

**APPENDIX TO THE PETITION
FOR A WRIT OF CERTIORARI**

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APPENDIX A

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

RE: Docket No. FAR-29402
COMMONWEALTH *vs.* NICKY S. KEO
Lowell District, MI No. 2111CR002014
A.C. No. 2022-P-0982

NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on August 4, 2023, the application for further appellate review was denied.

Francis V. Kenneally, Clerk

Dated: August 4, 2023.

To: Thomas D. Ralph, A.D.A.
Ryan J. Rall, A.D.A.
Patrick Levin, Esquire

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

22-P-982

COMMONWEALTH

vs.

NICKY S. KEO.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant pleaded guilty in the District Court on June 6, 2022, to a single count of unlawfully carrying a firearm without a license in violation of G. L. c. 269, § 10 (a).¹ He was sentenced to the mandatory minimum house of correction term of eighteen months. On June 23, 2022, the Supreme Court of the United States issued its decision in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022), holding that the State of New York’s statute for obtaining a license to carry a firearm outside of the home impermissibly burdened the Second Amendment rights of law-abiding citizens. The defendant filed a timely notice of appeal. Shortly thereafter the defendant filed in the District Court a motion “to correct the unconstitutional sentence or, in the alternative, motion for a new trial” (postconviction motion), together with a motion to stay his sentence pending appeal. He argued that under the Supreme Court’s analysis in *Bruen* the Commonwealth’s mandatory minimum sentence for unlawfully carrying a firearm is unconstitutional. The same judge who had accepted the guilty plea denied both motions, and the defendant timely appealed from the order denying the postconviction motion.²

Discussion. The defendant does not challenge the underlying licensing regime or his conviction.³ Instead, he argues that the mandatory minimum firearm sentencing scheme is unconstitutional under *Bruen* because there is no historical analogue in the country’s history to the mandatory sentencing scheme of G. L. c. 269,

¹ At the change of plea hearing, the Commonwealth agreed to dismiss three additional counts charging knowingly receiving a firearm with a defaced serial number, G. L. c. 269, § 11C; unlawful carrying of a loaded firearm, G. L. c. 269, § 10 (n); and possession of a class B substance with intent to distribute, G. L. c. 94C, § 32A (a).

² The defendant also renewed his motion to stay in our single justice session, which was denied. The defendant appealed that denial, which a panel of this court affirmed in an unpublished decision. *Commonwealth v. Keo*, 102 Mass. App. Ct. 1110 (2023).

³ As the Supreme Judicial Court recently held in a post-*Bruen* decision, “[t]he Commonwealth may impose licensing requirements upon the possession of firearms.” *Commonwealth v. Guardado*, 491 Mass. 666, 691 (2023).

§ 10 (a). Therefore, the defendant argues, the mandatory minimum sentence is an unconstitutional infringement on his Second Amendment rights. “Such constitutional challenges are questions of law that we review de novo.” *Commonwealth v. Johnson*, 470 Mass. 300, 307 (2014).

We do not agree that under the reasoning of *Bruen* section 10 (a)’s mandatory minimum sentence must be considered unconstitutional. As two of the concurring Justices in *Bruen* made clear, 142 S. Ct. at 2161 (Kavanaugh, J., concurring), the reasoning of *Bruen* did not invalidate so-called “shall issue” State schemes for licensing firearms, and indeed, the opinion of the Court itself indicates that such licensing schemes do not run afoul of the Second Amendment. See *id.* at 2138 n.9 (“To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes”). Here, the sentencing provision at issue is part of a licensing scheme, and the defendant does not challenge the lawfulness of the licensing scheme itself.

Rather, the defendant invokes *Bruen* to challenge solely the punishment for a firearm licensing scheme violation. Historically, courts review the alleged harshness of different sentencing schemes to determine if the scheme runs afoul of the Eighth Amendment to the United States Constitution and art. 26 of the Massachusetts Declaration of Rights. See *Commonwealth v. Sharma*, 488 Mass. 85, 89 (2021). In *Commonwealth v. Jackson*, 369 Mass. 904, 909-916 (1976), the Supreme Judicial Court did just that and upheld the constitutionality of the mandatory minimum firearm sentencing scheme of G. L. c. 269, § 10 (a), holding that it did not amount to cruel and unusual punishment. The court noted that “the Legislature has great latitude to determine what conduct should be regarded as criminal and to prescribe penalties to vindicate the legitimate interests of society.” *Id.* at 909.

