

December 17, 2024

# LED BULLETIN

John Sofis Scheft, Esq., Law Enforcement Dimensions, LLC  
7 Central St., Suite 100, Arlington MA 02476  
www.ledimensions.com • 781-646-4377

## NEW GUN LAW CHANGES

**All police commanders, supervisors, detectives, and officers are encouraged to read this entire 27-page bulletin.** Below is a table of contents for key issues.

### **Administrative highlights.**

- No licenses to nonresident business owners. Page (Pg.) 2.
- Prohibited person for licenses under 140, § 121F. Pg. 2.
- Suitability assessment requires personal interview and checking on any 123, § 12 applications by other police agencies. Pg. 3.
- Gun possession impermissible during suspension or revocation appeals. Pg. 3.
- Extreme Risk Protection Order (ERPO) — petitioners and procedures. Pgs. 6–7.
- Exemptions to license requirements under 140, § 129C. Pgs. 7–9.
- Firearms registration and mandatory gun tracing. Pgs. 10–11.
- Gun transfers and sales by dealers and private parties. Pgs. 11–13.

### **Criminal highlights.**

- Unlawful possession of:
  - Handguns, including a frame. Pg. 14.
  - Rifle or shotgun, including a receiver. Pg. 16.
  - Large capacity handgun, rifle, or shotgun. Pg. 17.
  - Large capacity feeding device. Pg. 18.
  - Assault-style firearm (ASF). Pg. 20.
  - Machine gun or automatic part. Pg. 21.
  - Covert or undetectable firearm. Pg. 22.
  - Stun gun (must be capable of probe deployment). Pg. 23.
  - Self-defense spray. Pg. 24.
  - Undetectable firearm (aka one with no serial number). Pg. 25.
- Possession of firearm on government property under 269, § 10(k). Pg. 26.
- 3D printer violations. Pg. 27.

## FIREARMS LICENSING

### Licenses & Application Process

**Massachusetts issues the Firearms Identification Card (FID) and the License to Carry (LTC).** The FID allows possession of non-large capacity and non-semiautomatic rifles, shotguns, and ammunition in public and at home. The LTC permits possession of these and most other handguns and ammunition in public and at home.

- **These licenses are valid for 6 years.** 140, § 129B(d) and § 131(e).
- **The new firearms law took effect on October 2, 2024** when the Governor signed an emergency preamble to Chapter 135 of the Acts of 2024 (hereinafter Ch. 135). Certain parts of the law take effect later and are discussed in this chapter. See Ch. 135, Sects. 154-159.
- **Rights during transition from old to new law.** All valid licenses, until they expire or are revoked or suspended, entitle the holder to possess whatever firearms were authorized by that license when it was last issued or renewed. Ch. 135, Sect. 153.

**The LA may no longer issue a license to a non-resident business owner.** 140, § 129B(a) and § 131(d).

**The LA may not independently consider an applicant's purpose for carrying.** If the applicant qualifies for a license, the Second Amendment requires that the law-abiding citizen receive one. *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022).

**At the same time, an applicant must successfully complete a safety class and provide a certificate.** In April 2026, the new basic safety course curriculum will be implemented, including a live-fire component.

---

### Prohibited Person

**The LA shall deny an LTC or FID or other license to a prohibited person.** Under 140, § 121F(j), a prohibited person is someone who:

- **Criminal history.** In a Massachusetts or other state or federal court, was convicted (or adjudicated as a juvenile) of a felony; or a misdemeanor punishable by imprisonment for more than two years; or a crime involving firearms regulations for which any imprisonment is possible; or a drug crime.<sup>1</sup>
  - **Exception.** An applicant who only has been convicted of misdemeanors, firearms violations, or drug crimes, may still apply for an FID 5 years after the end of the sentence for the most recent offense.
- **Dishonorable discharge.** Was dishonorably discharged from the military.
- **Court commitment.** Was committed by court order to a hospital for mental illness; or for an alcohol or substance use disorder; or was subject to a probate court order appointing a guardian or conservator.

---

<sup>1</sup> Technically, an applicant is also a prohibited person if they have been convicted of a "violent crime" as defined under 140, § 121, but anything that would meet this definition is probably already a felony or misdemeanor punishable by more than two years. However, this "violent crime" definition also applies to any crime punishable by imprisonment for more than one year, which has an element involving the use or attempted use of force against another person. As a result, it may prohibit, in certain marginal cases, an applicant who would otherwise qualify for a license.

- **Exceptions.** An applicant may become eligible for a license by submitting: (1) an affidavit from a clinician attesting to his mental health 5 years after the commitment; or (2) a proper court order with his application pursuant to 215, § 56C and 123, § 36C and 123, §35.
- **Protection order.** Is the subject of a current protection order issued under Chapter 209A (Domestic Violence), or Chapter 258E (Harassment Prevention), or Chapter 140 (Extreme Risk Protection Order); or under federal law [18 USC 922(g)(8)]; or a similar order from any other jurisdiction.
- **Arrest warrant or fugitive.** Is the subject of an arrest warrant from any state or federal jurisdiction; or is a fugitive from justice.
- **Not a citizen and permanent resident.** Is not a U.S. citizen and does not maintain lawful permanent residency (aka “Green Card”).

---

### Unsuitable Person

**The LA shall deny an LTC to an unsuitable person, but must seek a district court order to deny an FID to an unsuitable person.**<sup>2</sup> Under 140, § 121F(k), “unsuitability” means the LA has “reliable . . . and credible information” that the applicant has “exhibited or engaged in behavior [suggesting] that the applicant may create a risk to public safety or a risk of danger to self or others if issued a license.” See *Nichols v. Chief of Natick*, 94 Mass. App. Ct. 739 (2019) (drug addiction caused unsuitability). *Chief of Taunton v. Caras*, 95 Mass. App. Ct. 182 (2019) (leaving unlocked gun where family member addicted to drugs could steal it showed unsuitability).

**In determining unsuitability, the LA must contact any police agency that submitted a report about a 123, § 12 incident** and consider the facts. However, an application for a section 12 order does not, by itself, prove unsuitability. 123, § 36C.

**The LA must conduct “a personal interview” with each first-time LTC applicant.** § 131(d).

---

### Revocation/Suspension Process

**The holder of an LTC or FID must immediately surrender guns and ammunition upon notice of suspension or revocation.** The holder must turn over all firearms and ammunition that they own or possess to the LA, and report that surrender through the Electronic Firearms Registration System (EFRS) — a new electronic database being developed by DCJIS.

- **Possession during an appeal is not permitted.** 140, § 129D(a).
- **The knowing refusal to surrender a revoked license, firearms, and ammunition is a crime under 269, § 10(i).** *Comm. v. Donnelly*, 2024 WL 4182583 (Appeals Court): In April, the Springfield Police revoked Jeffery Donnelly’s LTC. Records showed he possessed 26 firearms. In May, Detective Shink followed up with a call to Donnelly’s cell phone. Donnelly told Shink that he would not surrender his firearms or license. Donnelly also said that he would transfer his guns to Vermont. Twenty minutes later, during another call, Donnelly told Sergeant Rodgurski that he felt he was not required to surrender his firearms because they were already in Vermont.

---

<sup>2</sup> A determination of unsuitability must be proven by a preponderance of the evidence. If the court does not rule within 90 days of the petition, the FID is automatically approved. 140, § 121F(l).

Donnelly violated 269, §10(i). His conversations with officers established that Donnelly knew his LTC was revoked and that he was required to surrender his license and firearms. Instead, Donnelly refused and gave conflicting accounts about where his guns were.

- **Notice of the revocation/suspension may be in writing or “in some other way”** (e.g., verbally in person or over the phone). The fact that Donnelly’s guns had, in fact, been removed out of state to Vermont was not a defense to this charge. Finally, making it a crime to fail to surrender one’s firearms, license, and ammunition on notice does not violate the Second Amendment.
- **At the same time, once police notify the license holder, legal authority still needed to enter his home to seize the guns.** In *Comm. v. Adams*, 482 Mass. 514 (2019), Adams’ suspension was based on a report from the Department of Children and Families (DCF) that he injured his wife in front of their son. This serious misconduct rendered Adams unsuitable to possess firearms.

