

Docket No. \_\_\_\_\_

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SUPREME COURT OF THE UNITED STATES

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PHILIP MARQUIS,

Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME JUDICIAL COURT OF MASSACHUSETTS

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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**COMMONWEALTH VS. PHILIP J. MARQUIS.**

Middlesex. September 9, 2024. - March 11, 2025.

Present: BUDD, C.J., GAZIANO, KAFKER, WENDLANDT, GEORGES, &amp; WOLOHOJIAN, JJ.

*Firearms. License. Constitutional Law*, Right to bear arms, Equal protection of laws, Right to travel, Standing. *Practice, Criminal*, Standing. *Statute*, Construction. *Words*, “Shall be issued,” “Determined unsuitable.”

An out-of-State resident charged with unlawful possession of a firearm in violation of G. L. c. 269, § 10 (a), lacked standing to challenge the constitutionality of the nonresident firearm licensing scheme under G. L. c. 140, §§ 131 and 131F, as applied to him, where the defendant had not applied for and been denied a license pursuant to that scheme. [439-441]

This court concluded that, pursuant to G. L. c. 140, § 131F, nonresident applicants for firearms licenses who are not prohibited persons or determined unsuitable, as set forth in G. L. c. 140, § 131, shall be issued temporary licenses, irrespective of purpose. [442-446]

Discussion of foundational decisions of the United States Supreme Court defining the landscape of contemporary jurisprudence under the Second Amendment to the United States Constitution. [446-450]

This court reversed a District Court judge’s order allowing the nonresident criminal defendant’s motion to dismiss a complaint charging him with unlawful possession of a firearm, in violation of G. L. c. 269, § 10 (a), where, although the defendant’s conduct fell within the plain text of the Second Amendment to the United States Constitution and was therefore presumptively protected [450-451], both case law and the historical record unequivocally indicated that the Commonwealth’s justification for restricting the ability of law-abiding citizens to carry firearms within its borders pursuant to the nonresident firearm licensing scheme under G. L. c. 140, §§ 131 and 131F (i.e., credible, individualized evidence that the person in question would pose a danger if armed), was consistent with the nation’s historical tradition of firearm regulation [451-454], and the defendant failed to meet his burden of establishing that no set of circumstances existed under which the licensing scheme would be valid, such that the licensing scheme was facially consistent with the Second Amendment right to keep and bear arms [454-460]; and where the licensing scheme did not violate the defendant’s rights to travel and to equal protection under the Fourteenth Amendment to the United States Constitution, in that the licensing scheme did not penalize basic components of nonresidents’ right to travel, and in that differences in the Commonwealth’s treatment of resident and nonresident firearms license applicants bore some rational relationship to a legitimate State end [460-469].

COMPLAINT received and sworn to in the Lowell Division of the District Court Department on October 12, 2022.

A motion to dismiss was heard by *John F. Coffey, J.*, and a motion for reconsideration was considered by him.

The Supreme Judicial Court granted an application for direct appellate review.

*Ryan J. Rall*, Assistant District Attorney, for the Commonwealth.  
*K. Hayne Barnwell* for the defendant.

The following submitted briefs for amici curiae:

*Jason Gerhard, Matthew Coulon, Tom Mannion, Nikki McCarter, Diane Kelley, & Leah Cushman*, pro se.

*Jay Edward Simkin*, pro se.

*Andrea Joy Campbell*, Attorney General, *Carlos Cousins, Grace Gohlke, & Nicole Nixon*, Assistant Attorneys General, for the Attorney General.

*John M. Formella*, New Hampshire Attorney General, *Anthony J. Galdieri*, New Hampshire Solicitor General, & *Brandon F. Chase*, Assistant New Hampshire Attorney General, for the State of New Hampshire.

*Joshua M. Daniels & Lisa J. Steele* for Massachusetts Association of Criminal Defense Lawyers.

*Clark M. Neily, III, & Christopher D. Barnewolt*, of the District of Columbia, & *Kevin J. Powers* for Cato Institute.

GAZIANO, J. This is one of two cases we decide today in which we determine the constitutionality of the Commonwealth's non-resident firearm licensing scheme.<sup>1</sup> See *Commonwealth v. Donnell*, 495 Mass. 471 (2025). While we consider a prior version of the nonresident firearm licensing scheme in *Donnell*, here we consider the current version of that scheme. See St. 2022, c. 175, §§ 17B-22 (effective Aug. 10, 2022). Specifically, we address whether the current nonresident firearm licensing scheme violates

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<sup>1</sup>General Laws c. 269, § 10 (a), makes it a crime to possess a firearm outside of one's residence or place of business without having a license to carry a firearm issued under G. L. c. 140, § 131, or under G. L. c. 140, § 131F. We refer to these licensing requirements, coupled with the criminalization of possession by those who fail to fulfill them, as the Commonwealth's "firearm licensing scheme." See, e.g., *Commonwealth v. Johnson*, 461 Mass. 44, 54-55, 55 n.14 (2011). Where we discuss the portions of this scheme specifically related to nonresidents — including the conditions for the issuance of a temporary license to a nonresident pursuant to G. L. c. 140, § 131F, as well as the prohibition of G. L. c. 269, § 10 (a) (3), against a nonresident's possession of a firearm without a temporary license — we refer to them as the Commonwealth's "nonresident firearm licensing scheme."

the right to keep and bear arms under the Second Amendment to the United States Constitution or the rights to travel and to equal protection under the Fourteenth Amendment to the United States Constitution. We hold that it does not.

In the Commonwealth, unlicensed possession of a firearm outside of one's residence or place of business is unlawful. G. L. c. 269, § 10 (a) (§ 10 [a]). Under G. L. c. 140, § 131F (§ 131F), a firearms license "shall be issued" to a nonresident applicant so long as that applicant is neither a "prohibited person," such as a felon or minor, or a person "determined unsuitable," about whom, as provided under G. L. c. 140, § 131, "credible information" exists that issuing a license would pose "a risk to public safety or a risk of danger to self or others."<sup>2</sup>

The defendant, a New Hampshire resident who did not obtain a Massachusetts firearms license, was involved in a vehicle accident in Massachusetts en route to his place of employment. After being found in possession of an unlicensed firearm, the defendant was charged with unlawful possession of a firearm in violation of § 10 (a) and unlawful possession of ammunition in violation of G. L. c. 269, § 10 (h) (1). The defendant filed a motion to dismiss, asserting that the Commonwealth's nonresident firearm licensing scheme violated his Second Amendment right to keep and bear arms in light of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022) (*Bruen*). The motion judge allowed the defendant's motion to dismiss, and the Commonwealth appealed.

We hold as follows. First, we conclude that the defendant lacked standing to bring an as-applied challenge to the Commonwealth's nonresident firearm licensing scheme because only one denied a license under that scheme may challenge it as applied. We then proceed to consider the merits of a facial challenge to the constitutional validity of the Commonwealth's nonresident firearm licensing scheme. Applying the test enunciated in *Bruen* and further clarified in *United States v. Rahimi*, 602 U.S. 680 (2024), we hold that both the "why" of that scheme — restricting access to firearms by demonstrably dangerous persons — and the "how" of that scheme — a "shall issue" licensing regime — are "con-

<sup>2</sup>In contrast, the prior iteration of § 131F provided that a nonresident temporary license "may be issued . . . subject to such terms and conditions as [the] colonel [of State police] may deem proper." G. L. c. 140, § 131F, as amended through St. 2014, c. 284, §§ 60, 63. As discussed in *Donnell*, this prior scheme was inconsistent with the Second Amendment to the United States Constitution.

sistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. Hence, the Commonwealth’s non-resident firearm licensing scheme is facially consistent with the Second Amendment right to keep and bear arms. Because that scheme does not penalize nonresidents’ right to travel, and because differences in how that scheme operates for residents versus nonresidents are rationally related to legitimate State interests, the Commonwealth’s nonresident firearm licensing scheme is also facially consistent with the Fourteenth Amendment rights to travel and to equal protection.

In sum, the defendant’s facial challenge to the constitutional validity of the Commonwealth’s nonresident firearm licensing scheme fails. We therefore reverse the motion judge’s order allowing the defendant’s motion to dismiss.<sup>3</sup>

*Background. 1. Facts.* We recite the relevant facts from the application for criminal complaint. See *Commonwealth v. Ilya I.*, 470 Mass. 625, 626 (2015). On September 22, 2022, at approximately 8 A.M., Trooper Avery Morin and Lieutenant Dana Atkinson of the State police responded to the scene of a two-vehicle crash on Interstate 495 in Lowell. On arrival, Morin observed a 2021 Toyota Tundra with New Hampshire license plates and a Freightliner box truck with Massachusetts license plates in the highway’s breakdown lane. The defendant was the operator of the Toyota. When Morin approached the defendant, who was outside of his vehicle, the defendant removed a nine millimeter Ruger pistol from his pocket and stated, “I just want to let you know that I have this.” Morin asked if the weapon was loaded. The defendant stated that it was not loaded and “rack[ed]” it in full view of the trooper to so demonstrate. Morin then instructed the defendant to secure the weapon in his pocket and to sit on the guardrail in front of his vehicle.

After speaking with the operator of the box truck, Morin returned to speak to the defendant. Prior to securing the firearm, Morin asked the defendant if he possessed a license to carry a firearm in Massachusetts. He also asked the defendant to identify the origin and destination of his trip. The defendant stated that he did not possess a license to carry a firearm in Massachusetts, and

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<sup>3</sup>We acknowledge the amicus briefs submitted in support of the defendant by six New Hampshire State Representatives; Jay Edward Simkin; the State of New Hampshire; the Massachusetts Association of Criminal Defense Lawyers; and the Cato Institute. We further acknowledge the amicus brief submitted in support of the Commonwealth by the Attorney General.

further responded that he was traveling from his home in Rochester, New Hampshire, to his place of work in Massachusetts. Morin seized the pistol, along with a magazine loaded with twelve rounds of ammunition. Morin then “returned to [his] cruiser and confirmed [not only] that [the defendant] did not possess a license to carry in Massachusetts,” but also “that [the defendant] was not [F]ederally prohibited from carrying a firearm.” The defendant was cited for a civil motor vehicle infraction related to the crash with the box truck.

2. *Prior proceedings.* On November 28, 2022, the defendant was arraigned in the District Court on a complaint charging him with unlawful possession of a firearm in violation of § 10 (a), and unlawful possession of ammunition in violation of G. L. c. 269, § 10 (h) (1).<sup>4</sup> On June 27, 2023, the defendant filed a motion to dismiss, arguing, inter alia, that, in light of *Bruen*, the Commonwealth’s nonresident firearm licensing scheme violates his Second Amendment rights as a nonresident of the Commonwealth.