“[I]t is not uncommon for a constitutional rule to apply somewhat differently at the penalty phase than it does at the guilt phase.” *White v. Woodall*, 572 U.S. 415, 421 (2014). While *Bruen* provided a new analytical framework for the regulation of the possession of a firearm, it is silent on the issue of punishment. It did not change the constitutionality of existing sentencing schemes, nor discuss any change to how those sentencing schemes should be analyzed. Because nothing in *Bruen* inherently affects the Supreme Judicial Court’s holding in *Jackson*, we affirm the order denying the postconviction motion.

Order entered August 4, 2022, denying motion to correct sentence or, in the alternative, for a new trial affirmed.

By the Court (Henry, Desmond & Englander, JJ.⁴),

Joseph F. Stanton, Clerk

Entered: June 29, 2023.

⁴ The panelists are listed in order of seniority.

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS
LOWELL DISTRICT COURT

COMMONWEALTH OF MASSACHUSETTS

vs.

NICKY S. KEO

Docket No. 2111CR2014

**DECISION ON RULE 30 MOTION
BEFORE THE HONORABLE JOHN COFFEY**

Lowell, Massachusetts

Wednesday, August 3rd, 2022

APPEARANCES:

Hon. John Coffey, Judge

Mr. Edward Kim, Commonwealth

Ms. Eileen Morrison, Defense

* * *

THE COURT: So, as to the motion to correct the unconstitutional sentence, I read *Jackson*.

MS. MORRISON: Yes.

THE COURT: You might have some issues there based on some of the language there. I, I, I can't do anything but impose the sentence that I imposed. So, the motion to correct the sentence or the new trial is denied.

COMMONWEALTH: And—I apologize, Your Honor. And the motion for new trial?

THE COURT: Well, it's the motion to correct the sentence and, it's consolidated, motion for a new trial. Yeah. That's denied.

* * *

APPENDIX D

COMMONWEALTH OF MASSACHUSETTS
LOWELL DISTRICT COURT

COMMONWEALTH OF MASSACHUSETTS

vs.

NICKY S. KEO

Docket No. 2111CR2014

PLEA HEARING
BEFORE THE HONORABLE JOHN COFFEY

Lowell, Massachusetts

Monday, June 6th, 2022

APPEARANCES:

Hon. John Coffey, Judge
Mr. Edward Kim, Commonwealth
Ms. Eileen Morrison, Defense
Mr. Nicky Keo, Defendant

* * *

THE COURT: Mister Keo, I understand you want to change your plea on the Count 3 of, of 2111CR2014, is that correct?

MR. KEO: Yes, sir.

* * *

THE COURT: Now, Mister Keo, I'm going to ask you now to listen carefully to the Assistant District Attorney, who's going to recite to me the facts the Commonwealth would rely on to prove the allegations contained in this complaint. And then, I'll have some additional questions for you. Okay, sir?

MR. KEO: Okay.

THE COURT: All right. Attorney Kim?

COMMONWEALTH: Thank Your Honor. Edward Kim on behalf of the Commonwealth.

If Docket 2111—11CR002014 had proceeded to trial, the Commonwealth would have proven beyond a reasonable doubt, as to Count 3, that, on 6-16 of 2021, officers of the Lowell Police Department conducted a motor vehicle stop of a motor vehicle involving this Defendant due to an outstanding warrant. During—the officers had the Defendant step out of the motor vehicle. During a search of the Defendant when he was being placed under arrest, officers found a nine-millimeter Luger LC-9s firearm in the Defendant’s pock—, front right leg pocket. Those are essentially the facts of the case. The Commonwealth would have introduced testimony from a ballistics to show that the firearm in question was, in fact, a firearm.

THE COURT: All right.

COMMONWEALTH: Thank you.

THE COURT: All right. And, Mister Keo, did you hear those facts?