Police officers came to Adams’ house and properly demanded that he surrender his firearms, ammunition, and license immediately. He refused to do so, and could have been charged under 269, § 10(i).<sup>3</sup>

However, Adams’ refusal to allow police to enter his home was a separate constitutional issue. Police lacked consent to enter, but did not face exigent circumstances because Adams and his wife could have been ordered out while police secured the home and applied for a search warrant. Entry into Adams’ home without a warrant, consent, or exigent circumstances resulted in suppression of the seized firearms.

- **Best practice.** Inform the suspect that: (1) the continued possession of firearms violates his duty to surrender them immediately; (2) the possession of firearms without the now suspended license is a crime; and (3) if police have to get a warrant to enter to seize the firearms, he will be charged with 269, § 10(i), and the firearms will be seized as evidence of that crime. After receiving this information, the suspect will be more inclined to consent to police entry and the seizure of guns, licenses, and ammunition. If not, secure the scene and obtain a warrant.

### ***Police disposition of seized guns:***

- **When police collect firearms from people no longer permitted to possess them, they may be turned over to a licensed firearms dealer operating a bonded warehouse.** 140, § 129D(b). Storage fees may be collected upon a return, transfer, or sale to a person permitted to receive the firearms. *Foster v. New England Ballistic Services*, 2022 WL 16625472 (Appeals Court) (after confiscating firearms from a former LTC holder, Easton Police Department transferred custody to the company; the company was not required to release the guns until the storage fees were paid).
- **The holder or their legal representative shall have the right, at any time up to 1 year after the surrender, to transfer an unlimited amount of firearms and ammunition:**
  - *To a licensed dealer or a person legally permitted to purchase the firearms and ammunition.*
  - *The LA shall complete the transfer within 10 days of notice.* The purchaser or transferee shall promise in writing that they will not transfer the firearms or ammunition back to the former owner.

---

<sup>3</sup> At that point, officers could have removed him from the scene and applied for a criminal complaint.

- *This rule does not apply to evidence in any pending criminal investigation*, which must be secured in a department evidence locker.
- **Firearms and ammunition not disposed of within 1 year of delivery or surrender shall be sold at public auction** by the colonel of the State Police. § 129D(c). The dealer in possession may also schedule an auction with the colonel if the storage charges have been in arrears for 90 days. In either case, after deduction and payment of storage charges and all necessary costs associated with the auction, surplus proceeds shall be immediately given to the owner. Finally, any firearm or ammunition used to carry out a criminal act or prohibited from being possessed within the Commonwealth shall not be sold at public auction, but must be destroyed by the colonel.
- **If the LA cannot ascertain a lawful owner within 180 days of acquisition, the LA may trade or dispose of surplus, donated, abandoned, or junk firearms or ammunition** to licensed dealers. The proceeds of the sale may be used to purchase firearms, equipment, or supplies or for violence reduction or suicide prevention.

## ADMINISTRATIVE MISCONDUCT

### License Expiration

**DCJIS must mail notice at least 90 days before expiration date.** 140 § 121F(r).

**There is a 90-day grace period following the expiration date on the FID or LTC.** Moreover, if the holder applied to renew *before* the expiration date, his license stays valid until the renewal is approved or denied. In addition, active duty military have an extension. Their license remains valid for 180 days after discharge, even if they did not apply for renewal. 140, § 121F(s)(i – iii).

**Consequences.** If the FID or LTC expires (and is beyond the 90-day grace period), and if the holder did not apply for renewal but is still qualified, and if no LA action against the LTC or FID is pending (except for failure to provide notice of an address change), officers may *only* confiscate the expired FID or LTC and guns, and apply for a criminal complaint. Penalty: Fine NLT \$100, NMT \$5,000. The license should be immediately sent to the LA, and the suspect receives a written receipt for the confiscated guns. § 121F(t).

- **On the other hand, a holder should be arrested for unlawful possession if:**
  - *Currently disqualified from receiving a license* (whether or not he applied to renew); or
  - *Renewal application already denied orally or in writing.* The burden is on the defendant to show he qualifies for the renewal exemption. *Comm. v. Harrison*, 100 Mass. 376 (2021). Simply producing the expired license is not enough. *Comm. v. Indrisano*, 87 Mass. App. Ct. 709 (2015). *Comm. v. Farley*, 64 Mass. App. Ct. 854 (2005).
- **Renewal exemptions only apply to guns — not ammunition or large capacity feeding devices.** *Comm. v. Phillips*, 2016 WL 6998367 (Appeals Court) (exemption for expired license did not apply to ammunition and feeding devices found in defendant's vehicle).

### Change of Address

**Failure to notify about change of address.** License holders, within 30 days of moving, must provide notice through EFRS. Failure to do so results in license suspension or revocation. 140, §§ 131(g) (LTCs), 121B(e) (FIDs), 122D(d) (SDS permits for juveniles).



## EXTREME RISK PROTECTION ORDER

**Extreme Risk Protection Order (ERPO).** The petitioner files an application for an ERPO. The respondent is the focus of the ERPO. A district court may hear a petition to remove a person's right to possess a firearm or ammunition, whether or not the gun owner (respondent) holds an LTC or FID. Under 140, § 121, the following may file a petition:

- A family or household member (as defined in 209A, § 1) of the respondent; or
- The LA where the gun respondent resides; or
- Any law enforcement officer who has, during the previous 30 days, officially interacted with the respondent; or
- A health care provider (including licensed medical or mental health clinicians, addiction professionals, and social workers) who provided services to the respondent within the previous 6 months. See 140, § 131X(d) (health provider may disclose private information about respondent for this purpose); or
- A principal or assistant principal of an elementary or secondary school or administrator at a college or university where the respondent is enrolled.

**The court may issue an ERPO** if the judge finds by a preponderance of the evidence that the respondent poses a risk of causing bodily injury to self or others by having control, ownership, or possession of a firearm or ammunition. ERPOs are directed to the LA where the respondent resides.

The court chooses how to issue ERPOs:

- **An order after a hearing with notice to the respondent.** § 131T(a). Service of the notice must be 7 days prior to the hearing. § 131S(a). Also, just like under a 209A suspension and surrender order, the respondent must receive a hearing within two days if he files an affidavit saying that his firearm is required for his employment. § 131S(b).
- A temporary order prior to a hearing and without notice to the respondent; or
- An emergency order when the court is closed. § 131T(c) (just like 209A or 258E orders, this ERPO may be granted by a justice over the telephone).

**When the licensing authority receives an ERPO, it shall immediately suspend the respondent's LTC or FID and notify him.** A police department shall serve the ERPO on the respondent, inform the respondent of its terms, and provide information about social services issued by the trial court. § 131S(e).

**The respondent must immediately surrender their LTC/FID and all firearms and ammunition that he controls, owns, or possesses.** 140, § 121. Failure to immediately surrender all licenses, firearms, and ammunition is a crime under 140, § 131S(f). Penalty: HC NMT 2½ years; and/or Fine NMT \$5,000. The LA must enter the surrendered firearms and ammunition into EFRS. 140, § 129D.

Under 140, § 131S(h), the police may turn over surrendered firearms to a person who is determined to be the lawful owner. However, the lawful owner must agree to store any firearm so that the respondent does not have access. If the lawful owner violates this rule, Penalty: HC NMT 2½ yrs; and/or Fine NMT \$5,000.

**The court must issue a search warrant to seize firearms and ammunition if not surrendered within 24 hours of ERPO service.** § 131T(b). The police must provide probable cause that the respondent has access to firearms or ammunition on their person or in an identified place. The warrant must be issued regardless of the manner in which the ERPO was initially issued by the court.

**The police department accepting surrender of firearms, or seizing them pursuant to a warrant, must issue a receipt** for the licenses, firearms, and ammunition. Items seized pursuant to a warrant by another department should be transferred to the respondent's LA.

- An emergency ERPO, and any search warrant issued because of that ERPO, expires at the end of the next court day unless the petitioner appears in court.
- Temporary or permanent ERPOs expire on the date specified.

**Notification to petitioner before return of firearms.** The LA shall notify the petitioner 7 days prior to the expiration of an ERPO that the firearms are subject to return to the respondent, and shall notify the petitioner as soon as possible if the ERPO is terminated earlier. The LA shall return the LTC, FID, firearms, and ammunition to the respondent, but only after confirming the respondent is a suitable person under state and federal law. 140, § 131S(i).