After a nonevidentiary hearing, the motion judge issued a written memorandum of decision on August 21, 2023, allowing the defendant’s motion to dismiss. In his memorandum, the motion judge adopted portions of his decision allowing a motion to dismiss in *Commonwealth vs. Donnell*, Mass. Dist. Ct., No. 2211CR002835 (Lowell Div. Aug. 3, 2023). See *Donnell*, 495 Mass at 475. Specifically, the judge found that the Commonwealth failed to meet its burden under *Bruen* of demonstrating that § 131F is consistent with the nation’s history and tradition of firearm regulation, and that § 10 (a) is therefore “unconstitutional as applied to this particularly situated defendant.”

The Commonwealth filed a motion for reconsideration, which the motion judge denied orally and by margin endorsement at a hearing held the following month. The Commonwealth timely appealed from the motion judge’s rulings, and the case was docketed in the Appeals Court. On February 16, 2024, this court granted the Commonwealth’s request for direct appellate review.

*Discussion.* The Commonwealth raises two principal arguments on appeal in support of its contention that the motion judge erred in allowing the defendant’s motion to dismiss. First, the Commonwealth asserts that the defendant lacks standing to raise an as-applied challenge, where he never applied for (and was not

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<sup>4</sup>Because the motion judge allowed the defendant’s motion to dismiss only with respect to the § 10 (a) charge, our holding does not address G. L. c. 269, § 10 (h) (1).

denied) a firearms license pursuant to the challenged licensing scheme. Second, while the motion judge did not address any facial challenge to the Commonwealth's nonresident firearm licensing scheme, the Commonwealth further asserts that any such challenge under the Second Amendment or the Fourteenth Amendment would also fail.

1. *Standing to bring an as-applied challenge.* We begin with first principles. "Only one whose rights are impaired by a statute can raise the question of its constitutionality, and he can object to the statute only as applied to him." *Massachusetts Comm'n Against Discrimination v. Colangelo*, 344 Mass. 387, 390 (1962). Likewise, "[a]s a general matter, to establish standing to challenge an allegedly unconstitutional policy, a plaintiff must submit to the challenged policy." *Jackson-Bey v. Hanslmaier*, 115 F.3d 1091, 1096 (2d Cir. 1997).

These principles have a well-established corollary in the context of standing to challenge the Commonwealth's firearm licensing scheme. This court has long held that standing to bring an as-applied challenge to the Commonwealth's firearm licensing scheme requires having applied for (and been denied) a license or firearm identification (FID) card pursuant to that scheme. See, e.g., *Commonwealth v. Cassidy*, 479 Mass. 527, 539 n.10, cert. denied, 586 U.S. 876 (2018) ("Because [the defendant] did not apply for a license or an FID card, the defendant cannot properly raise an as-applied challenge, and he appropriately does not do so" [citations omitted]); *Commonwealth v. Loadholt*, 460 Mass. 723, 725 (2011) ("because the defendant in this case has not asserted or made any showing that he applied for [and was denied] an FID card to possess a firearm and ammunition, we conclude that he may not challenge his convictions under G. L. c. 269, § 10 [h] [1], as unconstitutional under the Second Amendment"); *Commonwealth v. Powell*, 459 Mass. 572, 589-590 (2011), cert. denied, 565 U.S. 1262 (2012) ("Instead of applying for an FID card, the defendant chose to violate the law. In these circumstances, we conclude that he may not challenge his conviction under G. L. c. 269, § 10 [h] [1]").<sup>5</sup>

The defendant contends that these holdings are undermined by *Bruen*, reasoning that the "premise of denying standing in *Powell*

<sup>5</sup>This court has recognized the possibility of standing to bring an as-applied challenge to the firearm licensing scheme absent license denial where the defendant can show that applying would have been futile. See *Commonwealth v. Harris*, 481 Mass. 767, 771 n.5 (2019). In the case at bar, the defendant has not "argued that applying for a license would have been futile." *Id.*



and other pre-*Bruen* opinions . . . was that there was no right to carry outside the home in the first instance.” This contention misapprehends the basis for our holdings on standing. Standing, after all, is a “threshold” inquiry. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 (1992). As such, this court is required to address it before entertaining the substantive validity of the law or policy that is being challenged. The holding that licensure denial is a prerequisite for bringing an as-applied challenge to the Commonwealth’s firearm licensing scheme is not premised on any substantive position, one way or the other, about the constitutional validity of that particular scheme. Rather, it simply reflects the more general principle that one may not challenge a licensing scheme if one has “never applied for a license, was never denied a hearing, and in no way was ever refused a license.” *Commonwealth v. Gordon*, 354 Mass. 722, 724-725 (1968) (affirming dismissal of equal protection challenge to licensing scheme governing street vendors).

The defendant also cites several Federal decisions to support his contention that having applied for (and been denied) a license is not a requirement of standing to bring an as-applied challenge to a firearm licensing scheme. But those decisions are distinguishable from the case at bar. For example, the United States Court of Appeals for the Third Circuit recently held that plaintiffs who had not been denied a firearms license had standing to challenge Pennsylvania’s firearm licensing scheme. *Lara v. Commissioner Pa. State Police*, 91 F.4th 122, 138-140 (3d Cir.), judgment vacated on other grounds sub nom. *Paris v. Lara*, 145 S. Ct. 369 (2024). However, the plaintiffs in that case were ineligible to apply for a license in the first place: they were all between eighteen and twenty years old, and only persons who were at least twenty-one years old were eligible to apply under the challenged licensing scheme. *Id.* at 127.<sup>6</sup> By contrast, nothing in the Commonwealth’s nonresident firearm licensing scheme precluded the defendant from applying for a nonresident temporary license under § 131F; he simply chose not to do so.

More broadly, Federal case law on standing under art. III of the United States Constitution mirrors this court’s holdings that

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<sup>6</sup>Moreover, the Third Circuit did not endorse — or even discuss — the proposition that a person who is eligible to apply for a license and chooses not to may nevertheless have standing to bring an as-applied challenge to the relevant licensing scheme. Rather, the Third Circuit conferred standing on other grounds. *Lara*, 91 F.4th at 139-140.

licensure denial is a prerequisite to bring an as-applied challenge to a firearm licensing scheme. Compare, e.g., *United States v. Decastro*, 682 F.3d 160, 164 (2d Cir. 2012), cert. denied, 568 U.S. 1092 (2013) (“because [the defendant] failed to apply for a gun license in New York, he lacks standing to challenge the licensing laws of the [S]tate”), and *Fletcher v. Haas*, 851 F. Supp. 2d 287, 291 (D. Mass. 2012) (rejecting organizational standing claim on grounds that no identified member would have standing to sue as individual because “[n]either [organization] has identified a *single* member who sought to obtain a license to carry a firearm in Massachusetts, let alone was denied”), with *Commonwealth v. Johnson*, 461 Mass. 44, 58 (2011) (“It does not appear in this case that the defendant has raised an as-applied challenge to the Commonwealth’s statutory licensing scheme, nor could he properly do so . . . , [as] there was no evidence that the defendant ever applied for a license to carry a firearm or an FID card”).

The defendant has standing to bring an as-applied challenge to the Commonwealth’s nonresident firearm licensing scheme if — but only if — the defendant applied for (and was denied) a license under that scheme. Because the defendant did not do so, he lacks standing to bring an as-applied challenge to the Commonwealth’s nonresident firearm licensing scheme.

2. *Merits of a facial challenge.* Although the defendant does not have standing to bring an as-applied challenge to the Commonwealth’s nonresident firearm licensing scheme, that holding does not end our inquiry. “[I]n a prosecution for violation of a licensing statute which is unconstitutional on its face, the issue of its validity is presented even in the absence of an application for a license.” *Gordon*, 354 Mass. at 725. In particular, the defendant’s failure to apply for a license does not preclude a facial challenge to the constitutional validity of the Commonwealth’s nonresident firearm licensing scheme. Therefore, we evaluate the defendant’s constitutional challenge to the Commonwealth’s nonresident firearm licensing scheme under the standards that govern facial challenges.

As a general matter, the United States Supreme Court has cautioned that facial challenges are “disfavored” because they “often rest on speculation” and “threaten to short circuit the democratic process.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450-451 (2008). Consequently, a facial challenge is “the ‘most difficult challenge to mount successfully,’ because it requires a defendant to ‘establish

that no set of circumstances exists under which the [statute] would be valid.’ ” *Rahimi*, 602 U.S. at 693, quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987). See *Blixt v. Blixt*, 437 Mass. 649, 652 (2002), cert. denied, 537 U.S. 1189 (2003) (“A facial challenge to the constitutional validity of a statute is the weakest form of challenge, and the one that is the least likely to succeed”). For the Commonwealth to prevail, it “need only demonstrate” that the Commonwealth’s nonresident firearm licensing scheme is compatible with the Second Amendment and with the Fourteenth Amendment “in some of its applications.” *Rahimi*, *supra*. Conversely, the defendant shall prevail if and only if he demonstrates “that the law is unconstitutional in all of its applications.” *Washington State Grange*, *supra* at 449.

a. *The meaning of § 131F*. In order to determine whether there exist any circumstances in which the Commonwealth’s nonresident firearm licensing scheme is constitutionally valid, it is necessary first to resolve disagreement between the parties about the meaning of one of the challenged provisions within that scheme. Specifically, the defendant and the Commonwealth advance substantially different interpretations of the meaning of § 131F with respect to the conditions under which temporary licenses “shall be issued” to nonresidents. The disputed portion of § 131F provides:

“A temporary license to carry firearms, rifles or shotguns or feeding devices or ammunition therefor, within the commonwealth, shall be issued by the colonel of state police, or persons authorized by him, to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition if it appears that the applicant is not a prohibited person and is not determined unsuitable to be issued a license as set forth in [§] 131.”

G. L. c. 140, § 131F. The defendant asserts that § 131F provides that temporary licenses “shall be issued” to nonresidents only “for purposes of firearms competition.” On the defendant’s reading, § 131F does *not* provide that temporary licenses “shall be issued” to nonresidents for ordinary purposes of self-defense. By contrast, the Commonwealth asserts that the language “for purposes of firearms competition” only applies to “an alien that resides outside the commonwealth” and does not apply to “a nonresident.” On the Commonwealth’s reading, § 131F *does* provide that tem-

porary licenses “shall be issued” to nonresidents for ordinary purposes of self-defense.

The correct interpretation of § 131F depends on whether the restriction “for purposes of firearms competition” applies to *every* enumerated category of applicant — “nonresident[s],” “person[s] not falling within the jurisdiction of a local licensing authority,” and “alien[s] that reside[ ] outside the commonwealth” — or instead only to the last applicant category on the list: “alien[s] that reside[ ] outside the commonwealth.” G. L. c. 140, § 131F. This question has a familiar form. In general, the correct interpretation of a statutory provision often depends on whether limiting language appearing at the end of a list applies only to the last item on the list or to every item on the list. Indeed, this question arises frequently enough that there has emerged a recognized default rule: the last antecedent rule, according to which “a court determines that qualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote, unless the extension is necessary from the context or the spirit of the entire writing.” Black’s Law Dictionary 1602 (12th ed. 2024).<sup>7</sup> See A. Scalia & B.A. Garner, *Reading Law: The Interpretation of Legal Texts* 152-153 (2012).