MR. KEO: Yes, sir.

THE COURT: Are those facts essentially true?

MR. KEO: Yes, sir.

* * *

THE COURT: I find there’s a factual basis for the plea. It’s made freely, voluntarily, with full knowledge of the consequence. I’ll accept the plea with the agreed-upon recommendation, which is 18 months sentence to the house of correction, Counts 1, 2, and 4 will be dismissed, and Count 5 had been previously nolle pros’ed.

MS. MORRISON: Your Honor, may I say something?

THE COURT: Absolutely.

MS. MORRISON: Mister Keo is 20 years old.

THE COURT: I know.

MS. MORRISON: And, he has no record.

THE COURT: I know.

MS. MORRISON: There is only one person in this courtroom—I’m sorry. There is only one person in this courtroom, actually who isn’t even in this courtroom, who has the authority—

THE COURT: I know.

MS. MORRISON: —to make an exercise of discretion.

THE COURT: I know.

MS. MORRISON: This is so unjust.

THE COURT: Yeah.

MS. MORRISON: And, I'm sorry.

THE COURT: No. I know.

MS. MORRISON: I'm sorry I'm being so emotional.

THE COURT: Yup.

MS. MORRISON: But, this is just—

THE COURT: All right.

COMMONWEALTH: Judge—

MS. MORRISON: —absolutely ridiculous.

THE COURT: I agree with everything, except, except one thing. I don't think even Attorney Kim has that authority.

MS. MORRISON: No, no. That's what I'm saying.

THE COURT: Yup.

MS. MORRISON: He doesn't—I know he does not—

THE COURT: No.

MS. MORRISON: —have the authority to make this decision.

THE COURT: No. I know.

MS. MORRISON: I have submitted a breakdown request.

THE COURT: Yup.

MS. MORRISON: Mister Keo is working. He is the only person in his family who is working right now. He lives with his father. He has not committed any new offenses while on arrest. But, for the mandatory minimum—

THE COURT: I know.

MS. MORRISON: —in this case—

THE COURT: I know.

MS. MORRISON: —he would be getting probation.

THE COURT: I know.

MS. MORRISON: And, I think that is what would satisfy community safety.

THE COURT: Yup.

MS. MORRISON: He is not going to be safer and we, as a community, are not going to be safer 18 months from now after he's in jail with adults. This is not what should be happening today. And, I wish there was something that I could do or you could do, Your Honor, to change this. But, there is only one—

THE COURT: Yeah.

MS. MORRISON: —person that can change that. And, that is the District Attorney of Middlesex County. And, I find it unconscionable that this is her decision.

THE COURT: Well—

MS. MORRISON: Thank you for letting me speak.

THE COURT: All right. Well, Attorney Morris—, Morrison, for what it's worth, I've been in this business over, almost 36 years now. And, I, I've been living with mandatory minimums for 36 years. And, it doesn't do what I think they thought it was going to do.

MS. MORRISON: I agree.

THE COURT: All right? And so—

MS. MORRISON: And, I think it should be unconstitutional to strip the authority from you, Your Honor, to make these decisions.

THE COURT: That, that—we can agree on that, too.

* * *

THE CLERK: As to Docket 2111CR2014, as to Count 3, having pled guilty, the Court finds guilty and sentences you to 18 months in the house of correction. The Court awards you one day jail credit.

As to Count 1, 2, and 4, those are going to be dismissed upon the acceptance of this plea. Count 5 was previously nolle pros'ed. The Court waives outstanding legal fee. And, the bail is ordered returned to the surety.

Custody, Mister Officer.

THE COURT: Thank you.

[END OF HEARING]

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

LOWELL DISTRICT COURT
DOCKET NO. 2111 CR 2014

COMMONWEALTH

v.

