Practice Advisory: Don't Take Your Guns to Town

2024 Mass. Acts c. 135, §§ 1-159 (H. 4885)

"An Act Modernizing Firearm Laws"

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Quick overview
This **far-reaching new law** comprehensively overhauls Massachusetts's firearm statutes.
Nearly all of the new provisions become effective on **October 23, 2024**.
New crimes include possession of **untraceable firearms**; possession of a firearm in a **"prohibited area"** (basically any government property); and certain uses and sales of **3-D printers**.
The most notable definitional changes are: 1) the elimination of the requirement that the Commonwealth prove **operability**; 2) replacement of the term "assault weapon" with the expanded "**assault-style firearms**;" 3) the concepts of "**automatic conversion**" and "automatic parts."
Judges have greater powers in connection with **extreme risk protection orders,** including enforcement by way of warrants and the ability to summons a respondent's privileged mental health records for "investigation."
258E orders now can command the surrender of firearms, parallel with 209A orders.

On July 25, 2024, Governor Maura Healey signed into law "An Act Modernizing Firearm Laws" 2024 Mass. Acts c. 135, §§ 1-159 (H. 4885). Nearly all[1] of this firearms reform law will go into effect on October 23, 2024, ninety days after its signing. The Act makes a wide swath of updates to the existing Massachusetts firearms laws including the licensing of firearms, carrying and transport, prohibited areas, untraceable guns, registration and reporting, harassment prevention orders, and updates to numerous definitions of different firearms and firearm accessories.

The Act is sprawling and complex, with 159 sections, many of which contain numerous subsections. This practice advisory will address only the provisions most likely to be encountered by criminal and delinquency defense practitioners, and is very much intended to be a starting point, and not and ending point, for research. One should, as always, read the full text of the statute when it is relevant to a client's case:

https://malegislature.gov/Laws/SessionLaws/Acts/2024/Chapter135

[1] §§ 38 and 75, which become effective on or about January 25, 2026, deal with training for licensing authorities and tracing of firearms used in suicides, respectively.

New Definitions.

§§ 15 through 31 make a number of changes to the definitions in G. L. c. 140, s. 121. These definitions appear in numerical (as well as alphabetical) order, with each section of the Act containing one or more terms. Some of the more notable new definitions are listed below:

New Definition: Assault-Style Firearms

The Act strikes the term "assault weapon" from G. L. c. 140, § 121 and replaces it with the term "assault-style firearm." The old "assault weapon" term was defined only by way of a cross-reference to certain federal statutes; the new "assault-style firearm" term is defined in complex detail across seven subsections, § 16(a-g). In essence, the term refers to semiautomatic weapons that have at least two of a list of several features (folding/telescopic stock; thumbhole stock or pistol grip; a grip for the non-trigger hand; a threaded barrel for attachment of flash suppressors, silencers, muzzle brakes, etc.; barrel shroud). As with the old version of the statute, a number of specific weapons (e.g., AR-15s) are enumerated as "assault-style firearms."

New Definitions: Automatic Parts and Conversion

In addition to the aforementioned fundamental change to the definition of "firearm," the Act creates the concepts of "automatic parts"[2] and "automatic conversions,"[3] which are firearm components which can effectively convert a semiautomatic firearm into a fully automatic firearm, and the acts of using such components to effect such a conversion, respectively.

New Definition: Firearm

§ 20 makes what is probably the Act's most significant change to firearms law—the Commonwealth no longer need prove that a weapon is operable in order for it to constitute

[2] § 16: "'Automatic part', any device, part or combination of parts capable of being attached to a firearm that allows for the automatic discharge of more than 1 shot with 1 continuous activation of the trigger or that increases the rate of fire of a firearm to mimic automatic fire."

[3] § 16: " 'Automatic conversion', any modification made to a firearm, including through the use of an automatic part, that allows for the automatic discharge of more than 1 shot with 1 continuous activation of the trigger or that alters or increases the rate of fire to mimic automatic fire."

a firearm. The pre-Act version of G. L. c. 140, § 121, required the in order to prove that a given weapon was a "firearm, " the Commonwealth needed to prove that a weapon was operable ("a stun gun or a pistol, revolver or other weapon of any description, loaded or unloaded, **from which a shot or bullet can be discharged** . . . ") . The updated definition specifically does not require operability. The new definition reads: "a stun gun, pistol, revolver, rifle, shotgun, sawed-off shotgun, large capacity firearm, assault-style firearm and machine gun, loaded or unloaded, **which is designed to or may readily be converted to expel a shot or bullet**; the frame[4] or receiver[5] of any such firearm or the unfinished frame or receiver of any such firearm; provided, however, that 'firearm' shall not include any antique firearm or permanently inoperable firearm." This widely expands the definition of firearm to a place that could include component parts that are not assembled. At this point there is no further legislative guidance or judicial guidance as to what "readily be converted" means or how quickly that conversion would need to be for the disassembled pieces to qualify as a firearm.