Both the courts of the Commonwealth and the United States Supreme Court have endorsed and applied the last antecedent rule. See *Lockhart v. United States*, 577 U.S. 347, 351 (2016) (“When this Court has interpreted statutes that include a list of terms or phrases followed by a limiting clause, we have typically applied an interpretive strategy called the rule of the last antecedent,” which “provides that a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows” [quotations and citations omitted]); *Hopkins v. Hopkins*, 287 Mass. 542, 547 (1934) (“It is the general rule of statutory as well as grammatical construction that a modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation”); *New England Survey Sys., Inc. v. Department of Indus. Accs.*, 89 Mass. App. Ct. 631, 638 n.17 (2016) (“a modifying clause is confined to the phrase that immediately precedes it and not to the phrases appearing ear-

<sup>7</sup>The entry notes that “strictly speaking,” the “last antecedent rule” applies only to “nouns or noun phrases.” Black’s Law Dictionary 1602 (12th ed. 2024). However, “in modern practice” the last antecedent rule is commonly used to encompass this more general rule, sometimes dubbed the “nearest-reasonable-referent canon.” *Id.*

lier”).<sup>8</sup>

As applied to § 131F, the last antecedent rule validates the Commonwealth’s position. Specifically, pursuant to the last antecedent rule, the limiting language “for purposes of firearms competition” applies only to “alien[s] that reside[ ] outside the commonwealth.” Because that limiting language does not apply to “nonresident[s],” the last antecedent rule implies that § 131F provides that a temporary license “shall be issued” to a nonresident not only for purposes of firearms competition but also for other purposes — so long as the nonresident is “not a prohibited person and is not determined unsuitable.”

To be sure, “[t]he last antecedent rule is not always a certain guide.” *New England Survey Sys., Inc.*, 89 Mass. App. Ct. at 638. In particular, it does not necessarily apply if the interpretation that would result goes against the controlling text’s “context or . . . spirit,” Black’s Law Dictionary 1602 (12th ed. 2024), or “subject matter or dominant purpose,” *Hopkins*, 287 Mass. at 547. In this case, the context and purpose of § 131F do not count against applying the last antecedent rule. On the contrary, they reinforce doing so.

When interpreting a statute, one relevant contextual consideration is whether a particular interpretation of one provision would render that provision incoherent or at odds with another, nearby provision. “Where possible, we seek to harmonize the provisions of a statute with related provisions that are part of the same statutory scheme . . . .” *Chin v. Merriot*, 470 Mass. 527, 537 (2015). Here, one related provision is G. L. c. 140, § 131G (§ 131G), which provides — in relevant part — that “[a]ny person who is not a resident of the commonwealth may carry a pistol or revolver in or through the commonwealth for the purpose of taking part in a pistol or revolver competition.”<sup>9</sup>

<sup>8</sup>*Commonwealth v. Kozubal*, 488 Mass. 575, 592 (2021), cert. denied, 142 S. Ct. 2723 (2022), provides a recent example of the last antecedent rule in action. There, we examined G. L. c. 119, § 21, which defines a “mandated reporter” in part as a “person who is . . . a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth or licensed under [G. L. c.] 15D.” Invoking the last antecedent rule, we held that “the phrase ‘funded by the commonwealth or licensed under [G. L. c.] 15D’ modifies only ‘home or program’” in the statutory text. *Kozubal*, *supra*.

<sup>9</sup>We note that G. L. c. 140, § 131G, was repealed effective October 2, 2024. See St. 2024, c. 135, § 64. This repeal occurred after G. L. c. 140, § 131F, was amended on August 10, 2022. See St. 2022, c. 175, §§ 17B-22.

The Commonwealth's interpretation, supported by the last antecedent rule, renders § 131F coherent with the plain meaning of § 131G. Specifically, while § 131F establishes the general rule that nonresidents who are not prohibited persons and not determined unsuitable "shall be issued" temporary licenses, irrespective of purpose, § 131G exempts a special category of nonresidents from the licensing regime: nonresidents who carry "for the purpose of taking part in a pistol or revolver competition."

By comparison, the interpretation of § 131F advanced by the defendant renders the two provisions less coherent with each other. On the defendant's reading, § 131F provides that a nonresident who seeks to carry a firearm only "for purposes of firearms competition" "shall be issued" a temporary license, while § 131G exempts nonresidents who seek to carry a pistol or revolver for purposes of firearms competition from the temporary licensing regime so long as the competition in question is "a pistol or revolver competition." While that interpretation does not, strictly speaking, render the two provisions contradictory, it does generate a less "harmoni[ous]" interpretation of § 131F and § 131G than the interpretation that follows from the last antecedent rule. *Chin*, 470 Mass. at 537. Accordingly, the consequences of the parties' competing interpretations of § 131F for neighboring provisions reinforces — and certainly does not override — application of the last antecedent rule.

Likewise, one relevant consideration is whether the Legislature would likely have intended the interpretation implied by the last antecedent rule. Of special relevance, "we assume that the Legislature intends its statutes to pass constitutional muster, and therefore 'we construe statutes to avoid constitutional problems where possible.' " *Chapman, petitioner*, 482 Mass. 293, 305-306 (2019), quoting *Commonwealth v. Maloney*, 447 Mass. 577, 589 (2006). On the defendant's reading, § 131F makes no provision whatsoever for nonresidents who seek to carry for purposes of self-defense — starkly implicating "the *central component* of the [Second Amendment] right itself." *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008). By contrast, under the Commonwealth's interpretation, § 131F does provide for nonresident self-defense. Reading § 131F in accordance with the last antecedent rule therefore is reinforced — and certainly not overridden — by the fact that doing so avoids squarely implicating the most fundamental of Second Amendment interests. Accordingly, we conclude that the limiting language "for purposes of firearms com-

petition” does not apply to “nonresident[s]” under § 131F.

b. *The Second Amendment challenge.* Having determined the meaning of § 131F, we now address the merits of the defendant’s Second Amendment challenge to the Commonwealth’s nonresident firearm licensing scheme. We begin with a brief overview of four foundational United States Supreme Court decisions that define the landscape of contemporary Second Amendment jurisprudence: *Heller*, 554 U.S. 570; *McDonald v. Chicago*, 561 U.S. 742 (2010); *Bruen*, 597 U.S. 1; and *Rahimi*, 602 U.S. 680.

*Heller*, 554 U.S. at 574-575, concerned a set of District of Columbia statutes, which, among other things, prohibited the registration of handguns while simultaneously making it a crime to carry unregistered firearms. The Court began with a close reading of the text of the constitutional amendment: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” *Id.* at 576, quoting Second Amendment to the United States Constitution. First, the Court held that the Second Amendment’s prefatory clause — i.e., “A well regulated Militia, being necessary to the security of a free State” — “announces a purpose” but “does not limit or expand the scope of the operative clause.” *Heller*, *supra* at 577-578. Second, with respect to the operative clause, the Court held that the term “the people” in the text of the Second Amendment “unambiguously refers to all members of the political community, not an unspecified subset.” *Id.* at 579-580. Third, the Court held that to “bear arms” means to “wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person” (citation omitted). *Id.* at 584. Putting these elements together, the Court concluded that the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” *Id.* at 592. On that basis, the Court invalidated all of the challenged District of Columbia regulations. *Id.* at 592-593, 595.

At the same time, the Court also qualified the scope of its holding in several relevant respects. First, the Court clarified that the Second Amendment right to keep and bear arms is “not unlimited.” *Heller*, 554 U.S. at 595. In particular, the Court noted that “from Blackstone through the [Nineteen]th-[C]entury cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any



manner whatsoever and for whatever purpose.” *Id.* at 626. Second, without purporting to have “undertake[n] an exhaustive historical analysis . . . of the full scope of the Second Amendment,” the Court clarified that “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626-627.

The Court reiterated these qualifications in *McDonald*, 561 U.S. at 786. At issue before the Court was whether the due process clause of the Fourteenth Amendment incorporates the Second Amendment, such that the latter applies with equal force to the States as to the Federal government. *Id.* at 753. The Court held that it does. *Id.* at 778. A plurality of the Court “repeat[ed] those assurances” from *Heller* regarding “longstanding” prohibitions on firearm possession by felons and the mentally ill, carrying of firearms in sensitive places, and conditions and qualifications on commercial arms sales. *Id.* at 786.

*Bruen*, 597 U.S. at 11-12, concerned a challenge to the State of New York’s licensing scheme for carrying firearms in public. Under that scheme, persons seeking to carry a firearm outside the home for self-defense were obligated to obtain an “unrestricted license” that required a showing of “proper cause.” *Id.* at 12. Although “[n]o New York statute define[d] ‘proper cause,’ ” New York courts had understood a showing of proper cause to require “demonstrat[ing] a special need for self-protection distinguishable from that of the general community” (citation omitted). *Id.* Because of its “proper cause” requirement, the challenged licensing scheme constituted a “may issue” regime, under which “authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria.” *Id.* at 14. This stands in contrast to the “shall issue” regimes then in force in forty-three States, wherein “authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability.” *Id.* at 13.

In determining whether New York’s “may issue” regime was compatible with the requirements of the Second Amendment, the Court began by clarifying the standard for evaluating a Second Amendment challenge. *Bruen*, 597 U.S. at 18-19. Prior to *Bruen*,



a number of the United States Courts of Appeals had developed a standard for evaluating Second Amendment challenges under which courts first determined whether the challenged law regulated activity “falling outside the scope of the right as originally understood,” *Kanter v. Barr*, 919 F.3d 437, 441 (7th Cir. 2019); if so, they held that “the regulated activity is categorically unprotected,” *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir.), cert. denied, 568 U.S. 922 (2012), and if not, they proceeded to apply different levels of scrutiny — strict or intermediate — depending on whether the challenged regulation burdened “core” Second Amendment interests, *id.* at 517. See, e.g., *Kanter*, *supra*. The Court in *Bruen*, *supra* at 19, rejected this two-step approach, deeming it “one step too many.” Instead, the Court formulated the controlling standard for evaluating Second Amendment challenges to firearm regulations by focusing squarely on the historical meaning of the Second Amendment. As the Court explained:

“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. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command’ ” (citation omitted).

*Id.* at 24.

The crucial question raised by *Bruen*’s standard is what it means for a certain regulation to be “consistent” with the nation’s “historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. Without purporting to “provide an exhaustive survey of the features that render [modern] regulations relevantly similar [to historical regulations],” the Court highlighted “two metrics: how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 29. Accordingly, “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry” (citation and emphasis omitted). *Id.* This analogical inquiry “requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 30. In particular, “even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.*

The Court's application of this standard to the challenged New York regulations proceeded in two steps. First, the Court held that the defendants' conduct fell within the "Second Amendment's plain text" and was therefore "presumptively protect[ed]." *Bruen*, 597 U.S. at 24, 33. Specifically, the Court noted that it was "undisputed" that defendants were part of the "people" to whom the Second Amendment refers in virtue of being "ordinary, law-abiding, adult citizens." *Id.* at 31-32. Likewise, the Court noted that it was "[un]dispute[d]" that handguns are "arms" within the meaning of the Second Amendment because they are "weapons in common use today for self-defense" (quotation and citation omitted). *Id.* at 32. Finally, the Court held that "carrying handguns publicly for self-defense" qualifies as "bearing" arms within the meaning of the Second Amendment because the "definition of 'bear' naturally encompasses public carry" and "self-defense is 'the central component of the [Second Amendment] right itself'" (citation and emphasis omitted). *Id.*

Second, the Court held that New York's "proper-cause" regime was not "consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 34, 38, 70. In short, the Court concluded from reviewing the historical record that "[t]hroughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms." *Id.* at 38. However, the historical record "does not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense." *Id.* In particular, there is no "historical tradition limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense." *Id.* From these premises, the Court concluded that New York's "proper-cause" regime violated the Second Amendment right to keep and bear arms. *Id.* at 38-39.

Finally, at issue before the Court in *Rahimi*, 602 U.S. at 693, was a facial challenge to the constitutionality of a Federal statute, 18 U.S.C. § 922(g)(8) (§ 922[g][8]). This Federal law prohibits firearm possession by a person subject to a domestic violence restraining order where the order includes a finding that the person "represents a credible threat to the physical safety of [an] intimate partner or [a] child [of such intimate partner or person]." 18 U.S.C. § 922(g)(8). The Court began its analysis by observing that "[s]ince the founding, our Nation's firearm laws have included provisions

preventing individuals who threaten physical harm to others from misusing firearms.” *Rahimi, supra* at 690. After a review of various founding-era firearm regulations, the Court reaffirmed that these laws “confirm what common sense suggests: [w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *Id.* at 698. Moreover, the Court held that § 922(g)(8) “fits neatly within the tradition” represented by these founding-era laws. *Id.* Specifically, because § 922(g)(8) “restricts gun use to mitigate demonstrated threats of physical violence,” it comports with the “why” of the relevant historical laws. *Rahimi, supra* at 698. And because, like surety and going armed laws, § 922(g)(8) applies only following a determination that the relevant person “likely would threaten or had threatened another with a weapon,” the burden it imposes is consistent with the “how” of such laws. *Rahimi, supra* at 699-700. Given these premises, the Court “ha[d] no trouble concluding that [§] 922(g)(8) survive[d] [the defendant’s] facial challenge.” *Id.* at 700.

i. *Bruen step one.* Having reviewed contemporary Second Amendment jurisprudence, we are now in a position to ask where the Commonwealth’s nonresident firearm licensing scheme fits within that doctrinal landscape. Our first step is to determine whether the regulated conduct falls within the “Second Amendment’s plain text.” *Bruen*, 597 U.S. at 24. This textual question depends on whether the persons subjected to the regulation at issue are members of “the people,”<sup>10</sup> whether the weapons at issue are “[a]rms,”<sup>11</sup> and whether the specific conduct at issue qualifies as “keep[ing]” or “bear[ing]”<sup>12</sup> within the meaning of

<sup>10</sup>Although this case does not present any issues about membership in the “people,” a great many post-*Bruen* challenges to firearm regulations have turned on that issue. See, e.g., *United States v. Duarte*, 101 F.4th 657, 666 (9th Cir. 2024), rehearing en banc granted and opinion vacated, 108 F.4th 786 (9th Cir. 2024) (felons); *Lara*, 91 F.4th at 131-132 (persons eighteen to twenty-one years old); *United States v. Sitladeen*, 64 F.4th 978, 987 (8th Cir. 2023) (persons illegally present in United States); *People v. Anderson*, 104 Cal. App. 5th 577, 588-589 (2024) (felons).

<sup>11</sup>See, e.g., *Commonwealth v. Canjura*, 494 Mass. 508, 513 (2024) (switchblades are “arms”); *Bevis v. Naperville*, 85 F.4th 1175, 1194-1197 (7th Cir. 2023) (assault weapons and high-capacity magazines are not “[a]rms”); *Grell v. Lopez*, 76 F.4th 938, 949-950 (9th Cir. 2023), rehearing en banc granted and opinion vacated, 93 F.4th 1150 (9th Cir. 2024) (“butterfly knives” are “arms”).

<sup>12</sup>See, e.g., *United States v. Stambaugh*, 641 F. Supp. 3d 1185, 1190 (W.D. Okla. 2022) (receiving firearm falls under Second Amendment’s plain text as “condition precedent to keeping and bearing arms”); *Defense Distributed vs.*

the Second Amendment.<sup>13</sup>

The type of regulated conduct at issue falls within the “Second Amendment’s plain text” on all three counts and is therefore “presumptively protect[ed].” *Bruen*, 597 U.S. at 24. There is no dispute that nonresidents of the State whose firearms regulations are at issue belong to the “people” protected by the Second Amendment so long as they are “ordinary, law-abiding, adult citizens.” *Id.* at 31. Likewise, there is no dispute that handguns are “arms” within the meaning of the Second Amendment because they are “weapons in common use today for self-defense” (quotation and citation omitted). *Id.* at 32. Finally, there is no dispute that possessing a firearm outside of one’s residence or place of business qualifies as “bearing,” as the “definition of ‘bear’ naturally encompasses public carry.” *Id.* We therefore proceed to step two of the *Bruen* analysis.

ii. *Bruen step two.* Our next question is whether the Commonwealth has demonstrated that its nonresident firearm licensing scheme is “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. As noted *supra*, at this stage of the analysis, the United States Supreme Court has “point[ed] toward at least two metrics: how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 29. We apply each metric in turn.

A. *The “why” of §§ 131 and 131F.* The “why” inquiry requires us first to articulate the purpose of the Commonwealth’s nonresident firearm licensing scheme. Bearing that purpose in mind, we then must ask “if laws at the founding regulated firearm use to address particular problems,” as “that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations.” *Rahimi*, 602 U.S. at 692.

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Bonta, U.S. Dist. Ct., No. CV 22-6200-GW-AGRx (C.D. Cal. Oct. 21, 2022) (self-manufacturing of firearms does not fall under Second Amendment’s plain text); *United States vs. Tilotta*, U.S. Dist. Ct., No. 3:19-cr-04768-GPC (S.D. Cal. Aug. 30, 2022) (commercial sale and transfer of firearms does not fall under Second Amendment’s plain text).

<sup>13</sup>We note that some courts include a fourth question in the step one inquiry: namely, whether the relevant regulation constitutes an “infringement.” See, e.g., *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 220-222 (4th Cir. 2024), cert. denied, U.S. Supreme Ct., No. 24-373 (Jan. 13, 2025). However, because the question whether a regulation constitutes an “infringement” may often implicate questions about consistency with history and tradition, we shall maintain the three-part analysis of step one.

We have already established that § 131F creates a general entitlement on the part of nonresidents to obtain firearm licenses where the statutory conditions are met. Specifically, so long as nonresident applicants are neither “prohibited” nor “determined unsuitable” within the meaning of § 131, such applicants “shall be issued” temporary firearms licenses. G. L. c. 140, § 131F. Because a nonresident’s entitlement to a temporary license is restricted only if they are “prohibited” or “determined unsuitable,” we shall look to the definition of those terms, as set forth in § 131, to clarify the purposes for which the Commonwealth’s nonresident firearm licensing scheme restricts nonresidents. See *Commonwealth v. Perez Narvaez*, 490 Mass. 807, 809 (2022) (“The words of the statute generally are the main source from which we ascertain legislative purpose”). In particular, because the defendant does not challenge the Commonwealth’s restrictions on “prohibited” persons, we examine only the definition of “determined unsuitable.”

General Laws c. 140, § 131 (*d*), describes the conditions warranting a determination of unsuitability by a “licensing authority”<sup>14</sup> as well as the process by which such a determination is made:

“The licensing authority shall deny the application or renewal of a license to carry, or suspend or revoke a license . . . if the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others. Upon denial of an application or renewal of a license based on a determination of unsuitability, the licensing authority shall notify the applicant in writing setting forth the specific reasons for the determination . . . . Upon revoking or suspending a license based on a determination of unsuitability, the licensing authority shall notify the holder of a license in writing setting forth the specific reasons for the determination . . . . The determination of unsuitability shall be subject to judicial review . . . .”

By the plain terms of § 131 (*d*), the restriction on nonresidents “determined unsuitable” exists to prevent persons whose “behav-

<sup>14</sup>Under G. L. c. 140, § 121, a “[l]icensing authority” is defined as “the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.”

ior” demonstrates “a risk to public safety or a risk of danger to self or others” from carrying firearms within the Commonwealth. Importantly, this public safety rationale supplies both a necessary condition and a sufficient condition of unsuitability. If there is “credible information” that a nonresident applicant would pose a risk to “public safety,” “self[,] or others,” then that person shall not be granted a license to carry within the Commonwealth, subject to the aforementioned procedural requirements. G. L. c. 140, § 131 (*d*). But *only if* there exists such “credible information” shall a nonresident applicant be determined unsuitable. *Id.* The question, then, is whether this safety rationale is compatible with “the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24.

If there is any point of consensus about what purposes have historically been recognized as a permissible basis for regulating access to firearms, it is “what common sense suggests: [w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *Rahimi*, 602 U.S. at 698. To that end, “the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others.” *Id.* at 693. See *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting) (“History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns”).

Other State and Federal courts have also recognized the “common sense” proposition that keeping firearms out of the hands of demonstrably dangerous persons is a valid basis on which to restrict access to firearms. See, e.g., *Antonyuk v. James*, 120 F.4th 941, 976 (2d Cir. 2024) (“A reasoned denial of a carry license to a person who, if armed, would pose a danger to themselves, others, or to the public interest is consistent with the well-recognized historical tradition of preventing dangerous individuals from possessing weapons”); *United States v. Collette*, 630 F. Supp. 3d 841, 846 (W.D. Tex. 2022), petition for cert. filed, U.S. Supreme Ct., No. 24-6497 (Feb. 3, 2025) (“The common concern from all three [founding-era ratifying conventions] . . . appears to be threatened violence and the risk of public injury, not felons specifically or even criminals in general”); *R.M. v. C.M.*, 226 A.D.3d 153, 165 (N.Y. 2024) (“the Nation’s historical tradition of firearm regulation in keeping dangerous individuals from carrying guns”).

These judicial conclusions find support in relevant historical scholarship. See, e.g., Greenlee, *The Historical Justification for*

Prohibiting Dangerous Persons from Possessing Arms, 20 Wyo. L. Rev. 249, 265 (2020) (“as was the case with all disarmaments during the colonial period, the justification was always that those being disarmed were dangerous”); Larson, Four Exceptions in Search of a Theory: *District of Columbia v. Heller* and Judicial Ipse Dixit, 60 Hastings L.J. 1371, 1377 (2009) (citing historical record for proposition that “any person viewed as potentially dangerous could be disarmed by the government without running afoul of the ‘right to bear arms’ ”). In sum, “[s]ince the founding, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm . . . from misusing firearms.” *Rahimi*, 602 U.S. at 690.

To the extent that the Commonwealth restricts the ability of law-abiding citizens to carry firearms within its borders, the justification for so doing is credible, individualized evidence that the person in question would pose a danger if armed. Both case law and the historical record unequivocally indicate that this justification is consistent with “the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24. It follows that with respect to the “why” dimension of assessment, the Commonwealth’s nonresident firearm licensing scheme is compatible with the requirements of the Second Amendment.

However, our inquiry does not end here, for now we must ask if the *means* by which the Commonwealth pursues the permissible end of restricting access to firearms by demonstrably dangerous people — i.e., through its “shall issue” licensing scheme — “impose[s] a comparable burden on the right of armed self-defense” in light of “historical regulations.” *Bruen*, 597 U.S. at 29.

B. *The “how” of §§ 131 and 131F.* Licensing schemes of one form or another have been used to regulate firearm use and possession in this country at least since the Nineteenth Century. See, e.g., *The Laws of the State of New-Hampshire; with the Constitutions of the United States and of the State Prefixed* 270-271 (I. Long, Jr., ed., 1830) (referring to “permission of the police officers . . . in writing”). More recently, by the time the United States Supreme Court decided *Bruen*, forty-nine States had employed the mechanism of licensure to regulate firearm use and possession within their borders. *Bruen*, 597 U.S. at 11.

Of course, not all licensing schemes are created equal. As discussed *supra*, of special relevance is the distinction highlighted in *Bruen*, 597 U.S. at 13-14, between “may issue” licens-



ing regimes, under which “authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria,” and “shall issue” licensing regimes, wherein “authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements.” The Court elaborated on this distinction in a footnote, identifying several indices of presumptive constitutionality in a “shall issue” regime. See *id.* at 38 n.9.<sup>15</sup> First, “shall issue” regimes “do not require applicants to show an atypical need for armed self-defense.” *Id.* This corresponds to the Court’s express rationale for invalidating New York’s “may issue” regime. See *id.* at 11 (“Because the State of New York issues public-carry licenses only when an applicant demonstrates a special need for self-defense, we conclude that the State’s licensing regime violates the Constitution”). Second, “shall issue” regimes are “designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens” (quotation and citation omitted). *Id.* at 38 n.9. Third, “shall issue” regimes “guid[e] licensing officials” by means of “narrow, objective, and definite standards” (citation omitted). *Id.*

In addition to the semantic fact that § 131F employs the phrase “shall be issued,” in substance the Commonwealth’s nonresident firearm licensing scheme displays all three hallmarks of a “shall issue” regime. First, *any* nonresident who is neither a prohibited person nor determined unsuitable pursuant to the criteria and procedures outlined in § 131 “shall be issued” a license to carry. Applicants need not demonstrate an “atypical need for armed self-defense,” *Bruen*, 597 U.S. at 38 n.9 — or indeed articulate any purpose for which they seek to possess a firearm outside of their home or place of business. Second, because the *only* statutorily permissible ground on which to withhold or revoke a license from a nonprohibited person is a determination that the person would pose “a risk to public safety or a risk of danger to self or others” if armed, G. L. c. 140, § 131 (d), the Common-

<sup>15</sup>On the precedential force of this footnote, see, e.g., *McRorey v. Garland*, 99 F.4th 831, 837 (5th Cir. 2024) (“[Plaintiffs] characterize passages such as footnote 9 as *dicta*. We, however, are generally bound by Supreme Court *dicta*, especially when it is recent and detailed[, a]nd it doesn’t get more recent or detailed than *Bruen*” [quotation and citation omitted]); *Maryland Shall Issue, Inc.*, 116 F.4th at 221-222 (“We are not free to ignore the Supreme Court’s substantive dictum on ‘shall-issue’ licensing laws . . . [and s]o, in accord with the Supreme Court’s ‘shall-issue’ discussion, we hold that non-discretionary ‘shall-issue’ licensing laws are presumptively constitutional”).



wealth's nonresident firearm licensing scheme is "designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens" (quotation and citation omitted), *Bruen*, *supra*. Third, the statutory criteria for "unsuitability" appropriately "guid[e]" the licensing authority by means of "narrow, objective, and definite standards" (citation omitted). *Id.* Specifically, an applicant can be identified as posing "a risk to public safety or a risk of danger to self or others" if armed only on the condition that the applicant "has exhibited or engaged in behavior" indicating such a risk. G. L. c. 140, § 131 (*d*). Likewise, the determination that an applicant has engaged in the specified behavior indicating the specified safety risk must itself be supported by "reliable, articulable and credible information." *Id.* Subjective, impressionistic judgments of "unsuitability" are thereby proscribed. In addition, once a determination of unsuitability has been made pursuant to these criteria, the licensing authority "shall notify the applicant in writing setting forth the specific reasons for the determination." *Id.* Finally, if an applicant is unsatisfied with the reasons given for a determination of unsuitability, that applicant may petition for judicial review. G. L. c. 140, § 131 (*d*), (*f*).

In addition to displaying the substantive hallmarks of a "shall issue" regime, the Commonwealth's nonresident firearm licensing scheme also has historical analogues in the form of firearm regulations motivated by safety considerations. Two such regulations, as detailed in *Rahimi*, 602 U.S. at 695-699, and *Bruen*, 597 U.S. at 46-59, are surety laws and "going armed" laws. Although these did not employ the specific mechanism of licensure, they employed the more general mechanism of administratively conditioning firearm access by persons for whom individualized evidence of risk was found. See *Bruen*, *supra* at 30 ("even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster").

As the Court explained in *Bruen*, 597 U.S. at 55, surety statutes "required certain individuals to post bond before carrying weapons in public." Importantly, surety statutes "*presumed* that individuals had a right to public carry," *id.* at 56, and burdened this right "only when 'attended with circumstances giving just reason to fear that [the person] purposes to make an unlawful use of [arms],'" *id.*, quoting W. Rawle, *A View of the Constitution of the United States of America* 126 (2d ed. 1829). The Court in

*Bruen* held that surety statutes were *not* a historical analogue of New York’s “proper cause” regime because the former “were not *bans* on public carry, and they typically targeted only those threatening to do harm.” *Bruen*, *supra* at 55. Conversely, the Court in *Rahimi*, 602 U.S. at 698, held that surety statutes *were* a historical analogue of § 922(g)(8) because both “restrict[ ] [firearm] use to mitigate demonstrated threats of physical violence.” Going armed laws, by contrast, provided a mechanism for restricting those “who had menaced others with firearms.” *Id.* at 697. Specifically, these laws prohibited conduct such as “riding or going armed, with dangerous or unusual weapons, [to] terrify[ ] the good people of the land.” *Id.*, quoting 4 W. Blackstone, Commentaries \*149. As the Court explained, going armed laws are “relevantly similar” to § 922(g)(8) because — like surety statutes — they specifically “appl[y] to individuals found to threaten the physical safety of another.” *Rahimi*, *supra* at 698.

The Commonwealth’s nonresident firearm licensing scheme “fits neatly within the tradition the surety and going armed laws represent.” *Rahimi*, 602 U.S. at 698. It begins with the presumption that all nonresident applicants “shall be issued” a temporary license and will thereby enjoy the unencumbered right to public carry. G. L. c. 140, § 131F. That right is burdened “only when attended with circumstances giving just reason to fear that [the applicant] purposes to make an unlawful use of [arms]” (quotation and citation omitted), *Bruen*, 597 U.S. at 56 — specifically, the circumstance that the applicant has “exhibited or engaged in behavior” indicative of “a risk to public safety or a risk of danger to self or others,” G. L. c. 140, § 131 (*d*). By the same token, the Commonwealth’s nonresident firearm licensing scheme is analogous to going armed laws, in that both restrict a person’s right to carry only on the basis of “credible information” that the person has engaged in specific, threatening conduct. *Id.*

The defendant maintains that the Commonwealth’s nonresident firearm licensing scheme is unsupported by the nation’s historical tradition. Specifically, the defendant argues that “[t]here is no historical law or regulation allowing the government to collectively disarm a broad swath of the public so as to ferret out any individual who is or could be dangerous or ‘unsuitable.’” However, this description mischaracterizes the operation of the Commonwealth’s nonresident firearm licensing scheme. The image evoked by that description is of a regime whereby all citizens must surrender their arms to a government authority, only to

reacquire those arms if that authority deems them suitable. This image misleads. The Commonwealth's nonresident firearm licensing scheme places an *ex ante* condition on the right to carry. Before carrying a firearm in the Commonwealth outside of one's home or place of business, both residents and nonresidents alike must obtain a license; and before issuing a license, the licensing authority must verify that the applicant satisfies the statutory requirement of being neither "prohibited" nor determined "unsuitable" within the specified meaning of § 131 (*d*). Although it is true that a person who violates State law by possessing a firearm outside of his residence or place of business without first having obtained a license is liable to disarmament, the Commonwealth's scheme no more "disarm[s] a broad swath of the public" than does *any* licensing scheme regardless of its substantive requirements.

The defendant also argues that there is no "historical law or regulation demonstrating that residents of one colony or [S]tate reflexively distrusted armed residents of another colony or [S]tate." However, there is no evidence that the Commonwealth's scheme is motivated in any way by such attitudes of "reflexive[ ] distrust" toward nonresidents. On the contrary, the Commonwealth's firearm licensing scheme applies the same substantive requirements to residents as to nonresidents. Both must obtain a license in order to possess a firearm outside of their homes or places of business within the Commonwealth, and both "shall be issued" such a license pursuant to the same statutory criteria. Compare G. L. c. 140, § 131 (*d*) (residents), with G. L. c. 140, § 131F (nonresidents). As emphasized, the Commonwealth's firearm licensing scheme operates to ensure "only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens" (quotation and citation omitted), *Bruen*, 597 U.S. at 38 n.9 — whether "those bearing arms in the jurisdiction" are residents of the Commonwealth or nonresidents, *id*.

Finally, the defendant asserts a more specific objection to the fact that "processing may take up to [ninety] days" for nonresident license applications. He characterizes this projected wait time as "another significant curtailment of [his] freedom." As a threshold matter, we have doubts whether this timeline — which apparently stems from a webpage, see <https://www.mass.gov/how-to/apply-for-a-firearms-license> [<https://perma.cc/4TAJ-RSWV>] — has "the legal force of a statute or regulation" (citation omitted). *DeCosmo v. Blue Tarp Redev., LLC*, 487 Mass. 690, 694-695

(2021). Putting those doubts to one side, however, the defendant's substantive objection fails on its own terms.

To be sure, the defendant is correct to highlight *Bruen*'s cautionary note that "we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." *Bruen*, 597 U.S. at 38 n.9. More broadly, the defendant is correct to point out that "shall issue" licensing regimes do not *automatically* comply with the Second Amendment, because it is possible for such a regime's procedural requirements to be so onerous that they effectively deny some or all prospective licensees their Second Amendment rights. Indeed, "any permitting scheme can be put toward abusive ends." *Id.* And it goes without saying that a "shall issue" licensing regime that operated in this "abusive" manner would be the proper subject of an as-applied challenge by persons injured thereby.

However, as the party bringing a facial challenge to the constitutionality of the Commonwealth's "shall issue" licensing regime, the defendant must demonstrate not that it is possible for the Commonwealth's processing times to deny nonresidents their right to public carry, but that "no set of circumstances exists" under which those processing times are compatible with the Second Amendment (citation omitted). *Rahimi*, 602 U.S. at 693. The defendant has not pointed to any evidence that the Commonwealth's processing times meaningfully hinder the ability of nonresidents to exercise their right to public carry in all circumstances, let alone that the processing timeline is so burdensome that it rises to the level of a constitutional violation. Indeed, the defendant makes no argument in support of that conclusion apart from asserting that the Commonwealth's processing times are a "significant curtailment" of his freedom. To invalidate the Commonwealth's "shall issue" regime on that basis alone would require us to "focus[ ] on hypothetical scenarios where [that regime] might raise constitutional concerns" as opposed to "circumstances in which [that regime is] most likely to be constitutional" — an error that would leave us "slaying a straw man." *Rahimi*, 602 U.S. at 701. Consequently, the defendant has not carried the "most difficult" burden of bringing a successful facial challenge to the Commonwealth's processing times for nonresident license applicants (citation omitted). *Id.* at 693. See *Mary-*

*land Shall Issue, Inc. v. Moore*, 116 F.4th 211, 227 (4th Cir. 2024), cert. denied, U.S. Supreme Ct., No. 24-373 (Jan. 13, 2025) (“By equating ‘infringement’ with any temporary delay, the [defendant] improperly discount[s] the Supreme Court’s guidance that requirements such as background checks and training instruction, which necessarily occasion some delay, ordinarily will pass constitutional muster”); *McRorey v. Garland*, 99 F.4th 831, 839 (5th Cir. 2024) (“Our law is plain as can be that some amount of time for background checks is permissible”).

In sum, the defendant’s facial challenge under the Second Amendment fails to “establish that no set of circumstances exists under which the [Commonwealth’s nonresident firearm licensing scheme] would be valid” (citation omitted). *Rahimi*, 602 U.S. at 693. Therefore, that challenge fails.

c. *The Fourteenth Amendment challenges.* Finally, the defendant argues that the Commonwealth’s nonresident firearm licensing scheme violates the Fourteenth Amendment rights to travel and to equal protection. Specifically, the defendant objects to several differences between the resident and nonresident licensing processes, including the following: (1) a resident’s license is valid for a period of from five to six years, see G. L. c. 140, § 131 (i), while a nonresident’s license is valid for only one year, see G. L. c. 140, § 131F; (2) resident license applications must be processed within forty days, see G. L. c. 140, § 131 (e), whereas nonresidents “must wait up to [ninety] days” for their applications to be processed;<sup>16</sup> and (3) newly arrived or returning residents have a sixty-day grace period in which to obtain an FID card, see G. L. c. 140, § 129C (j), whereas no such grace period exists for nonresidents. Given the constraints of a facial challenge, the defendant is again limited to arguing that no set of circumstances exists under which that scheme complies with the Fourteenth Amendment. See *Rahimi*, 602 U.S. at 693.

We first evaluate the defendant’s argument that the Commonwealth’s licensing scheme violates nonresidents’ Fourteenth Amendment right to travel. “The word ‘travel’ is not found in the text of the Constitution.” *Saenz v. Roe*, 526 U.S. 489, 498 (1999). Nevertheless, the right to travel is “firmly embedded in our jurisprudence” such that “imposing a penalty on the exercise of

<sup>16</sup>The defendant again cites to a webpage for the ninety-day timeline. See <https://www.mass.gov/how-to/apply-for-a-firearms-license> [<https://perma.cc/4TAJ-RSWV>]. We assume, without deciding, that the defendant’s argument as to this timeline is proper here.

the right to travel violate[s] the Equal Protection Clause unless shown to be necessary to promote a *compelling* governmental interest” (quotation and citation omitted). *Id.* at 498-499. By the same token, “only those classifications that serve to *penalize* the exercise of that right [to travel] are tested on that strict scrutiny basis.” *Lee v. Commissioner of Revenue*, 395 Mass. 527, 530 (1985). Otherwise, “[l]ess significant impositions on the right to travel have been upheld when supported by a rational or conceivable basis.” *Id.* at 531.

Turning now to the substance of the Fourteenth Amendment right to travel, the United States Supreme Court has held that this right contains three basic components:

“[(1)] the right of a citizen of one State to enter and to leave another State, [(2)] the right to be treated as a welcome visitor rather than unfriendly alien when temporarily present in the second State, and . . . [(3)] for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.”

*Saenz*, 526 U.S. at 500. Because there is no contention that the defendant elected or attempted to elect to become a permanent resident of the Commonwealth, only the first two components of the right to travel are at issue.<sup>17</sup>

With respect to the first component, the defendant maintains

<sup>17</sup>We note that in making his right to travel argument, the defendant nevertheless places significant weight on a line of cases that properly belong to the third component. These include *Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898 (1986); *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Shapiro v. Thompson*, 394 U.S. 618 (1969). All of these cases featured State laws that differentially assigned various rights and benefits to current residents of the State depending on when or for how long those residents had resided in the State. Such cases differ from the case at bar in two relevant respects. First, these cases involved statutory distinctions *among* current residents rather than between current residents and nonresidents. Second, the laws challenged in these cases categorically withheld the relevant right or benefit from residents who failed to satisfy the temporal residency requirement — whether the right to vote (*Dunn*, *supra*), entitlement to a civil service employment preference (*Soto-Lopez*, *supra*), entitlement to hospitalization medical care for the indigent (*Memorial Hosp.*, *supra*), or entitlement to welfare benefits (*Shapiro*, *supra*). By contrast, under the Commonwealth’s licensing scheme, nonresidents who wish to publicly carry firearms in the Commonwealth are not categorically barred from so doing for any period of time, so long as they obtain a license pursuant to § 131F prior to entry and public carry. Accordingly, insofar as the defendant’s right to travel argument relies on these component cases, that reliance is misplaced.

that “[t]he unchanneled discretion lodged with a colonel as well as lengthy wait times for any license . . . deter (if not preclude) nonresident travel into Massachusetts.” As the reference to “unchanneled discretion” makes evident, the defendant’s argument presupposes that the Commonwealth’s nonresident firearm licensing scheme violates the Second Amendment right to keep and bear arms. In essence, the defendant posits a constitutional dilemma: either “suffer disarmament, arrest and/or prosecution” by entering the Commonwealth with an unlicensed firearm or “yield Second Amendment rights.” Because the Commonwealth’s nonresident firearm licensing scheme does not violate the Second Amendment, however, no such constitutional dilemma exists. On the contrary, the dilemma posited by the defendant merely “repackag[es] a claim that is more appropriately brought under . . . the Second Amendment.” *Culp v. Raoul*, 921 F.3d 646, 658 (7th Cir. 2019), cert. denied, 141 S. Ct. 109 (2020).

More generally, the mere fact of having to apply for and obtain a license before entering the Commonwealth with a firearm does not *penalize* the right to travel. Although such a requirement “necessarily occasion[s] some delay,” *Maryland Shall Issue, Inc.*, 116 F.4th at 227, “[o]nly those statutes resulting in some significant effect on the right to travel will be deemed ‘penalties,’ ” *Lee*, 395 Mass. at 530. Unlike a criminal prohibition on transporting indigent nonresidents into the State, *Edwards v. California*, 314 U.S. 160, 171 (1941), or a conspiracy to prevent members of certain racial groups from crossing State lines using public highways, *United States v. Guest*, 383 U.S. 745, 757 (1966), the requirement that nonresidents obtain a license on the same terms as residents before publicly carrying a firearm within the Commonwealth does not “impos[e an] obstacle to [nonresidents’] entry into [the Commonwealth],” interfere with “free ingress and regress to and from neighboring States,” or otherwise “directly impair the exercise of the right to free interstate movement” (quotation and citation omitted). *Saenz*, 526 U.S. at 501. See *Commonwealth v. Harris*, 481 Mass. 767, 771, 774 (2019) (rejecting argument that G. L. c. 269, § 10 [a], and G. L. c. 140, § 129C [h], facially violate right to travel). In short, the Commonwealth’s nonresident firearm licensing scheme does not penalize the first component of the right to travel.

With respect to the second component of the right to travel, the question is whether the Commonwealth’s nonresident firearm



licensing scheme treats nonresidents as “unfriendly alien[s]” rather than as “welcome visitor[s].” *Saenz*, 526 U.S. at 500. As emphasized, the substantive eligibility criteria for residents and nonresidents are identical: both must be neither prohibited nor unsuitable within the meaning of § 131. Because nonresidents must satisfy the same substantive criteria as residents in order to receive a license, § 131F’s requirement that nonresidents be neither prohibited nor unsuitable cannot be said to demean nonresidents as “unfriendly aliens.” Simply put, a nonresident “may travel across [the Commonwealth] unimpeded so long as he abides by the reasonable and minimally burdensome regulations necessary to protect the safety of [the Commonwealth]’s citizens.” *Johnson v. County of Horry, S.C.*, 360 Fed. Appx. 466, 471 (4th Cir. 2010) (rejecting right-to-travel challenge to vehicle registration statute both facially and as applied to nonresident). Therefore, the Commonwealth’s nonresident firearm licensing scheme does not penalize the second component of the right to travel, either.

In sum, the Commonwealth’s nonresident firearm licensing scheme does not violate nonresidents’ Fourteenth Amendment right to travel. On the contrary, it embodies “State and local experimentation with reasonable firearms regulations [that] will continue under the Second Amendment” as part and parcel of the “ability to devise solutions to social problems that suit local needs and values.” *McDonald*, 561 U.S. at 785.

We have already seen that the Commonwealth’s nonresident firearm licensing scheme does not impermissibly interfere with the Second Amendment right to keep and bear arms. See *supra*. In addition, there is no contention that the Commonwealth’s nonresident firearm licensing scheme relies on a suspect classification. Because the Commonwealth’s nonresident firearm licensing scheme neither violates a fundamental right nor relies on a suspect classification, we evaluate the right to travel challenge and the equal protection challenge under rational basis review.<sup>18</sup> See *Romer v. Evans*, 517 U.S. 620, 631 (1996) (“if a law neither

<sup>18</sup>We note that some United States Courts of Appeals evaluating Second Amendment and equal protection challenges to firearm regulations have treated the analysis required by the latter as subsumed under the analysis required by the former. See, e.g., *Pena v. Lindley*, 898 F.3d 969, 986 (9th Cir. 2018), cert. denied sub nom. *Pena v. Horan*, 141 S. Ct. 108 (2020) (“To the extent that the Equal Protection challenge is based on the Second Amendment’s fundamental right to bear arms and the disparate treatment of groups in exercising that right,



burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end”); *Federal Communications Comm’n v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993) (“a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification”); *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976) (“equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class” [footnote omitted]); *Commonwealth v. Freeman*, 472 Mass. 503, 506 (2015) (statutes that “neither burden a fundamental right nor discriminate on the basis of a suspect classification . . . are subject to a rational basis level of judicial scrutiny” [citation omitted]). Compare *Smith v. District of Columbia*, 568 F. Supp. 3d 55, 62-66 (D.D.C. 2021) (concluding that District of Columbia regulations violate Second Amendment right to keep and bear arms, and proceeding to evaluate, under strict scrutiny, equal protection challenge to differential treatment of residents versus nonresidents), with *United States v. Gil-Solano*, 699 F. Supp. 3d 1063, 1073-1074 (D. Nev. 2023) (concluding that Federal prohibition on firearms possession by undocumented immigrants does not violate Second Amendment right to keep and bear arms, and proceeding to evaluate, under rational basis review, equal protection challenge to differential treatment of undocumented versus documented immigrants).

Under rational basis review, “State action will be upheld as long as it is rationally related to the furtherance of a legitimate [S]tate interest” (quotation and citation omitted). *Commonwealth v. Roman*, 489 Mass. 81, 86 (2022). In particular, “those attacking the rationality of the legislative classification have the burden to

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as recognized by [the United States Supreme Court], that challenge is subsumed in the Second Amendment inquiry above”); *United States v. Carey*, 602 F.3d 738, 741 n.2 (6th Cir.), cert. denied, 562 U.S. 895 (2010) (declining to consider claims that “conflate the enumerated Second Amendment right with Equal Protection and Due Process protections under the Fifth Amendment”). Nevertheless, in the interest of completeness, we conduct a full and separate review of the defendant’s equal protection claim.

negative every conceivable basis which might support it” (quotation and citation omitted). *Federal Communications Comm’n*, 508 U.S. at 315. To be sure, “[t]he distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end.” *McDonald v. Board of Election Comm’rs of Chicago*, 394 U.S. 802, 809 (1969). But statutory classifications “will be set aside . . . only if based on reasons totally unrelated to the pursuit of that goal” and “only if no grounds can be conceived to justify them.” *Id.*

In subjecting the Commonwealth’s nonresident firearm licensing scheme to rational basis review, we are mindful of two points. First, at the most general level, the equal protection clause “does not forbid classifications. It simply keeps governmental decision-makers from treating differently persons who are in all relevant respects alike.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). By the same token, States “may treat unlike cases accordingly.” *Vacco v. Quill*, 521 U.S. 793, 799 (1997). Second, because residents and nonresidents are frequently not “in all relevant respects alike,” *Nordlinger*, *supra*, there is in general “no duty on the State to have its licensing structure parallel or identical for both residents and nonresidents,” *Baldwin v. Fish & Game Comm’n of Mont.*, 436 U.S. 371, 391 (1978). See, e.g., *Marilley v. Bonham*, 844 F.3d 841, 854-855 (9th Cir. 2016), cert. denied, 583 U.S. 915 (2017) (finding rational basis for differential fishing license fees in relevant differences between resident versus non-resident fishers); *Sestric v. Clark*, 765 F.2d 655, 661-662 (7th Cir. 1985), cert. denied, 474 U.S. 1086 (1986) (noting relevant differences between nonresident attorneys and new resident attorneys in affirming rational basis for law permitting only latter to gain bar admission by motion alone).

Bearing these points in mind, we now consider first whether the Commonwealth’s nonresident firearm licensing scheme serves a legitimate State interest. The Commonwealth has at least a legitimate interest in regulating firearm possession within its borders so as to protect public safety. See, e.g., *Chief of Police of Worcester v. Holden*, 470 Mass. 845, 858 (2015) (recognizing “compelling” and “significant” interest in firearm regulation because it “directly affects the physical safety of the citizenry” [citation omitted]); *Kanter*, 919 F.3d at 451 (Barrett, J., dissenting) (noting “government’s undeniably compelling interest in protecting the public from gun violence”). As discussed, the

Commonwealth's general interest in public safety implies a more specific interest in ensuring that persons who publicly carry firearms within the Commonwealth satisfy the statutory criteria of being neither prohibited nor unsuitable. Moreover, that interest applies with equal strength to all persons who wish to publicly carry firearms within the Commonwealth regardless of their State of residence. The Commonwealth's interest in verifying the suitability and prohibition status of nonresidents who seek to publicly carry firearms within its borders is no weaker than its interest in verifying the suitability and prohibition status of residents who seek to publicly carry firearms within its borders.

At the same time, the factual reality is that it may often be more costly or time-consuming to obtain and verify the facts that are necessary to verify the suitability and prohibition status of a nonresident applicant as compared to a resident applicant. Specifically, the Commonwealth provides several statutory mechanisms whereby the relevant licensing authority is automatically notified of disqualifying events that would render a person prohibited or unsuitable to possess a firearms license. See, e.g., G. L. c. 140, § 131S (upon issuance of extreme risk protection order following petition demonstrating probable risk of bodily injury to self or others, clerk-magistrate required to transmit order to licensing authority and licensing authority required to immediately suspend firearms license); G. L. c. 209A, § 3B (mandating automatic suspension of firearms license upon issuance of temporary or emergency abuse prevention order following complaint demonstrating substantial likelihood of immediate danger of abuse). The defendant, as the party "attacking the rationality of the legislative classification[,] ha[s] the burden to negative every conceivable basis which might support it" (quotation and citation omitted). *Federal Communications Comm'n*, 508 U.S. at 315. See *Murphy v. Department of Correction*, 429 Mass. 736, 742 (1999). The defendant has not pointed to any comparable statutory infrastructure that would ensure that the Commonwealth's licensing authority is equally apprised of disqualifying events outside the Commonwealth's borders that have an impact on the suitability or prohibition status of a nonresident.

Moreover, it is generally recognized that States often have more reliable access to information having an impact on the firearms license eligibility of their own residents as compared to

residents of other States. See, e.g., *Culp*, 921 F.3d at 651 (discussing practical difficulties in accessing and monitoring other States' criminal history databases and mental health repositories); *Peterson v. LaCabe*, 783 F. Supp. 2d 1167, 1175, 1178 (D. Colo. 2011) ("Information about a person's contacts with law enforcement, mental health status, alcohol and drug use, and domestic violence history is simply more likely to be found in the jurisdiction where that person resides" such that "residents and non-residents are not similarly situated in terms of the state's ability to obtain information about and monitor the potential licensee's eligibility for a concealed weapons permit").

In light of these facts, the complained-of differences between the Commonwealth's treatment of resident and nonresident license applicants survive rational basis review. We first consider the provision of one-year license durations for nonresidents, G. L. c. 140, § 131F,<sup>19</sup> versus five- to six-year license durations for

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<sup>19</sup>The renewal provision in § 131F was amended in light of *Bruen* to eliminate discretionary language. Specifically, the prior iteration of § 131F provided that a "license shall be valid for a period of one year but the colonel may renew such license, if in his discretion, such renewal is necessary." G. L. c. 140, § 131F, as amended through St. 2014, c. 284, §§ 60, 63. See St. 1998, c. 180, § 46. The current iteration excises the phrase "in his discretion" and provides that a "license shall be valid for a period of one year but the colonel may renew such license if such renewal is necessary." G. L. c. 140, § 131F. The defendant does not argue that the nonresident renewal provision as amended confers any additional discretion on the colonel with respect to renewing nonresident licenses as compared to issuing first-time nonresident licenses. Context and purpose confirm that the current nonresident renewal provision does not import discretion. First, the paragraph that immediately precedes the renewal provision states the eligibility conditions for nonresident license applicants: such applicants "shall be issued" a temporary firearms license so long as they are neither prohibited nor unsuitable. The nonresident renewal provision does not modify those conditions; on the contrary, it presupposes their satisfaction. It merely specifies that, if a nonresident renewal applicant intends to continue to publicly carry firearms within the Commonwealth after one year such that it is "necessary" to continue to possess a valid firearms license in order to lawfully do so, the colonel is fully authorized to renew the license in question, so long as there has been no change to the applicant's suitability or prohibition status. Hence, although the nonresident renewal provision employs the phrase "may renew" to describe the colonel's renewal authorization, in the context of the Commonwealth's "shall issue" nonresident licensing scheme, this phrase does not import any discretion. Second, "we construe statutes to avoid constitutional problems where possible." *Maloney*, 447 Mass. at 589. Pursuant to that principle, any ambiguity with respect to whether the nonresident renewal provision imports discretion would be resolved in favor of the foregoing construction, as it avoids

residents, G. L. c. 140, § 131. One implication of the license duration differential is that nonresidents are obligated to apply more frequently than residents. This affords the Commonwealth's licensing authority more frequent opportunities to verify the continued eligibility of nonresidents for a firearms license. Insofar as it may be more difficult to reliably monitor nonresidents' continued compliance with the substantive requirements of the Commonwealth's firearm licensing scheme, having shorter license durations and concomitantly more frequent opportunities to verify nonresident suitability and prohibition status stands in a "rational relationship" to the Commonwealth's legitimate end of equally verifying the eligibility of all firearms license applicants regardless of their State of residency. *McDonald*, 394 U.S. at 809. At minimum, differential access to eligibility-relevant information about resident and nonresident applicants embodies a "reasonably conceivable state of facts that could provide a rational basis" for the license duration differential. *Federal Communications Comm'n*, 508 U.S. at 313.