NICKY KEO

**MOTION TO CORRECT THE UNCONSTITUTIONAL SENTENCE
OR, IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL
PURSUANT TO MASS. R. CRIM. P. 30(A) AND 30(B)**

Defendant Nicky Keo hereby moves this Honorable Court to correct the unconstitutional sentence against him or, in the alternative, to grant him a new trial. See Mass. R. Crim. P. 30(a), (b). Shortly after Mr. Keo pleaded guilty to one count of carrying a firearm without a license in violation of M.G.L. ch. 269, § 10(a), the United States Supreme Court decided New York State Rifle and Pistol Association v. Bruen, 597 U.S. __ (2022). Under Bruen, the firearm regulation that requires mandatory minimum penalties for violations of § 10(a) is unconstitutional because this regulation is not relevantly similar to laws existing at the time of the enactment of the Second and Fourteenth Amendments.

I. Brief Summary of Facts

Nicky Keo is a twenty-year-old Cambodian American with no criminal record prior to this case. On June 16, 2021, Mr. Keo was pulled over by the Lowell Police. He was ultimately charged with various offenses including carrying a firearm without a license, which carries an 18-month mandatory minimum penalty. Mr. Keo was released on bail during the pendency of the case and abided by all conditions of bail. On June 6, 2022, Mr. Keo walked into Lowell District Court and pleaded guilty to one count of carrying a firearm without a license in violation

of M.G.L. ch. 269, § 10(a). He was placed in custody and will not be released until December 5, 2023.

II. The Mandatory Minimum Penalty in § 10(a) is an Unconstitutional Burden on the Right to Bear Arms

“[T]he Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense.” Bruen, 597 U.S. __ (2022) (slip op., at 8). Massachusetts has a complex firearm regulatory regime which requires residents to have a license in order to purchase, possess, or carry firearms, in some circumstances requires registration of firearms, and imposes severe mandatory minimum penalties on those who carry firearms outside the home with no exceptions for those who carry for self-defense. See, e.g., 140, §§ 121-131Q, 10(a). Penalties for violations of licensing statutes burden the right to bear arms; the more harsh the punishment, the more significant the burden on the exercise of this right. See Bruen, 597 U.S. (slip op., at 49). And the Commonwealth need not even prove that an otherwise law-abiding citizen failed to comply with the licensing scheme in order to subject him to these harsh mandatory penalties; simply evidence that he carried a firearm in public will suffice. See Commonwealth v. Gouse, 461 Mass. 787, 800-802 & n.17 (2012); compare Bruen, 597 U.S. (slip op., at 34) (confirming that the Second Amendment protects the “right to bear arms in public for self-defense”).

On June 23, 2022, the Supreme Court announced Bruen, a drastic shift in constitutional interpretation of the Second Amendment.¹ Previously, the Courts of Appeals had coalesced around a “two-step” framework to analyze Second Amendment challenges. In Bruen, the Court rejected that framework and announced a test never before seen in any Supreme Court decision

¹ Counsel did not raise this issue prior to the plea because the constitutional theory on which the defendant is relying here was not sufficiently developed at the time of trial and he did not have a genuine opportunity to raise his claim here before the announcement of Bruen. Counsel is not required to be clairvoyant. Commonwealth v. Randolph, 438 Mass. 290, 295 (2002).

examining a constitutional right. See Bruen, 597 U.S. (slip op., at 1). The Court held: “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”

Id. at 15. In order for the government to meet this burden, it must show that the regulations were “relevantly similar” to laws existing at the time of the adoption of the Second and Fourteenth Amendments. Id. at 20, 29.

No jurisdiction in the United States regulated firearms with a mandatory minimum penalty until the Massachusetts legislature amended chapter 269, section 10(a) in 1974. Commonwealth v. Jackson, 369 Mass. 904, 913 (1976). In upholding the new mandatory minimum in Jackson, the Supreme Judicial Court stated, “[T]he Legislature has great latitude to determine what conduct should be regarded as criminal and to prescribe penalties to vindicate the legitimate interests of society.” Jackson, 269 Mass. at 909. However, Bruen makes clear that when the Legislature seeks to curtail the constitutional right “to keep and bear arms,” it does not in fact have that latitude but rather is confined to regulations “relevantly similar” to laws existing in 1791 or 1868. As in Bruen, whether the relevant time period is 1791 (when the Second Amendment was adopted) or 1868 (when the Fourteenth Amendment was adopted), firearm regulation did not include mandatory minimum penalties for unlicensed firearm possession because such regulations only came into being less than 50 years ago.