The new definition of a firearm above was also intended to capture specifically frames and receivers that are sold as sets of parts from which a buyer can assemble (usually including adding certain parts obtained separately) an operable weapon. This new statute includes a specific process for serialization of homemade firearms.

Practice Tip: If the Commonwealth is arguing that disassembled pieces constitute a firearm (or firearm accessory) be prepared to argue the "readily converted" issue, both from a legal standpoint and factual standpoint. It is likely that consultation with a firearms expert will be advisable in any case where the evidence consists of disassembled or unfinished parts.

New Definition: Privately Made Firearm

§ 27 of the Act defines a "privately made firearm" as "a firearm manufactured or assembled by an individual who is not a licensed firearm manufacturer.

[4] § 20: "'Frame', the part of a pistol or revolver that provides housing or a structure for the component designed to hold back the hammer, striker, bolt or similar primary energized component prior to initiation of the firing sequence, even if pins or other attachments are required to connect such component to the housing or structure. . ."

[5] § 26:"'Receiver', the part of a rifle or shotgun that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence, even if pins or other attachments are required to connect such component to the housing or structure. . ."

New Definition: Untraceable Firearm

§ 30 of the Act defines an "untraceable firearm" as any unserialized firearm or firearm from which the serial number has been modified or obliterated.

New Definition: Self-Defense Spray

§ 29 of the Act defines "self-defense spray" as "chemical mace, pepper spray, or any device or instrument which contains, propels, or emits a liquid, gas, powder or other substance designed to incapacitate."

New Definition: Prohibited Area

§ 124 of the Act creates a new subsection (k) of G. L. c. 269, § 10, which criminalizes the possession of firearms in a broad array of "prohibited areas" (see below). "Prohibited areas" are basically any government building (including courthouses), including grounds and parking lots; as well as any polling place, early voting site, or vote tabulation site while such activities are underway.[6]

New Crimes, Amendments to Existing Crimes, Enhanced Penalties, and Expanded Civil Protective Orders.

§§ 93-113 create a series of primarily syntactical changes (generally replacing the phrase "firearm, rifle, shotgun, machine gun, or assault weapon" with "firearm as defined in section 212 of 140) to various sections of chapters 265 and 266, but there are no new offenses or enhanced penalties here. §§ 114-144 provide for similar syntactical changes to c. 269, but also contain substantive changes which are discussed below. §§ 145-147 make

[6] § 124: "(2) For the purposes of this subsection, 'prohibited area' shall mean any of the following locations:

(i) a place owned, leased, or under the control of state, county or municipal government and used for the purpose of government administration, judicial or court administrative proceedings, or correctional services, including in or upon any part of the buildings, grounds, or parking areas thereof; provided, however, that a 'prohibited area' shall not include any state-owned public land available to the public for hunting and provided further that a municipality may vote pursuant to section 4 of chapter 4 to exclude its administrative buildings from being a 'prohibited area'; or

(ii) a location in use at the time of possession for the storage or tabulation of ballots during the hours in which voting or tabulation is occurring or a polling place or early voting site while open for voting or within 150 feet of the building entrance door to such polling place or early voting site."

similar syntactical changes to G. L. c. 276, § 58A and G. L. c. 279, § 25(b). Scattered throughout the Act are a number of new offenses, amendments to existing offenses, and penalty increases for certain offenses. The more notable of such provisions are discussed below.

New Crime: Use or Sale of Certain 3-D Printers

§ 32 of the Act creates the new G. L. c. 140, § 121C, which details serialization requirements for "privately made firearms" (one who wishes to build a firearm or import a privately-made firearm must, among other requirements, apply for a serial number through CJIS). This section of the Act also creates the new § 121D, which prohibits bans the sale of 3-D printers that are advertised as capable of producing firearms (and which prohibits unlicensed individuals from using 3-D printers to create firearms) and provides a maximum penalty of 1 year imprisonment (presumably only to the HOC, but not expressly specified).

Expansion of Civil Orders: ERPOs and HPOs

§§ 76-85 of the Act overhaul G. L. c. 140 §§ 131R-131Y, the statute governing extreme risk protective orders (ERPOs). These sections have been updated to reflect the new terminology created by the Act but also contain significant substantive changes. A judge will now be able to issue an order preventing someone from obtaining a firearms license and purchasing new firearms, among other things, where they were not previously licensed, for the duration of the ERPO. It also allows for a court to issue a warrant to seize firearms and other items ordered removed that were not properly turned over to the state.