## EXEMPTIONS TO LICENSE REQUIREMENTS

**140, § 129C allows exemptions for possession of firearms and ammunition.** The following are exempt:

- **Supervised possession in the presence of an appropriate license holder** while shooting firearms fixed to the counter at licensed amusement park concessions; during examination, trial, or instruction with the firearm; during examination by a professional photographer or writer; and during use in a film, television, or stage production. § 129C(b). (140, § 131F½ also covers film, TV, and stage productions).
- **Voluntarily surrendering firearm by prior arrangement with the colonel or a municipal LA** as to place and approximate time of the surrender. § 129C (a)(i). Also see 140, § 131O. 515 CMR 3.06.
- **60-day grace period for new resident or for a Massachusetts resident returning after an absence of NLT 180 consecutive days.** This exemption applies only to possession of firearms they legally possessed prior to moving in or returning to Massachusetts. § 129C(a)(ii).
  - **License from other state not enough.** Although a suspect has a valid firearms license from another state, he has only 60 days, from the time he also becomes a Massachusetts resident, to get an LTC here. Otherwise, he unlawfully possesses his firearm when in Massachusetts. For the purpose of our gun laws, a citizen may be a resident of more than one state. *Comm. v. Harris*, 481 Mass. 767 (2019) (abusive defendant lived in New Hampshire and got a gun license there; he moved into a Tewksbury apartment for about five months when police arrived on a domestic complaint and discovered his Glock in his car; defendant admitted he did not have a Massachusetts LTC; he had been a resident for well over 60 days; he was properly convicted of unlawful firearm possession).
  - **Resident is more permanent than visitor.** *Comm. v. Paul*, 96 Mass. App. Ct. 263 (2019) (trooper found James Paul walking on a highway with a loaded gun in his backpack;

Paul said he was meeting a friend and traveling on to Michigan; he was not a new resident because he did not intend to live in Massachusetts for any amount of time; he was not exempt under § 129C).

- **60-day grace period provided for heir following transfer from deceased.** The recipient shall, during this time period, transfer the firearms and ammunition to a licensed person. § 129C(a)(iii).
- **Ordinary shipping of firearms as merchandise by a common carrier,** provided the transportation and storage complies with 140, §§ 131C and 131L. See §129C(c).
- **Bank collateral for a secured transaction or following a default on a commercial transaction,** but only with non-large capacity firearms and ammunition. § 129C(d).
- **Federally licensed firearms manufacturers and wholesalers** and their employees when necessary for manufacture, display, storage, transport, installation, inspection, or testing. § 129C(e)(i).
- **Officially recognized veterans organizations and their members during official parades or ceremonies,** provided that large capacity rifles or shotguns are unloaded, or loaded only with blank cartridges. 129C(e)(ii).
- **Museums and institutional collections open to the public,** provided firearms are unloaded and secured from unauthorized handling. § 129C(e)(iii).
- **Minor or under 21 years old under immediate supervision of appropriate licensee** (or member of the military service in performance of duty) for hunting, target shooting, or recreation. § 129C(g). (140, § 130½ states that a parent or guardian must consent to their minor to use a firearm, rifle, or shotgun under appropriate supervision.)
- **Signal device or industrial gun** used exclusively for signaling and recommended by the U.S. Coast Guard or Interstate Commerce Commission, or for the firing of stud cartridges, explosive rivets, or similar industrial ammunition. § 129C(h). *Comm. v. Sampson*, 383 Mass. 750 (1981) (flare gun exempt from licensing).

**Critical limitation to exemptions.** Under § 129C(m), there is no exemption for failing to follow registration requirements under 140, § 121B or serial number requirements under 140 § 121C.

---

## Antique Firearm Exemption

**Defined in 140, 121:** A firearm or replica manufactured before 1900 that is not designed for or converted to use rimfire or conventional centerfire ammunition.

Remember, many firearms manufactured before 1900 can use fixed ammunition. Those firearms, their replicas, and any firearm converted or readily convertible for fixed ammunition are not antiques.

A firearm is still an antique if it uses rimfire or conventional centerfire ammunition that is no longer manufactured in the United States and is not otherwise readily available.

Finally, a muzzle loading rifle, shotgun, or pistol that uses black powder or black powder substitute and cannot use fixed ammunition and does not incorporate a frame or receiver, or cannot be readily converted to firing fixed ammunition by replacing the barrel, bolt, and/or breechblock is exempt.



## Exemptions for Nonresidents

**140, 121 defines a nonresident** as a person who is temporarily in Massachusetts but legally resides in another U.S. state or territory.

**140, § 129C has exemptions for nonresidents** who possess firearms and ammunition in Massachusetts. The nonresident must be:

- **At least 18 years of age, possessing only rifles and shotguns that are not large capacity or semi-automatic, and:**
  - Have a permit or license from their state of residence;<sup>4</sup> or
  - While present to hunt, have a nonresident hunting license or hunting license or permit from their state of residence;<sup>5</sup> or
  - Be at a shooting range; or
  - Be traveling in or through Massachusetts, provided the rifles and shotguns shall be unloaded and in compliance with 140, §§ 131C and 131L; or
  - Be at a firearm showing or display organized by a regularly existing gun collectors association. § 129C(i) and (j); or
- **Carrying a firearm on their person in a vehicle lawfully traveling through Massachusetts,** provided that the firearm remains in the vehicle and, if the firearm is outside its owner's direct control, in compliance with 140, § 131C. See § 129C(k); or
- **Federal or out-of-state military or police** of any jurisdiction, in the performance of their official duty or when duly authorized. These officials may also buy, sell, or transfer firearms, but only non-large capacity in compliance with 140, § 128A. See § 129C(f).

**No exemptions for aliens.**

## Nonresident & "Green Card" LTC — 140, § 131F

**Same eligibility standards for nonresidents and lawful permanent residents.** A temporary LTC may be issued by the colonel to a nonresident or to a lawful permanent resident (aka Green Card holder) of the U.S.

A nonresident or Green Card LTC is marked as a "temporary license" and is "subject to such terms and conditions as said colonel may deem proper."

**Purpose & duration of license.** Lawful permanent residents and nonresidents may receive an LTC for firearms competition for 1 year. Only nonresidents may receive an LTC for employment for up to 2 years. Both types of licenses may be renewed.

<sup>4</sup> The exemption exists only if the colonel of the State Police determines the nonresident's state has substantially similar requirements for issuance of its permit or license as a Massachusetts FID.

<sup>5</sup> The exemption exists only if the colonel of the State Police determines the nonresident's state has substantially similar requirements to those found in 131, § 11.

## FIREARMS REGISTRATION

**Electronic Firearms Registration System (EFRS).** DCJIS administers a system to record all LTCs, FIDs, 129C exemptions, licenses to sell firearms, firearms transactions, and records of firearms possession. 140, § 121B.

In October 2025, EFRS will be in operation. DCJIS will also provide online, non-personalized data about firearms in Massachusetts (called the “dashboard”).

**Firearms in Massachusetts shall be registered.** A firearm’s registration must be completed when the firearm is imported, purchased, acquired, manufactured, or assembled in Massachusetts. Registration must occur within 7 days of importation by a licensed dealer or following private manufacture in Massachusetts. A firearm brought into the state by a new resident, or inherited by a resident, must be registered within 60 days. 140, § 121B(2). Once EFRS is operating in October 2025, owners will register all their firearms. See *EOPSS Memorandum, September 30, 2024*.

Under § 121B(d), guns are exempt from registration when:

- Delivered to law enforcement for destruction;
- Possessed by common carriers for transportation as merchandise;
- Possessed by nonresident owners lawfully traveling through Massachusetts with the firearms stored in compliance with 140, §§ 131C and 131L; or
- Lawfully produced by a federally licensed manufacturer and not for sale in Massachusetts.

**No registration required for loaning a firearm to a properly licensed or exempt person for less than 7 days.** § 121B(b).

**Firearms transfers reported to EFRS.** Within 7 days, any purchase, sale, rental, or other transfer must be reported to EFRS by all parties. § 121B(b).

**Registration requirements.** Registration requires a full description of the firearm, information about the registrant including LTC or FID or § 129C exemption, information identifying the source of the firearm, and a sworn statement that possession of the firearm is lawful. § 121B(a)(1).

**Owner must report loss or theft of firearm within 7 days.** The owner reports to EFRS, which immediately notifies the LA. § 121B(c).