Bruen makes clear that when examining whether regulations are “relevantly similar,” a reviewing court should consider the metrics of “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” Bruen, 597 U.S. (slip op., at 20). However, “[c]ourts may not engage in an independent means-end scrutiny under the guise of an analogical inquiry.” Id. at

20 n.7. Rather, “the government must identify a well-established and representative historical analog.” Id. at 21 (emphasis omitted). The government cannot do so here. There were no other firearms regulations in existence in 1791 or 1868 that were remotely analogous to the mandatory minimum punishment contained in § 10(a). The imposition of a mandatory minimum penalty on those who possess firearms without a license was a completely new and unique regulation. It was created by the so-called “Bartley-Fox” amendment in 1974, and marked the first law in the nation regulating firearms with a mandatory minimum penalty. See James A. II Beha, And Nobody Can Get You Out - The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the Use of Firearms and on the Administration of Criminal Justice in Boston - Part I, 57 B.U. L. Rev. 96, 98, 102-03 (1977) (explaining that the law prevented suspension, parole, or furlough); Jackson, 369 Mass. at 913.

Because the imposition of a mandatory minimum was a such a radical and enormous change to firearm regulation, the law’s sponsors coupled the passage of the law with an intensive public information and education campaign. Beha, supra, at 108. This campaign included stories in the newspaper and radio and television spots. Id. at 108 n.47. The sponsors themselves ended up lobbying for a 3-month delay in the effective date of the law because “there had not been sufficient publicity about the new penalties.” Id. at 107 n.44. The new regulation imposing a mandatory minimum prompted a wide-ranging constitutional challenge in Jackson, where the Supreme Judicial Court remarked that it “may question the [wisdom] of the decision to *reject the traditional notions* of individualizing the sentence to the offender and rehabilitating the convicted.” Jackson, 369 Mass. at 915 (emphasis added). By any relevant metric under Bruen, the change to § 10(a) was a sharp departure from the Nation’s historical tradition of firearm regulation.

As a law-abiding citizen, Mr. Keo had a Second Amendment right to bear arms for self-defense, the Second Amendment presumptively protected that conduct. See Bruen, 597 U.S. __ (2022) (slip op., at 8). In order to regulate that conduct with a mandatory minimum penalty, the government must show that the regulation in question was consistent with the Nation's historical tradition of firearm regulation. See id. at 15. The government cannot do so here, where no laws in any jurisdiction regulated that conduct with the imposition of mandatory minimum penalties until 1974. Therefore, this Court should correct the unconstitutional sentence against him or, in the alternative, grant him a new trial.

Dated: July 7, 2022

Respectfully submitted,
NICKY KEO

By his attorney,

/s/ Eileen L. Morrison

Eileen L. Morrison (BBO # 694208)
Committee for Public Counsel Services
40-44 Church Street, 4TH Floor
Lowell, MA 01852
(978) 458-7161
emorrison@publiccounsel.net

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

LOWELL DISTRICT COURT
DOCKET NO. 2111 CR 2014

COMMONWEALTH

v.

NICKY KEO

AFFIDAVIT OF COUNSEL

I, Eileen L. Morrison, do hereby state the following is true to the best of my knowledge, information, and belief:

1. I am an attorney licensed to practice in Massachusetts. I represent Nicky S. Keo in the above-captioned case.
2. As part of my work in this case, I am aware of the allegations alleged in the police report and my client's board of probation record.
3. During the pendency of the above-captioned case, Mr. Keo was released on bail for nearly one year (from June 17, 2021 to June 6, 2022). During that time, Mr. Keo abided by all conditions of his release and stayed in good contact with his attorneys. Mr. Keo was living with his father, stepmother, siblings (age 3 and 11), and grandmothers while he was out on bail. Mr. Keo was also employed at Life Force Orthodontics in Burlington, MA. Mr. Keo gave money to his father for rent and helped care for his siblings.
4. Mr. Keo can return to living with his family if he is released on conditions during the pendency of his direct appeal and Rule 30 Motion.
5. I reviewed New York State Rifle and Pistol Association v. Bruen, 597 U.S. __ (2022) when it was released on June 23, 2022. I also conducted additional research regarding the history of firearm regulation.