Perhaps promising for challenge is § 84's rewriting of § 131X- the new law purports to authorize health-care providers to disclose otherwise protected health information in connection with an ERPO application or extension, and gives a judge the power to summons "clinical records or any other records or documents relating to diagnosis, prognosis, or treatment of the respondent as are necessary for the full investigation and disposition of an application for [an ERPO]."

Note that a thorough discussion of the changes to ERPO law is beyond the scope of this Advisory—attorneys handling ERPOs should carefully read the full text of the Act's §§ 76-85.

§ 92 updates G. L. c. 258E (harassment prevention orders, or HPOs) such that it allows a court to order the surrender of firearms, licenses, and permits as terms of an HPO (this brings c. 258E in line with c. 209A).

New Crime: Possession of Firearm in a Prohibited Area

As mentioned above, § 124 creates a new misdemeanor of possession of a firearm in a "protected area," G. L. c. 269, § 10(k)(2 ½ year HOC maximum; note also that subsection (k) had previously stood empty, and this provision does not replace any other currently in effect) offense, Note that while the definition is expansive, the statute does have a scienter requirement- an element of the offense is that the defendant "knows or reasonably should know" that a given location is a protected area. There is also an affirmative defense if the defendant can show 1) that they are duly licensed to carry the firearm, and 2) that the firearm is "securely stored . . . in a vehicle . . . in accordance with sections 131C and 131L of chapter 140."

The new law does provide municipalities with the ability to opt-out their specific municipal buildings. Current and retired law enforcement officers are exempt from this prohibition, as are private security guards. Individual entities (e.g., courthouses) are free to "further restrict" firearms possession on their grounds. This legislation maintains the current right of private individuals and businesses to prohibit the carrying of firearms onto their private property (though private entities do not generally have the power to declare their properties "prohibited areas" for purposes of § 10(k)).

Amendment: .08 BAC Intoxication Threshold

Previously, the charge of carrying a loaded firearm while under the influence of alcohol or other substances (G. L. c. 269, § 10H) did not list a particular blood alcohol concentration (BAC) as intoxication by alcohol. § 133 amends § 10H so that it will provide .08 BAC as a standard for alcoholic intoxication. This change was aligns this statute with the Massachusetts operating under the influence (OUI) statutory scheme.

Increased Penalty: Felonious Use of Untraceable Firearms

§ 137 dramatically stiffens the penalty for possession of an untraceable firearm during the commission of a felony. G.L. c. 269, § 11B previously read: "Whoever, while in the commission or attempted commission of a felony, has in his possession or under his control a firearm the serial number of identification number of which has been removed, defaced, altered, obliterated or mutilated in any manner shall be punished by imprisonment in the state prison for not less than two and one half nor more than five

years, or in a jail or house of correction for not less than six months nor more than two and one half years."

The updated statute strikes the entirety of that sentence and replaces it with "Whoever, while in the commission or attempted commission of a felony, has in their possession or under their control an untraceable firearm, shall be punished by imprisonment for not less than 2 ½ years." This change makes the use of an obliterated-serial-number firearm punishable by life in prison,[7] and eliminates the HOC alternative (and thus, presumably, final jurisdiction in the District and Municipal Courts). Note that the 2 ½ year figure is a statutory-not-less-than (SNLT) and not a true mandatory minimum (MM). In other words, probation is available as a disposition for this offense.

Increased Penalty: Possession of Untraceable Firearm

§ 138 strikes the existing text G. L. c. 269, 11C and revises it to operate around the new "untraceable firearm" definition. The previous penalty, which was up to 2½ years HOC[8] with a 1 month statutory-not-less-than, is increased such that the SNLT is now 1 year.

New Crime: Firearm Discharge Striking a Dwelling or Building

§ 143 creates a new felony offense, G. L. c. 269, § 12G, of "intentional or reckless discharge of a firearm striking a dwelling or other building in use," which carries a maximum penalty of 5 years state prison or 2½ years HOC. The statute makes exceptions for cases of "lawful defense of life or property or any law enforcement officer acting in the discharge of their duties," along with exceptions for permissive use of firing ranges and shooting galleries.

[7] "[W]here only a minimum is expressly imposed, we presume that the maximum term of incarceration permitted under the statute is life." Commonwealth v. Rossetti, 489 Mass. 589, 602 (2022)(citations omitted).
[8] The statute does not specify whether its 2 ½ year maximum is HOC time, state prison time, or either. It would appear that the common-law rule of lenity would weigh in favor of interpreting this figure to refer only to HOC time; indeed, the Massachusetts Sentencing Commission's 2018 Felony and Misdemeanor Master Crime List (303) indicates only a HOC sentence possibility in connection with the existing version of § 11C.