**Criminal and administrative penalty for failure to register a firearm, or report a firearm transaction, loss, or theft.**

- **Under 140, § 121B(e),** Penalty: 1<sup>st</sup> offense: Fine NMT \$1,000. 2<sup>nd</sup> offense: HC NMT 6 months; and/or Fine NMT \$7,500. 3<sup>rd</sup> or more: SP NLT 1 year, NMT 5 yrs; and/or Fine NMT \$10,000. Failure to report shall also result in license suspension or permanent revocation.
- **Right of arrest for § 121B(e):** For 1<sup>st</sup> or 2<sup>nd</sup> offense, confiscate unregistered guns and complaint application. Do not arrest. For 3<sup>rd</sup> or more, Felony.
- **There is another statute, 140, § 128B,** which states that any resident or nonresident of the Commonwealth who obtains a firearm from any source, inside or outside of Massachusetts, must register the firearm. Penalty: 1<sup>st</sup> offense — Fine NLT \$500, NMT \$1,000. 2<sup>nd</sup> offense or more — SP NMT 10 yrs.

## MANDATORY GUN TRACING

**Tracing crime or suicide guns.** Under 140, § 131Q, the LA for a city or town in which a gun crime or suicide takes place — or the law enforcement agency that actually takes possession of the firearm — must gather and report to DCJIS the following information:

- A full description of the firearm;
- Whether crime or suicide occurred;
- Whether an arrest was made;
- What fingerprint evidence was found on the firearm or ballistic evidence recovered at the scene;
- Whether the crime was gang-related;
- Whether the firearm was obtained lawfully; and
- Whether a “prohibited person” used the firearm.

**Cartridge casings.** Spent cartridges must be submitted to the National Integrated Ballistics Information Network.

**DCJIS transmits information** to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and to the Commonwealth Fusion Center.

## TRANSFERS AND/OR SALES OF FIREARMS & AMMUNITION DEALERS

### Dealer License & Regulations

**Licensed firearms dealers.** The LA may grant licenses pursuant to 140, § 122 to sell firearms and ammunition, or work as a gunsmith, to any person who is at least 21 years of age and is neither a prohibited person nor unsuitable (according to the standards found in 140, § 121F). The applicant must complete online dealer training classes. 140, § 125. The license must be connected to a specific business address, separate and distinct from the dealer’s residence. No authority exists to possess firearms or ammunition except at the business address. 140, § 123(b). However, a licensed dealer may transfer firearms at the meeting of an incorporated collector’s club or at a gun show open to the public. 140, § 123(j).

While a license may be transferred to different premises, with the approval of the LA, the license may not be sold to another person.

**Regulation of a dealer’s business, sales, and records.** The many rules a dealer must follow appear in 140, § 123. Among these are:

- Conspicuously display dealer’s license. § 123(c).
- Do not display any gun in a window or in a way where it is visible from outside the business premises. § 123(c).
- Provide information at purchase counter on safe storage and suicide prevention. § 123(d).
- Ensure in-person presentation by a customer of their LTC, FID, or other documents prior to a transaction (except between federally licensed dealers). § 123(f) and (k).

- Verify licenses and documents prior to a transaction. § 123(f).
- Seize any invalid LTC or FID presented by a customer and report it on EFRS; then issue a receipt to the customer and tell him to surrender his guns to the LA pursuant to 140, § 129. § 123(g).
- Keep extensive records of the customers for all transactions and make these records available for police inspection “at all times.” § 123(h).
- Deliver only unloaded firearms to customers. § 123(l).
- Do not sell to a purchaser a firearm that is prone to explosion or to discharging more than one shot per trigger pull, or (except to a firearms wholesaler) one that does not meet the standards found in 140, § 123 regarding materials testing and accidental discharge testing.<sup>6</sup> § 123(o).
- Do not sell a firearm with a barrel less than 3 inches long without disclosing information about the firearm’s accuracy.<sup>7</sup> § 123(o)(iv).
- Immediately report any lost or stolen firearms or ammunition through EFRS. § 123(i).

**Club license to sell ammunition.** The LA may issue to an incorporated sporting or shooting club a license to sell ammunition “for regulated shooting” on the premises. 140, § 122B. This club license, subject to screening under 140, § 121F, must be held personally, on behalf of the club, by a club officer who also holds an LTC or FID.

---

## **Criminal & Administrative Consequences for Improper Dealer Behavior**

### ***Firearms dealer misconduct:***

- **Any violation of 140, § 123 is a felony under § 123(m):** Fine NLT \$1,000, NMT \$10,000; and/or SP NLT 1 year, NMT 10 yrs.
- **Sale by a licensee to a person without the proper license is also a felony under 140, § 128:** Fine NLT \$1,000, NMT \$10,000; and/or SP NLT 1 year, NMT 10 yrs, or HC NMT 2½ yrs. Administrative penalty after conviction: Mandatory loss of dealer license NLT 10 yrs.

***Selling ammunition without license.*** The sale of ammunition without a firearms dealer or shooting club ammunition license is a crime. Under 140, § 122B(e), penalty is HC NLT 6 months, NMT 2 yrs; or Fine NLT \$500, NMT \$1,000. Right of Arrest: Confiscate ammunition and complaint.

***Dealer’s license suspension/revocation:*** Under 140, § 121F(u)(2), a dealer’s license under § 122 or club ammunition license under § 122B may be suspended or revoked. If revoked, the dealer is disqualified from receiving a license for an additional 1 year after the term of revocation. A dealer may appeal a suspension/revocation to either the state police colonel within 10 days or the district court within 90 days. § 121F(v).

---

<sup>6</sup> Exempt under 140, § 123(p) is: a firearm legally possessed in Massachusetts prior to October 21, 1998, or a stun gun, or a firearm designated by the secretary of EOPPS, or a firearm made for Olympic competition.

<sup>7</sup> The same exemptions in the previous note apply here.

## PRIVATE TRANSFERS

### Limits on Legal Transfers

**Transfer of firearms by private persons.** Private firearms transfers or sales are governed by 140, § 128A.

- Transfers are typically limited to 4 firearms per calendar year to private buyers.
- Transfers must be direct to the holder of an LTC or FID or exempt person under § 129C. The firearms are limited to the types each party may legally possess.<sup>8</sup> (No limits appear regarding the amount of ammunition that may be transferred, but being in the business of selling ammunition requires a license under 140, § 122.)
- There is no limit on number of firearms transfers to firearms dealers, historical societies, museums, or collections open to the public; or to private buyers during the year after a person has had their LTC or FID revoked/suspended.
- All transfers must be processed through EFRS. EFRS will inform the seller whether the transfer may proceed. § 128A(g).

### Crimes for Improper Private Transfers

**Transfer without dealer's license.** Under 140, § 128, a person may not sell or transfer a firearm without holding a dealer's license, or exemption under 140, § 129C or 140, § 128A. Penalty: Fine NLT \$1,000, NMT \$10,000; and/or SP NLT 1 year, NMT 10 yrs. Right of Arrest: Felony.

**Also, intentionally transferring a firearm, except as provided by law, violates 269, § 10E.** Penalty: Fine NMT \$50,000; and/or SP NMT 10 yrs for transfers of 1 or 2 firearms. Transferring 3 or more firearms, but fewer than 10: Fine NMT \$100,000, and SP NLT 5, NMT 20 yrs. Transferring more than 10 firearms: Fine NMT \$150,000, and SP NLT 10 yrs, NMT Life. Right of Arrest: Felony.

## TARGET & SPORTING CLUBS

**Club licenses for large capacity firearms.** The State Police may issue to an incorporated club a license to possess, store, and use large capacity firearms, feeding devices, and ammunition on the premises. 140, § 122B. One "shareholder" of the club must be suitable for an LTC.

- The large capacity firearms may be used only by LTC holders or by others while under direct supervision of a certified firearms safety instructor or member holding an LTC. § 122B(b).
- The club must:
  - Forbid shooting at human figure targets except by public safety personnel;
  - Not allow the club's large capacity firearms to leave the premises except when transferred to a gun dealer, sent to a gunsmith for repair, transported to another club, used to hunt, or used in an event approved by a public law enforcement agency or recognized organization promoting semiautomatic firearms education or proficiency;

<sup>8</sup> With a permit to purchase, 140, § 131A, the holder of an FID is permitted to receive the firearm described in the permit even if it is a handgun or large capacity, semiautomatic rifle or shotgun.