Signed under the pains and penalties of perjury this 7th day of July 2022.

/s/ Eileen L. Morrison

Eileen L. Morrison

APPENDIX F

MASSACHUSETTS GENERAL LAWS

Chapter 269, § 10. Carrying dangerous weapons; possession of machine gun or sawed-off shotguns; possession of large capacity weapon or large capacity feeding device; punishment.

- (a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

- (1) being present in or on his residence or place of business; or
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or
- (3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or
- (4) having complied with the provisions of sections one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or
- (5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B;

and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:

- (1) being present in or on his residence or place of business; or
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or
- (3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or
- (4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or
- (5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; or
- (6) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B;

shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than 18 months nor more than two and one-half years in a jail or house of correction. The

sentence imposed on such person shall not be reduced to less than 18 months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 18 months of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file.

No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person 18 years of age or older, charged with a violation of this subsection, or to any child between ages fourteen and 18 so charged, if the court is of the opinion that the interests of the public require that he should be tried as an adult for such offense instead of being dealt with as a child.

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business.

- (b) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stiletto, dagger or a device or case which enables a knife with a locking blade to be drawn at a locked position, any ballistic knife, or any knife with a detachable blade capable of being propelled by any mechanism, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blowgun, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed starlike object intended to injure a person when thrown, or any armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance or a cestus or similar material weighted with metal or other substance and

worn on the hand, or a manrikigusari or similar length of chain having weighted ends; or whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned and those mentioned in paragraph (a), shall be punished by imprisonment for not less than two and one-half years nor more than five years in the state prison, or for not less than six months nor more than two and one-half years in a jail or house of correction, except that, if the court finds that the defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment for not more than two and one-half years in a jail or house of correction.

- (c) Whoever, except as provided by law, possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred and forty, without permission under section one hundred and thirty-one of said chapter one hundred and forty; or whoever owns, possesses or carries on his person, or carries on his person or under his control in a vehicle, a sawed-off shotgun, as defined in said section one hundred and twenty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life, or for any term of years provided that any sentence imposed under the provisions of this paragraph shall be subject to the minimum requirements of paragraph (a).
- (d) Whoever, after having been convicted of any of the offenses set forth in paragraph (a), (b) or (c) commits a like offense or any other of the said offenses, shall be punished by imprisonment in the state prison for not less than five years nor more than seven years; for a third such offense, by imprisonment in the state prison for not less than seven years nor more than ten years; and for a fourth such offense, by imprisonment in the state prison for not less than ten years nor more than fifteen years. The sentence imposed upon a person, who after a conviction of an offense under paragraph (a), (b) or (c) commits the same or a like offense, shall not be suspended, nor shall any person so sentenced be eligible for probation or receive any deduction from his sentence for good conduct.
- (e) Upon conviction of a violation of this section, the firearm or other article shall, unless otherwise ordered by the court, be confiscated by the commonwealth. The firearm or article so confiscated shall, by the authority of the written order of the court be forwarded by common carrier to the colonel of the state police, who, upon receipt of the same, shall notify said court or justice thereof. Said colonel may sell or destroy the same, except that any firearm which may not be lawfully sold in the commonwealth shall be destroyed, and in the case of a sale, after paying the cost of forwarding the article, shall pay over the net proceeds to the commonwealth.

