cases losing their property all together.
- **The bill would make substantial changes to the reporting requirements regarding the National Instant Check System – OPPOSE as written**

Fact Points:

- There are new laws regarding the National Instant Check System that the state must comply with. After conferring with national experts on the subject there are many concerns with the proposed language regarding these changes. When the bill was scheduled for a hearing within the Joint Committee on the Judiciary we had national experts come to the state house to give testimony on how to best address the matter. Unfortunately, these experts were never allowed to testify in person. If the state wishes to proceed with any changes to the system a careful and deliberate study should be conducted to determine what, if any, changes are needed to comply with any federal standards.