- Ensure its firearms are transported in compliance with 140, § 131C (unloaded and enclosed in a case);
- File an annual report with the State Police and DCJIS listing all large capacity firearms and feeding devices the club possesses and permit inspection by the State Police; and
- Follow regulations established by EOPSS. § 122B(c).

***A club may receive a license to sell ammunition from the LA.*** See earlier discussion.

## CRIMINAL OFFENSES

***Under 140, § 121, a firearm is broadly defined*** as “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 or receiver of any such firearm or an unfinished frame or receiver of any such firearm.”

This means that, in order to effectively enforce the law, police officers must be able to define each of type of firearm listed and what is legally necessary to possess it. This is why each type of firearm is discussed separately.

### HANDGUN 269, § 10(a)

#### Elements

***The suspect possessed, or had under his control in a vehicle, a loaded or unloaded non-large capacity handgun or frame.***

- **Handgun.** A non-large capacity handgun — based on the language of 140, § 121 — has a barrel less than 16” (otherwise it is a rifle) and can fire or discharge a shot or bullet (or can be easily fixed to fire one). The handgun may be semiautomatic, but it may not have a feeding device (i.e., a magazine) that allows it to fire more than 10 bullets at a time.
- **Frame** is “[t]he part of the 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. Any such part that is identified with an importer or manufacturer serial number shall be presumed, absent an official determination by the ATF or other reliable evidence to the contrary, to be the frame of the firearm.” § 121.
- **Unfinished frame.** When an unfinished frame has reached a stage in manufacture where it may be readily assembled to function as a frame, or is marketed or sold to the public as a frame once assembled (except if intended for an antique handgun).

***And the suspect was not properly licensed or otherwise exempt as follows:***

- **License to Carry (LTC).** The suspect has a valid LTC issued under 140, § 131 (for Massachusetts residents) or under § 131F (for a nonresident or lawful permanent resident in Massachusetts, aka Green Card holder);
- **Exempt under 129C.** The suspect is exempt for one of the reasons specified in 140, § 129C; or
- **Present at residence or business.** The suspect does not have an LTC or is not exempt under 129C, but he is at his home or place of business.

## Right of Arrest

Felony.

## Penalty

SP NLT 2½ yrs, NMT 5 yrs or HC NLT 18 months, NMT 2½ yrs. Mandatory minimum incarceration of 18 months for either SP or HC sentence. Court shall order the gun to either be forwarded to the colonel for destruction or sale, or returned to its rightful owner. 269, §§ 10(e) and 10(f).

## Notes

**The definition of any firearm includes a frame** (or even an unfinished frame). See earlier discussion of definitions under 140, § 121. Otherwise, the government must have proof that the particular firearm is capable of discharging a shot or bullet.

**269, § 10(a) may not be charged against a suspect who possesses a non-large capacity handgun on his residential or business property.** *Comm. v. Guardado*, 491 Mass. 666 (2023).

- **A residence includes all areas over which a suspect has exclusive control.** *Comm. v. Coren*, 437 Mass. 723 (2002) (single family home includes backyard). Compare *Comm. v. McCollum*, 79 Mass. App. Ct. 239 (2011) (defendant's handgun found in his girlfriend's apartment, so "home exemption" inapplicable; his girlfriend said he stayed there "occasionally," and he told police the apartment "belong[s] to the mother of [my] child").
- **A business must belong to the suspect.** For this purpose, a person's workplace does not qualify. For example, the exemption protects the shop owner who has a gun, but not the sales employee. *Comm. v. Belding*, 42 Mass. App. Ct. 435 (1997) (landlord of a three-family home could not claim it as his "place of business" and carry a firearm into his tenant's apartment).

**Still, unlicensed, non-exempt possession of a non-large capacity handgun at a home or business is a crime in violation of 269, § 10(h)(1).**

- **The benefit for a suspect is that § 10(h)(1) is a misdemeanor with no mandatory minimum jail time** — unlike the 18-month sentence under § 10(a). *Comm. v. Loadholt*, 460 Mass. 723 (2011).
- **§ 10(h)(1) authorizes a warrantless arrest on probable cause.** Penalty: HC NMT 2 yrs; or Fine NMT \$500.

**An FID card is no defense to the public or private possession of a non-large capacity handgun.** An FID card authorizes the possession of non-semiautomatic, non-large capacity rifles and shotguns. The Appeals Court recently ruled that an FID card, contrary to popular belief, does not excuse the possession of a handgun in a home or business. *Comm. v. Ewan*, \_\_ Mass. App. Ct. \_\_ (2024) [Wareham police arrested Bryan Ewan in his home with a pistol in his pocket; Ewan's FID card did not prevent him from being convicted under 269, § 10(h)(1)].<sup>9</sup>

<sup>9</sup> The *Ewan* decision, which was published on October 30, 2024 as Slip op. 23-P-1258, provides welcome clarity in an area of longtime confusion. See, e.g., *Comm. v. Seay*, 376 Mass 735 (1978). While some advocates may claim that the existence of permits to purchase in 140, § 131A authorize FID holders to purchase and possess handguns at their home or business, the recent amendments to the firearms law repealed a separate statute, 140, § 131E, which means there is no longer a way for an FID holder to lawfully purchase a handgun in the first place. Ch. 135, Sect. 59. Moreover, while permits to purchase are technically still recognized, police department licensing authorities will acknowledge that they have, for decades, not had the actual forms! Until the SJC weighs in on this topic, officers should follow the *Ewan* rule.

## RIFLE OR SHOTGUN 269, § 10(a)

### Elements

***The suspect possessed, or had under his control in a vehicle, a loaded or unloaded non-large capacity rifle or shotgun, or receiver.*** Based on 140, § 121:

- **Rifle** has a rifled bore and barrel length equal to or greater than 16", and is capable of discharging a shot or bullet for each pull of the trigger.
- **Shotgun** a smooth bore and barrel length equal to or greater than 18", with an overall length equal to or greater than 26", and is capable of discharging a shot for each pull of the trigger.
- **Receiver** is "[t]he 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. Any such part that is identified with an importer or manufacturer serial number shall be presumed, absent an official determination by the ATF or other reliable evidence to the contrary, to be the receiver of the firearm."
- **Unfinished receiver.** When an unfinished receiver has reached a stage in manufacture where it may be readily assembled to function as a receiver, or is marketed or sold to the public as a receiver once assembled (except if intended for an antique rifle or shotgun).

***And the suspect was not properly licensed or otherwise exempt as follows:***

- **License to Carry (LTC).** The suspect has a valid LTC issued under 140, § 131 (for Massachusetts residents) or under § 131F (nonresidents or Green Card holder);
- **Firearms Identification Card (FID).** The suspect has a valid FID issued under 140, § 129B;
- **Exempt under 129C.** The suspect is exempt for one of the reasons specified in 140, § 129C; or
- **Present at residence or business.** The suspect does not have an LTC, FID, and is not exempt under 129C, but he is at his home or place of business.

---

### Right of Arrest

Felony.

---

### Penalty

SP NLT 2½ yrs, NMT 5 yrs or HC NLT 18 months, NMT 2½ yrs. Mandatory minimum incarceration of 18 months for either SP or HC sentence. Court shall order the gun to either be forwarded to the colonel for destruction or sale, or returned to its rightful owner. 269, §§ 10(e) and 10(f).

---

### Notes

***269, § 10(a) may not be charged against a suspect who possesses a non-large capacity rifle or shotgun on his residential or business property.*** *Comm. v. Guardado*, 491 Mass. 666 (2023).

A residence includes all areas over which a suspect has exclusive control. A business must belong to the suspect, not simply be his workplace. See earlier discussion.

***Unlicensed, non-exempt possession of a rifle or shotgun at a home or business is still a crime in violation of 269, § 10(h)(1).*** The benefit for a suspect is that § 10(h)(1) is a misdemeanor without mandatory incarceration. Under § 10(h)(1), police may make a warrantless arrest on probable cause. Penalty: HC NMT 2 yrs; or Fine NMT \$500.

***The definition of a rifle or shotgun includes a receiver*** (or even an unfinished receiver). Otherwise, the government must have proof that the particular rifle or shotgun is capable of discharging a shot or bullet.