- (f) The court shall, if the firearm or other article was lost by or stolen from the person lawfully in possession of it, order its return to such person.
- (g) Whoever, within this commonwealth, produces for sale, delivers or causes to be delivered, orders for delivery, sells or offers for sale, or fails to keep records regarding, any rifle or shotgun without complying with the requirement of a serial number, as provided in section one hundred and twenty-nine B of chapter one hundred and forty, shall for the first offense be punished by confinement in a jail or house of correction for not more than two and one-half years, or by a fine of not more than five hundred dollars.
- (h) (1) Whoever owns, possesses or transfers a firearm, rifle, shotgun or ammunition without complying with the provisions of section 129C of chapter 140 shall be punished by imprisonment in a jail or house of correction for not more than 2 years or by a fine of not more than \$500. Whoever commits a second or subsequent violation of this paragraph shall be punished by imprisonment in a house of correction for not more than 2 years or by a fine of not more than \$1,000, or both. Any officer authorized to make arrests may arrest without a warrant any person whom the officer has probable cause to believe has violated this paragraph.
- (2) Any person who leaves a firearm, rifle, shotgun or ammunition unattended with the intent to transfer possession of such firearm, rifle, shotgun or ammunition to any person not licensed under section 129C of chapter 140 or section 131 of chapter 140 for the purpose of committing a crime or concealing a crime shall be punished by imprisonment in a house of correction for not more than 2 ½ years or in state prison for not more than 5 years.
- (i) Whoever knowingly fails to deliver or surrender a revoked or suspended license to carry or possess firearms or machine guns issued under the provisions of section one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty, or firearm identification card, or receipt for the fee for such card, or a firearm, rifle, shotgun or machine gun, as provided in section one hundred and twenty-nine D of chapter one hundred and forty, unless an appeal is pending, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars.
- (j) For the purposes of this paragraph, “firearm” shall mean any pistol, revolver, rifle or smoothbore arm from which a shot, bullet or pellet can be discharged.

Whoever, not being a law enforcement officer and notwithstanding any license obtained by the person pursuant to chapter 140, carries on the person a firearm, loaded or unloaded, or other dangerous weapon in any building or on the grounds of any elementary or secondary school, college or university without the written authorization of the board or officer in charge of the elementary or secondary school, college or university shall be punished by a fine of

not more than \$1,000 or by imprisonment for not more than 2 years or both. A law enforcement officer may arrest without a warrant and detain a person found carrying a firearm in violation of this paragraph.

Any officer in charge of an elementary or secondary school, college or university or any faculty member or administrative officer of an elementary or secondary school, college or university that fails to report a violation of this paragraph shall be guilty of a misdemeanor and punished by a fine of not more than \$500.

[There is no paragraph (k).]

- (l) The provisions of this section shall be fully applicable to any person proceeded against under section seventy-five of chapter one hundred and nineteen and convicted under section eighty-three of chapter one hundred and nineteen, provided, however, that nothing contained in this section shall impair, impede, or affect the power granted any court by chapter one hundred and nineteen to adjudicate a person a delinquent child, including the power so granted under section eighty-three of said chapter one hundred and nineteen.
- (m) Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession, or knowingly has under his control in a vehicle, a large capacity weapon or large capacity feeding device therefor who does not possess a valid license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. The possession of a valid firearm identification card issued under section 129B shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served such minimum term of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution or the administrator of a county correctional institution, grant to such offender a temporary release in the custody of an officer of such institution for the following purposes only: (i) to attend the funeral of a spouse or next of kin; (ii) to visit a critically ill close relative or spouse; or (iii) to obtain emergency medical services unavailable at such institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file. The provisions of section 87 of chapter 276 relative to the power of the court to place certain offenders on probation shall not

apply to any person 18 years of age or over charged with a violation of this section.

The provisions of this paragraph shall not apply to the possession of a large capacity weapon or large capacity feeding device by (i) any officer, agent or employee of the commonwealth or any other state or the United States, including any federal, state or local law enforcement personnel; (ii) any member of the military or other service of any state or the United States; (iii) any duly authorized law enforcement officer, agent or employee of any municipality of the commonwealth; (iv) any federal, state or local historical society, museum or institutional collection open to the public; provided, however, that any such person described in clauses (i) to (iii), inclusive, is authorized by a competent authority to acquire, possess or carry a large capacity semiautomatic weapon and is acting within the scope of his duties; or (v) any gunsmith duly licensed under the applicable federal law.

- (n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm, loaded sawed off shotgun or loaded machine gun shall be further punished by imprisonment in the house of correction for not more than 2½ years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c).
- (o) For purposes of this section, “loaded” shall mean that ammunition is contained in the weapon or within a feeding device attached thereto.

For purposes of this section, “ammunition” shall mean cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun.