

HOUSE No. 03441

(House – [Enter text], 05/12/2011)



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND ELEVEN

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HOUSE No. 03441

The Commonwealth of Massachusetts

PRESENTED BY:

Deval Patrick

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to provide law enforcement with tools to prevent youth violence.

PETITION OF:

NAME: _____ | DISTRICT/ADDRESS: _____

HOUSE No. 03441

A message from His Excellency the Governor recommending legislation relative to providing law enforcement with tools to prevent youth violence

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act to provide law enforcement with tools to prevent youth violence.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 May 11, 2011

2 To the Honorable Senate and House of Representatives:

3 While efforts to prevent youth violence must focus on positive intervention in the lives of young
4 persons who have a history of violence or who are identified as being the highest-risk for
5 engaging in violence, a comprehensive strategy must also include effective law enforcement
6 intervention to protect the community from the most violent offenders, particularly those who
7 use guns in gang-related violence and drug distribution. Accordingly, I submit for your
8 consideration a bill entitled “An Act To Provide Law Enforcement with Tools To Prevent Youth
9 Violence.”

10 This bill provides public safety officials with new criminal sanctions and investigative tools to go
11 after guns and gangs. It includes three new gun-related crimes – assault and battery with a

12 firearm, assault with a firearm, and a “felon in possession law” parallel to federal law – with
13 serious criminal consequences. These crimes will give police and prosecutors additional tools to
14 protect the community from those who possess and use guns in a crime. To facilitate the swift
15 prosecution of gun crimes, I also propose amending the definition of “firearm” to make it parallel
16 to the federal definition. In addition, I am proposing amendments to increase the punishment for
17 third and fourth convictions for illegal possession of guns, and to tighten the law that currently
18 prohibits possessing guns and other weapons on school grounds, and to give police the power
19 they currently lack to arrest anyone who brings these dangerous weapons onto school grounds.

20 To increase law enforcement’s ability to target illegal activity perpetrated by traditional criminal
21 enterprises, as well as non-traditional organizations including street gangs and large-scale drug
22 and human trafficking groups, I have included in this bill Attorney General Coakley’s proposal,
23 currently included as section 2 of House Bill No. 1379 and Senate Bill No. 629, to create a state
24 “criminal enterprise” statute. In addition, as recently suggested by Justice Gants, concurring in
25 *Commonwealth v. Tavares*, 459 Mass. 289 (2011), I am proposing a simple amendment to the
26 state electronic surveillance laws to make this tool available for investigating and prosecuting
27 street gangs.

28 This bill also seeks 10 million dollars to support identified resource gaps in communities with
29 the highest rate of youth violence and to implement the safe and successful youth initiative
30 aimed at reducing violence among young persons at highest risk for being perpetrators or victims
31 of gun violence.

32 I urge your prompt consideration and enactment of this bill to help stop the terrible tragedy of
33 youth violence in our Commonwealth.

34 Respectfully submitted,

35 DEVAL PATRICK

36 AN ACT TO PROVIDE LAW ENFORCEMENT WITH TOOLS TO PREVENT YOUTH
37 VIOLENCE.

38 SECTION 1. To provide for supplementing certain items in the general appropriation act and
39 other appropriation acts for fiscal year 2011, the sums set forth in section 2 are hereby
40 appropriated from the General Fund unless specifically designated otherwise in this act or in
41 those appropriation acts, for the several purposes and subject to the conditions specified in this
42 act, and subject to the laws regulating the disbursement of public funds for the fiscal year ending
43 June 30, 2011.

44 SECTION 2. For youth violence prevention program grants administered by the executive office
45 of health and human services; provided, that the programs shall be targeted at reducing youth
46 violence among young persons at highest risk for being perpetrators or victims of gun violence;
47 and provided further, that these funds shall be available to those municipalities with the highest
48 number of youth homicides and serious assaults as determined by the executive office of health
49 and human services
50 \$10,000,000

51 SECTION 3. Section 121 of chapter 140 of the General Laws, as appearing in the 2008 Official
52 Edition, is hereby amended by striking out, in line 39, the words “from which a shot or bullet can
53 be discharged”, and inserting in place thereof the following words:- which will or is designed to
54 or may readily be converted to expel a projectile by the action of an explosive.

55

56 SECTION 4. Section 26 of chapter 218 of the General Laws, as so appearing, is hereby
57 amended by inserting after the words “fifteen A”, in line 17, the following words:- , 15D(a),
58 15E(a)

59 SECTION 5. Section 26 of chapter 218 is hereby further amended by inserting after the words
60 “sixty-six,” in line 20, the following words:- section 10(p) of chapter 269

61 SECTION 6. Chapter 265 of the General Laws, as so appearing, is hereby amended by inserting
62 after section 15C the following sections:-

63

64 Section 15D. (a) Whoever commits an assault and battery upon another by means of a firearm,
65 large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun or assault weapon as
66 defined in section 121 of chapter 140 shall be punished by imprisonment in the state prison for
67 not more than 15 years or by imprisonment in the house of correction for not more than 2½
68 years, or by a fine of not more than \$10,000, or by both such fine and imprisonment.

69 (b) Any person convicted of violating subsection (a) after 1 or more prior convictions under
70 subsection (a), section 15E, or a law of another jurisdiction that necessarily includes the elements
71 of subsection (a) or section 15E shall be punished by imprisonment in the state prison for not less
72 than 3 years nor more than 20 years. The sentence imposed shall not be reduced to less than a
73 term of 3 years imprisonment, nor suspended, nor shall a person sentenced under this subsection
74 be eligible for probation, parole, work release or furlough, or receive any deduction from the
75 sentence for good conduct, until having served 3 years of the sentence; provided, however, that

76 the commissioner of correction may, on the recommendation of the warden, superintendent, or
77 other person in charge of a correctional institution, grant to an offender committed under this
78 subsection a temporary release in the custody of an officer of such institution for the following
79 purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain
80 emergency medical or psychiatric service unavailable at said institution.

81 (c) Prosecutions commenced under this section shall not be suspended, continued without a
82 finding or placed on file. A sentence imposed under this section shall begin from and after the
83 expiration of any sentence imposed under section 10(a), 10(c), 10(d), 10(h), 10(m) or 10(n) of
84 chapter 269 arising out of the same incident.

85

86 Section 15E. (a) Whoever commits an assault upon another by means of a firearm, large
87 capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun or assault weapon as defined in
88 section 121 of chapter 140 shall be punished by imprisonment in the state prison for not more
89 than 10 years or by imprisonment in the house of correction for not more than 2½ years, or by a
90 fine of not more than \$5,000, or by both such fine and imprisonment..

91 (b) Any person convicted of violating subsection (a) after 1 or more prior convictions under
92 subsection (a), section 15D, or a law of another jurisdiction that necessarily includes the
93 elements of subsection (a) or section 15D shall be punished by imprisonment in the state prison
94 for not less than 2 years nor more than 15 years. The sentence imposed shall not be reduced to
95 less than a term of 2 years imprisonment, nor suspended, nor shall a person sentenced under this
96 subsection be eligible for probation, parole, work release or furlough, or receive any deduction
97 from the sentence for good conduct, until having served 2 years of the sentence; provided,

98 however, that the commissioner of correction may, on the recommendation of the warden,
99 superintendent, or other person in charge of a correctional institution, grant to an offender
100 committed under this subsection a temporary release in the custody of an officer of such
101 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
102 ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution.

103 (c) Prosecutions commenced under this section shall not be suspended, continued without a
104 finding or placed on file. A sentence imposed under this section shall begin from and after the
105 expiration of any sentence imposed under section 10(a), 10(c), 10(d), 10(h), 10(m) or 10(n) of
106 chapter 269 arising out of the same incident.

107

108 SECTION 7. Section 10 of chapter 269 of the General Laws, as so appearing, is hereby
109 amended by striking out, in lines 103-107, the words “seven years; for a third such offense, by
110 imprisonment in the state prison for not less than seven years nor more than ten years; and for a
111 fourth such offense, by imprisonment in the state prison for not less than ten years nor more than
112 fifteen years”, and inserting in place thereof the following words:- 10 years; for a third such
113 offense, by imprisonment in the state prison for not less than 10 years nor more than 15 years;
114 and for a fourth such offense, by imprisonment in the state prison for not less than 15 years nor
115 more than 20 years.

116 SECTION 8. Section 10 of chapter 269 of the General Laws, as so appearing, is hereby
117 amended by striking out subsection (j) and inserting in place thereof the following subsection:-

118 (j) Whoever, not being a law enforcement officer, and notwithstanding any license obtained
119 under chapter 140, knowingly has in possession or knowingly has under control in a vehicle a

120 firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun, assault weapon
121 or ammunition as defined in section 121 of chapter 140, in any building or on the grounds of a
122 public or private elementary or secondary school, college or university without the prior written
123 authorization of the board or officer in charge of such elementary or secondary school, college or
124 university shall be punished by a fine of not more than \$1,000 or by imprisonment in the house
125 of correction for not more than 2 years, or both, and may be arrested without a warrant.

126 Whoever, not being a law enforcement officer, knowingly possesses or knowingly has under
127 control in a vehicle a dangerous weapon, or an air gun, so-called BB gun, paintball gun, air rifle
128 or air pistol or other smoothbore arm capable of discharging a shot or pellet by whatever means
129 or replica of a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun,
130 assault weapon in any building or on the grounds of a public or private elementary or secondary
131 school, college or university without the prior written authorization of the board or officer in
132 charge of such elementary or secondary school, college or university shall be punished by a fine
133 of not more than \$500 or by imprisonment in the house of correction for not more than 1 year, or
134 both, and may be arrested without a warrant.

135 Whoever knowingly possesses or knowingly has under control in a vehicle a destructive or
136 incendiary device or substance, as defined in section 101 of chapter 266 in any building or on the
137 grounds of a public or private elementary or secondary school, college or university shall be
138 punished by a fine of not more than \$10,000 or by imprisonment in the state prison for not more
139 than 10 years, or both.

140 Any officer in charge of a public or private elementary or secondary school, college or university
141 or any faculty member or administrative officer of a public or private elementary or secondary

142 school, college or university failing to report violations of this subsection shall be guilty of a
143 misdemeanor and punished by a fine of not more than \$500.

144 SECTION 9. Section 10 of chapter 269 of the General Laws, as so appearing, is hereby
145 amended by adding the following paragraph:-

146 (p) Whoever, having been previously convicted in any court of this or another state or the
147 United States or a military, territorial or Indian tribal authority, of a crime punishable by
148 imprisonment for a term exceeding 1 year, knowingly possesses or knowingly has under control
149 in a vehicle, a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun,
150 assault weapon or ammunition as defined in section 121 of chapter 140 shall be punished by
151 imprisonment in the state prison for not more than 10 years or by imprisonment in the house of
152 correction for not more than 2½ years. Prosecutions commenced under this subsection shall not
153 be suspended, continued without a finding or placed on file. A sentence imposed under this
154 subsection shall begin from and after the expiration of any sentence imposed under section 10(a),
155 10(c), 10(d), 10(h), 10(m), 10(n) or 10E arising out of the same incident.

156 SECTION 10. The General Laws are hereby amended by inserting after chapter 271 the
157 following chapter:-

158 CHAPTER 271A

159 ENTERPRISE CRIME.

160 Section 1. As used in this chapter, the following words shall have the following meanings:

161 “Enterprise”, any individual, sole proprietorship, partnership, corporation, trust or other legal
162 entity, or any unchartered union, association or group of persons associated in fact although not a

163 legally recognized entity, including unlawful as well as lawful enterprises and governmental as
164 well as other entities.

165 “Pattern of criminal enterprise activity”, at least 2 incidents of criminal enterprise activity that
166 have the same or similar pattern, intents, results, accomplices, victims or methods of
167 commission, or are otherwise interrelated by distinguishing characteristics and are not isolated
168 incidents, provided that the last of the incidents occurred within 5 years after a prior incident.

169 “Criminal enterprise activity”, the commission, attempted commission, conspiracy to commit or
170 the solicitation, coercion, aiding, abetting or intimidation of another to commit any of the
171 following criminal activity under the laws of the commonwealth or equivalent crimes under the
172 laws of any other jurisdiction: a felony offense under chapter 271; trafficking, distributing,
173 dispensing, manufacturing, or possessing with intent to distribute, dispense or manufacture a
174 controlled substance in violation of chapter 94C; murder; rape; manslaughter; assault; assault and
175 battery; assault and battery in order to collect a loan; assault with intent to rob or steal; assault
176 with intent to murder, maim, or disfigure; murder; mayhem; robbery; extortion; stalking;
177 criminal harassment; kidnapping; arson; burglary; malicious destruction of property; commission
178 of a felony for hire; breaking and entering; child exploitation; assault and battery on a child; rape
179 of a child; rape and abuse of a child; enticement of a child under 16; poisoning; human
180 trafficking; violation of constitutional rights; usury; uttering; misuse or fraudulent use of credit
181 cards; identity fraud; misappropriation of funds; gross fraud; insurance fraud; unlawful prize
182 fighting or boxing matches; counterfeiting; perjury; subornation of perjury; obstruction of
183 justice; money laundering; witness intimidation; bribery; electronic eavesdropping; deriving
184 income from prostitution; receiving stolen property; larceny over \$250; larceny by false
185 pretenses or embezzlement; forgery; prohibited financial interest; procurement fraud; false

186 claims; tax evasion; filing false tax return; crimes involving violations of: gambling and lottery
187 laws, gift laws, liquor laws, tobacco laws, firearms laws, securities laws, lobbying laws, ethics
188 laws, conflict of interest laws, child or elder abuse laws; or any conduct defined as racketeering
189 activity under section 1961(1)(A), (B), or (D) of title 18 of the United States Code.

190 “Unlawful debt”, a debt incurred or contracted in an illegal gambling activity or business or
191 which is unenforceable under state or federal law in whole or part as to principal or interest
192 because of the law relating to usury.

193 Section 2. Whoever knowingly: (a) through a pattern of criminal enterprise activity or through
194 the collection of an unlawful debt, receives anything of value or acquires or maintains, directly
195 or indirectly, any interest in or control of any enterprise; (b) has received any proceeds derived,
196 directly or indirectly, from a pattern of criminal enterprise activity or through the collection of an
197 unlawful debt, to use or invest, directly or indirectly, any part of the proceeds including proceeds
198 derived from the investment, in the acquisition of any interest in real property, or in the
199 establishment or operation of, any enterprise; (c) is employed by or associated with any
200 enterprise to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs
201 by engaging in a pattern of criminal enterprise activity or through the collection of an unlawful
202 debt; or (d) conspires or attempts to violate subsections (a), (b), or (c) of this section; shall be
203 punished by imprisonment in the state prison for not less than 3 years and not more than 15 years
204 or by a fine of not more than \$25,000 or both.

205 A purchase of securities on the open market for purposes of investment, and without the
206 intention of controlling or participating in the control of the issuer, or of assisting another to do
207 so, shall not be unlawful under this section if the securities of the issuer held by the purchaser,

208 the members of his immediate family, and his or their accomplices in any pattern of criminal
209 activity or the collection of an unlawful debt after such purchase do not amount in the aggregate
210 to one percent of the outstanding securities of any one class and do not confer, either in law or in
211 fact, the power to elect one or more directors of the issuer.

212 Section 3. All monetary proceeds or other property, real or personal, obtained directly as a result
213 of a violation of this chapter, shall be subject to forfeiture to the commonwealth.

214 SECTION 11. Section 99 of chapter 272 of the General Laws, as so appearing, is hereby
215 amended by striking out, in line 66, the words “in connection with organized crime as defined in
216 the preamble”.

217 SECTION 12. Section 58A of chapter 276 of the General Laws, as most recently amended by
218 chapter 256 of the acts of 2010, is hereby amended by striking out, in subsection (1), the words
219 “paragraph (a), (c) or (m) of section 10 of chapter 269” and inserting in place thereof the
220 following words: paragraph (a), (c), (m) or (p) of section 10 of chapter 269.

221 SECTION 13. Chapter 271A of the General Laws, as inserted by section 6, shall apply to
222 “patterns of criminal enterprise activity,” as defined therein, that commence prior to the effective
223 date of this act, provided that at least one of the incidents of criminal enterprise activity occurs
224 on or after the effective date of this act.