## LARGE CAPACITY HANDGUN, RIFLE, OR SHOTGUN 269, § 10(m)

### Elements

***The suspect knowingly possessed, or had under his control in a vehicle, a loaded or unloaded large capacity handgun, rifle, or shotgun.*** Under 140, § 121, a handgun, rifle, or shotgun is considered large capacity when it is:

- **Semiautomatic and has a fixed large capacity feeding device;** or
  - *Note:* A large capacity feeding device is a fixed or detachable magazine, belt, drum, strip, or similar device that holds more than 10 rounds or more than 5 shotgun shells.
- **Semiautomatic and capable of accepting a detachable large capacity feeding device,** but only if both the firearm and feeding device are in the same person's possession or under their control in a vehicle; or
- **Semiautomatic and employs a rotating cylinder capable of accepting more than 10 rounds of ammunition or more than 5 shotgun shells.<sup>10</sup>**

***And the suspect was not properly licensed or otherwise exempt as follows:***

- **License to Carry (LTC).** The suspect has a valid LTC issued under 140, § 131 (for Massachusetts residents) or under § 131F (for a lawful permanent resident in Massachusetts, aka Green Card holder);
- **Licensed Shooting Club.** The suspect was properly supervised at a shooting club licensed under 140, § 122B;
- **Exempt under 129C.** The suspect is exempt for one of the reasons specified in 140, § 129C; or
- **On-duty police or military.** Within the scope of their duties, federal, state, and local law enforcement officers, and military personnel, may possess large capacity firearms according to 269, § 10(m);
- **Retired or off-duty police.** Under 140, § 131M, retired and current off-duty "qualified law enforcement officers" under 18 USC § 926 (LEOSA) may possess large capacity firearms; or
- **Museums.** Local historical societies, museums, and collections open to the public may possess large capacity firearms according to 269, § 10(m).

<sup>10</sup> Assault-style firearms (ASFs) are also prohibited by 269, § 10(m), but ASFs are complicated and, as a result, dealt with separately under 140, § 131M.

## Right of Arrest

Felony.

## Penalty

SP NLT 2½ yrs, NMT 10 yrs. Mandatory minimum incarceration of 2½ yrs. Interestingly, if the defendant had a valid FID, he is still guilty but the mandatory minimum may be reduced to 1 year. Court shall order the gun to either be forwarded to the colonel for destruction or sale, or returned to its rightful owner. 269, §§ 10(e) and 10(f).

## Notes

**Unlike for non-large capacity handguns, rifles, or shotguns, 269, § 10(m) provides no home or business exemption for large capacity firearms.**

**§ 10(m) also indicates that a person with an FID may not lawfully possess even large capacity rifles and shotguns in any location.<sup>11</sup>**

**There must be proof the suspect knew the gun or feeding device was “large capacity” or capable of holding more than 10 bullets or 5 shotgun shells.** *Comm. v. Cassidy*, 479 Mass. 527 (2018): John Cassidy purchased AK47 and 9 millimeter pistols in Texas and brought them to Massachusetts two years later — even though his friend told him he needed a Massachusetts license. Dartmouth police officers executed a search warrant at Cassidy’s apartment, and he was convicted of unlawful possession of an assault weapon, four large capacity feeding devices, and a large capacity firearm.

Evidence that proved the defendant’s knowledge included: his purchase of the guns, length of ownership, firing of the weapons, loading of the magazines, and the obvious length of the feeding devices which were “noticeably larger” than 10-round magazines.

Compare *Comm. v. Resende*, 94 Mass. App. Ct. 194 (2018) (Resende knew his gun was loaded, but there was no proof he knew it was large capacity; the gun was loaded with only one magazine and it did not look obviously large; no evidence showed how long Resende had owned it).

**The definition of any firearm includes a frame or receiver** (or even an unfinished frame or receiver). See earlier discussion of definitions under 140, § 121. Otherwise, the government must have proof that the particular firearm is capable of discharging a shot or bullet.

## LARGE CAPACITY FEEDING DEVICE 269, § 10(m)

### Elements

**The suspect knowingly possessed, or had under his control in a vehicle, a large capacity feeding device** which 140, § 121 defines as:

- **Completed magazine.** A fixed or detachable magazine, belt, drum, feed strip, or similar device that has a capacity of, or may be readily converted to accept, more than 10 rounds of ammunition or more than 5 shotgun shells; or

<sup>11</sup> The one increasingly rare exception is the grandfather clause found in Chapter 358 of the Acts of 1998, Sect. 11, for firearms obtained with a permit to purchase prior to October 12, 1998.



- **Parts to assemble magazine.** Any part or combination from which a device can be assembled if those parts are all in the possession or control of the same person.

***And the suspect was not properly licensed or otherwise exempt as follows:***

- **License to Carry (LTC) and meets requirements specified in 140, § 131M.** The suspect has a valid LTC issued under 140, § 131 (not 131F) and only has feeding devices legally possessed on or before September 13, 1994 on private property that he owns or controls or, in public, at a licensed range or sports competition and only if the feeding devices are unloaded and transported in a locked container. See 140, § 131(a) and 140, § 131M(c);
- **Licensed Shooting Club.** The suspect was properly supervised at a shooting club licensed under 140, § 122B;
- **Exempt under 129C.** The suspect is exempt for one of the reasons specified in 140, § 129C;
- **On-duty police or military.** Within the scope of their duties, federal, state, and local law enforcement officers, and military personnel, may possess large capacity firearms according to 269, § 10(m);
- **Retired or off-duty police.** Under 140, § 131M, retired and current off-duty “qualified law enforcement officers” defined by 18 USC § 926 (LEOSA) may possess large feeding devices; or
- **Museums.** Local historical societies, museums, and collections open to the public may possess large capacity firearms according to 269, § 10(m).

---

## Right of Arrest

Felony.

---

## Penalty

SP NLT 2½ yrs, NMT 10 yrs. Mandatory minimum incarceration of 2½ yrs. Interestingly, if the defendant had a valid FID, he is still guilty but the mandatory minimum may be reduced to 1 year. Court shall order the gun to either be forwarded to the colonel for destruction or sale, or returned to its rightful owner. 269, §§ 10(e) and 10(f).

---

## Notes

***There must be proof the suspect knew the feeding device was “large capacity” or capable of holding more than 10 bullets or 5 shotgun shells. Comm. v. Cassidy, supra.***

***140, § 131(a) specifically tells LTC holders that, when it comes to large capacity feeding devices, they must comply with the additional restrictions of 140, § 131M.***

***140, § 121 notes three exemptions from the definition of feeding device.*** Therefore, a feeding device is not: (1) a permanently altered device that cannot hold more than 10 rounds or 5 shotgun shells; or (2) a tubular magazine capable of only operating with .22 caliber rimfire ammunition; or (3) the tubular magazine of a lever action firearm or pump shotgun.

## ASSAULT-STYLE FIREARM (ASF)

### 140, § 131M

#### Elements

***The suspect knowingly possessed, or had under his control in a vehicle, an assault-style firearm (ASF) which 140, § 121 defines as:***

- **A semi-automatic centerfire rifle that accepts a detachable feeding device** and includes any 2 of the following features: (1) a folding or telescopic stock; (2) a pistol grip or thumbhole stock; (3) a forward grip, second handgrip, or protruding grip for the non-trigger hand; (4) a barrel threaded to accommodate a flash suppressor or muFzzle break; (5) or a heat shroud encircling all or part of the barrel, excluding a slide that encloses the barrel.
- **A semiautomatic pistol that accepts a detachable feeding device** and includes any 2 of the following features: (1) the capacity to accept a feeding device that attaches to the pistol outside the pistol grip; (2) a second handgrip or protruding grip for the non-trigger hand; (3) a barrel threaded to accommodate a flash suppressor, forward handgrip, or silencer; or (4) a heat shroud encircling all or part of the barrel, excluding a slide that encloses the barrel.
- **A semiautomatic shotgun** that includes any 2 of the following features: (1) a folding or telescopic stock; (2) a pistol grip or thumbhole stock; (3) a protruding grip for the non-trigger hand; or (4) the capacity to accept a detachable feeding device that can hold more than five rounds.
- **A firearm listed on the EOPSS assault-style firearms roster or specifically mentioned in 140, § 121.** See 140, § 131¾ (EOPSS roster creation and application). A copy or duplicate of any of these listed firearms — unless sold, owned, and registered prior to July 20, 2016.

***And the suspect was not properly licensed or otherwise exempt as follows:***

- **License to Carry (LTC) and requirements specified in 140, § 131M:**
  - LTC;
  - ASFs were lawfully possessed within the Commonwealth by an LTC holder on August 1, 2024;
  - ASFs are registered pursuant to 140, § 121B; and
  - ASFs have proper serial numbers pursuant to 140, § 121C;
- **Licensed Shooting Club.** The suspect was properly supervised at a shooting club licensed under 140, § 122B;
- **Exempt under 129C.** The suspect is exempt for one of the reasons specified in 140, § 129C;
- **On-duty police or military.** Within the scope of their duties, federal, state, and local law enforcement officers, and military personnel may possess large capacity firearms according to 269, § 10(m);
- **Retired or off-duty police.** Under 140, § 131M, retired and current off-duty “qualified law enforcement officers” defined by 18 USC § 926 (LEOSA) may possess ASFs; or
- **Museums.** Local historical societies, museums, and collections open to the public may possess large capacity firearms according to 269, § 10(m).

## Right of Arrest

Felony.

## Penalty

1<sup>st</sup> offense: SP NLT 1 year, NMT 10 yrs; and/or Fine NLT \$1,000, NMT \$10,000. 2<sup>nd</sup> offense: SP NLT 5 yrs, NMT 15 yrs; and/or Fine NLT \$5,000, NMT \$15,000. Court shall order the gun to either be forwarded to the colonel for destruction or sale, or returned to its rightful owner. 269, §§ 10(e) and 10(f).

## Notes

**140, § 131(a) specifically tells LTC holders that, when it comes to ASFs, they must comply with the additional restrictions of 140, § 131M.**

**Firearms are not assault-style under 140, § 121** if they are either: (1) operated by a bolt, pump, lever, or slide action; (2) permanently inoperable; (3) antiques, relics, or theater props; (4) otherwise incapable of firing a projectile; or (5) cannot be readily modified into an assault-style firearm.

## MACHINE GUN OR AUTOMATIC PART 269, § 10(c)

### Elements

***The suspect possessed, or had under his control in a vehicle, a loaded or unloaded machine gun; automatic part; bump stock; rapid-fire trigger activator; or trigger modifier.*** Each of these devices is defined in 140, § 121:

- **Machine Gun.** A firearm originally manufactured to discharge more than one shot by one continuous trigger activation, or modified to discharge more than one shot by one continuous trigger activation or to increase the rate of fire to mimic automatic fire. This includes submachine guns.
- **Automatic Part.** A device, part, or combination capable of being attached to a firearm to allow the automatic discharge of more than one shot by one continuous trigger activation, or that increases the rate of fire to mimic automatic fire.
- **Bump Stock.** Any device for a firearm that increases the rate of fire achievable by using the energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.
- **Rapid-Fire Trigger Activator.**
  - A manual, power-driven or electronic device designed to increase the rate of fire of a semiautomatic firearm when attached; or
  - A device, part, or combination designed to substantially increase the rate of fire of a semiautomatic firearm above its standard rate. [This does *not* include adjusting the trigger pull weight or adjusting the magazine spring.]
- **Trigger Modifier.** A modification that repeatedly activates the trigger of a firearm, including trigger cranks, binary triggers, and hellfire triggers.

***And the suspect was not properly licensed.***

- **Machine Gun License (MGL).** Under 140, § 131(f), the only applicants who qualify for a machine gun license are:
  - Law enforcement firearms instructors certified by MPTC for the sole purpose of firearms instruction to police personnel; or
  - “Bona fide collectors” defined under federal law 18 USC § 923(b).
- However, even with an MGL, no one may lawfully possess an automatic part. See § 131(f).
- There is no exemption under 140, § 121 for any type of machine gun or prohibited part.

---

**Right of Arrest**

Felony.

---

**Penalty**

SP NLT 18 months, NMT Life. Mandatory minimum incarceration of 18 months. Court shall order the gun to either be forwarded to the colonel for destruction or sale, or returned to its rightful owner. 269, §§ 10(e) and 10(f).

---

**Notes**

***Outlawing automatic parts is an effective strategy to deal with the proliferation of devices that transform ordinary firearms into machine guns.*** Remember, 140, § 131(f) holds that no license justifies possessing a part that can be attached to a firearm to increase its firing rate to mimic automatic fire. Under 269, § 10(c), simply possessing the part is sufficient for conviction, even if it has not been attached to a firearm yet.

***Without a machine gun license, simply possessing a bump stock, rapid-fire trigger activator, or trigger modifier is a crime.***

---

**COVERT OR UNDETECTABLE FIREARM**  
**140, § 131N**

---

**Elements**

***It is illegal to own, possess, sell, offer for sale, transfer, assemble, or repair either:***

- **Type 1: A covert firearm.** Under 140, § 121, a firearm placed in a camouflaging firearm container; or a firearm (except a stun gun) capable of discharging a bullet or shot and constructed in a shape that does not resemble a firearm or is not immediately recognizable as a firearm, including zip guns, concealed bolt guns, folding guns, and firearms resembling key-chains, pens, canes, wallets, flashlights, cigarette-lighters or packages, flare guns, pellet guns and BB gun conversion kits.
- **Type 2: An undetectable firearm.** Under 140, § 121, this is a firearm that has: (1) removed grips, stocks, or magazines that is not detectable by walk-through metal detectors; or (2) a major component that is not accurately depicted by detection devices commonly used at secure public buildings and transit stations.

**There is no license or exemption that authorizes possessing a covert or undetectable firearm.**

---

## Right of Arrest

Felony.

---

## Penalty

1<sup>st</sup> offense: SP NLT 1 year, NMT 10 yrs; and/or Fine NLT \$1,000, NMT \$10,000. 2<sup>nd</sup> or more: SP NLT 5 yrs, NMT 15 yrs; and/or Fine NLT \$5,000, NMT \$15,000. Court shall order the gun to be forwarded to the colonel for destruction as authorized by 269, § 10(e).

## STUN GUN (AKA TASER) WITH PROBE DEPLOYMENT 269, § 10(a)

### Elements

***The suspect possessed, or had under his control in a vehicle, a stun gun that is capable of “probe deployment.”*** Based on *Comm. v. Shehadi*, \_\_ Mass. App. Ct. \_\_ (2024)<sup>12</sup>, not all stun guns are regulated in Massachusetts. Those stun guns — commonly called Tasers or Electronic Control Weapons (ECWs) — that actually can discharge a dart or projectile are regulated as firearms. On the other hand, some stun guns simply operate in “drive stun mode” (without any probe deployment capacity). The *Shehadi* decision exempts those limited stun guns from legal regulation. To summarize:

- **For a stun gun with probe deployment, the suspect should be charged unless:**
  - ***License to Carry (LTC)*.** The suspect has a valid LTC issued under 140, §§ 131 or § 131F;
  - ***Exempt under 129C*.** The suspect is exempt for one of the reasons specified in 140, § 129C; or
  - ***Present at residence or business*.** The suspect does not have an LTC or is not exempt under 129C, but he is at his home or place of business.
- **For a stun gun with only drive stun mode, the suspect should not be charged at all.** *Comm. v. Shehadi, supra.*

---

## Right of Arrest

Felony.

---

## Penalty

SP NLT 2½ yrs, NMT 5 yrs or HC NLT 18 months, NMT 2½ yrs. Mandatory minimum incarceration of 18 months for either SP or HC sentence. Court shall order the gun to either be forwarded to the colonel for destruction or sale, or returned to its rightful owner. 269, §§ 10(e) and 10(f).

---

<sup>12</sup> This important Appeals Court opinion was published on November 6, 2024 as Slip op. 22-P-969.



## Notes

**The law currently requires an LTC for probe deployment tasers, but requires no license whatsoever for drive stun only tasers.** At present, the definition of a stun gun in 140, § 121 includes any “portable device . . . from which an electrical current . . . that is designed to incapacitate . . . may be directed.” This, of course, includes any taser-like weapon that functions through probe deployment and/or in drive stun mode when the weapon is directly pressed against a person’s body.

As the Appeals Court pointed out in *Shehadi*, the limitation on coverage occurs because of the way that stun guns are defined in § 121’s definition of a firearm. The current definition of a firearm is “a stun gun, pistol, revolver, rifle, [and other listed guns] loaded or unloaded, which is designed to . . . expel a shot or bullet.” [emphasis added] Since a stun gun is not a firearm unless it expels a shot, the Appeals Court overturned the conviction of Michael Shehadi for possessing a Sabre S-1009 stun gun in his vehicle trunk. This stun gun resembled “a clunky electrical razor” and could only operate in what Taser users call drive stun mode.<sup>13</sup>

## SELF-DEFENSE SPRAY (SDS)

### Purchase & Possess Self-Defense Spray (SDS)

**All citizens age 18 and over may purchase and possess SDS**, which is defined as Mace, OC, or any other device that emits an incapacitating substance. They do not need *any* type of license. 140, § 122C.

**Citizens who are age 12 to 17 may only purchase or possess SDS if they have an SDS permit.** 140, § 122D(a). A licensing authority may issue a permit to a person age 12 through 17 who is not a prohibited or unsuitable person under § 121F, provided that a person age 12 to 14 also provides a certificate of permission from a parent or guardian. § 122D(b).

**If a person under 18 possesses SDS without a permit, charge 140, § 122C(c).** Penalty: Fine NMT \$300. Right of Arrest: Confiscate and complaint.

---

### Sale of SDS

**SDS may only be sold by a licensed gun dealer under 140, § 122.** Charge unlicensed SDS dealers under 140, § 122C(a). Penalty: HC NMT 2 yrs; or Fine NMT \$1,000. Right of Arrest: Confiscate remaining SDS inventory and complaint.

**Sale of SDS to person under 18 without an SDS permit.** Charge violators under 140, § 122C(b) Penalty: Fine NMT \$300. Right of Arrest: Confiscate and complaint. *Note:* Clearly, this charge should only appear by itself when directed at a lawful dealer who sells to someone under 18. If a nondealer sells to someone under 18, then always apply the more serious charge above under 122C(a) — in addition to this one.

---

<sup>13</sup> Technically, *Shehadi* ruled that the appearance of the stun gun placed it outside the old firearm definition in effect at the time of the case. However, even under the new firearm definition enacted by Ch. 135, Sect. 20 after *Shehadi*, the logic of *Shehadi* still exempts all drive stun only tasers from any regulation in Massachusetts. To avoid this result, the legislature must amend the definition of firearm again to accommodate all types of tasers.

## POSSESSION OF UNTRACEABLE FIREARM (NO SERIAL NUMBER) 269, § 11C

### Elements

**No person may manufacture, assemble, sell, transfer, purchase, or receive (i.e., possess) an untraceable firearm with knowledge it is untraceable.** Under 140, § 121, an untraceable firearm is one without an official serial number, or one with the number removed, defaced, altered, or mutilated in any manner.

### Right of Arrest

Felony.<sup>14</sup>

### Penalty

SP or HC NLT 1 year, NMT 2½ yrs.

### Notes

**269, § 11C states that evidence showing the suspect possessed an untraceable firearm is, without more, sufficient proof of his guilt.** *Comm. v. Kante*, 2021 WL 1263109 (Appeals Court) (officers saw the defendant place a pistol on a truck tire, which proved possession; there was no need for separate evidence that some part of the defaced serial number was visible because the law presumes, absent contrary evidence, that the defendant was aware of the status of the serial number).

**No license or exemption permits possessing an untraceable firearm.** Even if a person has an LTC, FID, or is exempt under 140, § 129C, they are never exempt from the legal requirements pertaining to serial numbers. See 140, § 129C(m).

**A valid serial number** is one placed on a firearm pursuant to a federal or state law, or after it is issued by ATF or by DCJIS. 140, § 121 (defining “valid serial number” and the process of “serialization”). Also see 140, § 121C. Finally, EOPSS must issue regulations by April 2025 on how firearms must be serialized (permanently marked with a unique number by the manufacturer or, sometimes, owner).

### Related Offense

**Possession of Untraceable Firearm During Felony.** Under 269, § 11B, an untraceable firearm becomes more serious if possessed during the commission of a felony. Right of Arrest: Felony. Penalty: SP or HC with a mandatory minimum term of 2½ yrs. No maximum term is given by 269, § 11B.

<sup>14</sup> 269, § 11C does not explicitly limit imprisonment to the HC. Therefore, SP and HC are possible incarceration options..

## SPECIALIZED GUN OFFENSES ON GOVERNMENT PROPERTY

### Possession of Firearm in Prohibited Government Area — 269, § 10(k)

***No possession of firearm, loaded or unloaded, if suspect knows, or should know, he is in a prohibited area.***

***A prohibited area is any place owned, leased, or controlled by the state, a county, or a municipality and used for:***

- Government administration;
- Judicial or court administrative purposes including any part of the buildings, grounds, or parking areas; or
- A polling place or early voting site or area; or within 150 feet of the building entrance during voting hours; or a place in use for the storage or tabulation of ballots during voting or tabulation hours.
- Prohibited area does not include:
  - State-owned public land available for hunting.
  - *Optional:* A municipality may vote to exclude its administrative buildings from this definition.

***Right of Arrest:*** 269, § 10(k) warrantless arrest in presence.

***Penalty:*** HC NMT 2½ yrs; and/or Fine NMT \$1,000.

#### ***Notes:***

- ***Affirmative defense:*** If a person with an LTC or FID stored the firearm in a vehicle, in compliance with 140, §§ 131C and 131L, while within the prohibited area.
- ***Exempt:*** A qualified law enforcement officer under 18 USC §§ 926B and 926C (LEOSA) and a security guard employed at the prohibited area during the course of employment hours.
- ***Additional restrictions:*** Under 269, § 10(k)(5), any division of Massachusetts government or court “may adopt policies further restricting the possession of firearms in areas under their control.”

## IN MOTOR VEHICLE

### Guns in a Motor Vehicle — 140, § 131C

***Type 1: Loaded firearm.*** No person, with an LTC, FID, or § 129C exemption, shall carry a *loaded* firearm (including rifles and shotguns) in a vehicle unless it is under his direct control.

***Type 2: Large capacity firearm.*** No person, with an LTC or § 129C exemption, shall possess a large capacity firearm (including rifles and shotguns) in a vehicle unless unloaded and secured in a locked container. 140, § 121 defines a locked container to include “a locked trunk not accessible from the passenger compartment or a locked console or glovebox.”

**Right of Arrest:** Confiscate and complaint.

**Penalty:** For firearm (including rifles and shotguns): Fine NMT \$500 and mandatory license revocation for 1 year. For large capacity firearm: Fine NLT \$500, NMT \$5,000 and mandatory license revocation for 1 year. *Note:* under 140, § 121, a firearm with a detachable feeding device is large capacity *only* when the same person possesses or has under his control in a vehicle both the firearm *and* the large capacity feeding device.

**Exemption:** Employees of any federal or state government, municipal law enforcement officers, or military personnel acting within the scope of their official duties. § 131C(c).

## 3D PRINTER VIOLATIONS

### 140, § 121D

#### Elements

**Type 1: Use printer without LTC.** No person shall use a 3-dimensional (3D) printer or computer numerical control milling machine to manufacture or assemble a firearm in the Commonwealth without an LTC; or

**Type 2: Sell printer.** No person shall sell, transfer, or offer a 3D printer that has the primary or intended function of manufacturing a firearm. A printer has this function if advertised or promoted for this purpose — even if described as having other functions or being general purpose.

---

#### Right of Arrest

Confiscate and complaint.

---

#### Penalty

HC NMT 1 year; and/or Fine NMT \$5,000 per firearm or violation.

---

#### Notes

**Exemptions:** 3D printers when possessed by forensics laboratories; common carriers as merchandise; federally licensed firearms manufacturers; the United States government; or law enforcement for the purpose of destruction.

**Use other felony offenses if the offender unlawfully possesses the 3D firearm or improperly sells it.** See, e.g., 269, § 10(a).

**A person who privately manufactures or assembles a firearm must request a serial number** from DCJIS, serialize the firearm, and register it within 7 days of manufacture. 140, § 121C(c).

**A firearm includes a frame or receiver.** 140, § 121. Just 3D printing the frame or receiver makes the printer suspect possess a firearm.