Second, we consider the fifty-day differential in expected processing times for nonresidents (ninety days) versus residents (forty days). As noted, it may often take more time — and entail higher costs of investigation — to review nonresident applications as thoroughly as resident applications because out-of-State databases containing relevant information about applicants are not necessarily as accessible to in-State authorities as are in-State databases. See *Culp*, 921 F.3d at 651; *Peterson*, 783 F. Supp. 2d at 1175. Allowing the Commonwealth's licensing authority more time to process nonresident applications is one rational response to this asymmetry. At minimum, the fifty-day expected processing time differential is not "totally unrelated to the pursuit of that goal [of evaluating all applicants with equal thoroughness]." *McDonald*, 394 U.S. at 809.

Third, we consider the exclusion of nonresidents from the sixty-day "grace period" available to new or returning residents. See G. L. c. 140, § 129C (j). As this Court has held, having a grace period for new or returning residents but not for nonresi-

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squarely implicating fundamental constitutional rights. In sum, nonresident license renewal applicants are subject to the same substantive eligibility conditions as nonresident first-time license applicants.

dents can “be explained by the relatively short, one-year period of validity applicable to nonresident licenses.” *Firearms Records Bur. v. Simkin*, 466 Mass. 168, 178 (2013). In particular, a sixty-day grace period for nonresident licenses would represent a waiver of more than fifteen percent of the relevant license duration, whereas a sixty-day grace period for resident licenses waives at most approximately three percent of the relevant license duration. More broadly, the Legislature could rationally have concluded that extending the sixty-day grace period to nonresidents would effectively nullify the licensure requirement for nonresidents, since any nonresident physically present in the Commonwealth for less than a sixty-day period would presumably thereby become immune from liability for unlicensed possession. See generally *Federal Communications Comm’n*, 508 U.S. at 315 (under rational basis review, “a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation”); *McDonald*, 394 U.S. at 809 (legislative distinctions invalidated under rational basis review “only if no grounds can be conceived to justify them”).

In short, each of the complained-of differences in the Commonwealth’s treatment of resident versus nonresident firearms license applicants “bear[s] some rational relationship to a legitimate state end.” *McDonald*, 394 U.S. at 809. Specifically, the defendant has not fulfilled the attacking party’s “burden [under rational basis] to negate every conceivable basis which might support [the Commonwealth’s nonresident firearm licensing scheme]” (quotation and citation omitted). *Federal Communications Comm’n*, 508 U.S. at 315. Therefore, the Commonwealth’s nonresident firearm licensing scheme does not violate nonresidents’ Fourteenth Amendment equal protection rights.

*Conclusion.* The defendant’s Second Amendment challenge to the Commonwealth’s nonresident firearm licensing scheme fails because “shall issue” licensing schemes the purpose of which is to restrict possession of firearms by demonstrably dangerous persons are consistent with this nation’s historical tradition of firearm regulation. The defendant’s Fourteenth Amendment challenge also fails because the Commonwealth’s scheme does not violate a nonresident’s right to travel or to equal protection. It follows that the Commonwealth’s nonresident firearm licensing

scheme is facially valid. Accordingly, the order allowing the defendant's motion to dismiss is reversed.

*So ordered.*



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LOWELL DISTRICT COURT  
NO. 2211CR3931

COMMONWEALTH )

VS. )

PHILLIP MARQUIS )  
\_\_\_\_\_ )

MEMORANDUM OF DECISION ON DEFENDANT'S MOTION TO DISMISS

The defendant Phillip Marquis is charged in the Lowell District Court with carrying a firearm without a license under *G.L. 269 §10(a)*. The defendant has filed a motion to dismiss the charge in the complaint claiming that:

1. *G.L. 269 §10(a)* impermissibly infringes on his right to keep and bear arms.
2. *G.L. 140* and laws proscribing the possession of firearms under *G.L. 269 §10(a)* impermissibly violate the rights of nonresidents to keep and bear arms, and
3. *G.L. 269 §10(a)* violated the defendant's right to be free from cruel and unusual punishment.

The facts leading up the issuance of the complaint are not in dispute and for the purposes of this motion, the Court accepts them. Those facts are contained in both the Commonwealth's Memorandum in Opposition to the Motion to Dismiss as well as the Defendant's Memorandum in Support of the Motion to Dismiss.

This Court addressed similar arguments and opposition in its findings in the case of



Commonwealth v. Donnell, #2211CR2835 and adopts those finding in this related case as well. The parties have asked the Court to make findings on the defendant's claim that *G.L. 140 section 131F* (nonresidents or aliens temporary license to carry firearms) restricts nonresidents to only carry while participating in shooting competition (or hunting or attending exhibitions) and not for self-defense. The Commonwealth argues that that specific restriction only applies to aliens.

The Court did address this issue in the Donnell decision. But to clarify its finding, *G.L. 140 section 131F*, as written, groups nonresidents or persons not falling within the jurisdiction of a local licensing authority or aliens that reside outside the Commonwealth, to obtaining licenses for purposes of firearms competitions. While the Commonwealth is correct that since June 23, 2022, EOPS will consider all nonresident license to be unrestricted, that is not how the statute reads.

Furthermore, as stated in the Court's Donnell decision, *New York State Rifle and Pistol Association, Inc. v. Bruen*, 141 S. Ct. 2111 (2022) articulated a two-step analysis in determining whether a law or regulation of constitutionally protected conduct is unconstitutional. First, courts must determine whether "the Second Amendment's plain text covers an individual's conduct[.]" *Bruen supra* at 2129-30. If so, then the "Constitution presumptively protects that conduct," and the Government "must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." *Id.* "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.*

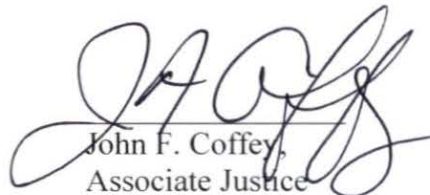
The constitutionality of *140 section 131F* rises or falls on the Commonwealth meeting its burden as articulated by the United States Supreme Court in *Bruen, Id.* The Commonwealth cannot

simply point to a case decided pre Bruen or a statute (however that statute may be read or what it meant to say) and meet its burden when the conduct it seeks to criminalize is constitutionally protected under the Second Amendment. [T]he Government "must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Id. at 2130. To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." Id. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." Id.

The Commonwealth has not met its burden on this issue.

Therefore, the Court finds that GL, 269, sec. 10(a) is unconstitutional as applied to this particularly situated defendant and Allows the motion to dismiss on that ground.

**SO ORDERED.**

  
John F. Coffey,  
Associate Justice

Dated: 8-21-23

**SUPREME JUDICIAL COURT  
for the Commonwealth  
Case Docket**

**COMMONWEALTH vs. PHILIP J. MARQUIS  
SJC-13562**

**CASE HEADER**

<b>Case Status</b>	Decided, Rescript issued	<b>Status Date</b>	04/08/2025
<b>Nature</b>	Crime: Possession of Gun	<b>Entry Date</b>	02/20/2024
<b>Appellant</b>	Plaintiff	<b>Case Type</b>	Criminal
<b>Brief Status</b>		<b>Brief Due</b>	
<b>Quorum</b>	Budd, C.J., Gaziano, Kafker, Wendlandt, Georges, Jr., Wolohojian, JJ.		
<b>Argued Date</b>	09/09/2024	<b>Decision Date</b>	03/11/2025
<b>AC/SJ Number</b>	<a href="#">2023-P-1278</a>	<b>Citation</b>	495 Mass. 434
<b>DAR/FAR Number</b>	<a href="#">DAR-29604</a>	<b>Lower Ct Number</b>	
<b>Lower Court</b>	Lowell District, MI	<b>Lower Ct Judge</b>	John F. Coffey, J.
<b>Route to SJC</b>	Direct Appellate Review		

**ADDITIONAL INFORMATION**

Transcripts received: 2 volumes (On PDF). Transcripts dates: 8/4/2023, 8/23/2023.

**INVOLVED PARTY**

**ATTORNEY APPEARANCE**

**Commonwealth**

Plaintiff/Appellant  
Blue br, app & reply br filed  
1 Enl, 31 Days

[Ryan J. Rall, A.D.A.](#)

**Philip J. Marquis**

Defendant/Appellee  
Red brief filed  
1 Enl, 74 Days

[Kathryn Hayne Barnwell, Esquire](#)

**Jason Gerhard**

Pro Se Amicus  
Amicus brief filed

**Matthew Coulon**

Pro Se Amicus  
On brief of another party

**Tom Mannion**

Pro Se Amicus  
On brief of another party

**Nikki McCarter**

Pro Se Amicus  
On brief of another party

**Diane Kelley**

Pro Se Amicus  
On brief of another party

**Leah Cushman**

Pro Se Amicus

On brief of another party

**Jay Edward Simkin**

Pro Se Amicus

Amicus brief filed

**The Attorney General**

Amicus

Amicus brief filed

[Carlos Eduardo Cousins, A.A.G.](#)[Grace Gohlke, A.A.G.](#)[Nicole Marie Nixon, A.A.G.](#)[Brandon Chase, Esquire](#)**State of New Hampshire**

Amicus

Amicus brief filed

**CATO Institute**

Amicus

Amicus brief filed

[Kevin J. Powers, Esquire](#)



Clark M. Neily, III, Pro Hac Vice Attorney

Christopher D. Barnewolt, Pro Hac Vice Attorney

**Massachusetts Association of Criminal Defense Lawyers**

Amicus

Amicus brief filed

[Joshua M. Daniels, Esquire](#)[Lisa J. Steele, Esquire](#)**DOCUMENTS**[Appellant Commonwealth Brief](#) [Appellee Marquis Brief](#) [Amicus Gerhard Et Al Brief](#) [Amicus Simkin Brief](#) [Amicus Attorney General Brief](#) [Amicus State of New Hampshire Brief](#) [Amicus MACDL Brief](#) [Amicus CATO Institute Brief](#) [Appellant Commonwealth Reply Brief](#) **DOCKET ENTRIES****Entry Date Paper Entry Text**

02/20/2024 #1 Entered.

02/23/2024 #2 ANNOUNCEMENT: The Justices are soliciting amicus briefs. Whether the district court judge erred in concluding pursuant to [New York State Rifle & Pistol Ass'n v. Bruen](#), 597 U.S. 1, 10 (2022), that G. L. c. 269, § 10 (a), and G. L. c. 140, § 131F, violated the defendants' constitutional rights to equal protection and interstate travel, as well as their rights under the Second Amendment to the U.S. Constitution, where the defendants were non-residents of Massachusetts charged in Massachusetts with carrying a firearm without a license, where the defendants could legally possess a firearm in their home State, and where there is no evidence that they applied for any license pursuant to the Massachusetts firearms licensing laws. (Note this matter will be argued with SJC-13561, Commonwealth vs. Dean F. Donnell, Jr.)

03/06/2024 #3 Motion to extend to date for filing of appellant's brief filed for Commonwealth by Ryan Rall, ADA. (ALLOWED to April 12, 2024.)

04/12/2024 #4 Appellant brief filed for Commonwealth by Ryan Rall, ADA.

04/12/2024 #5 Appendix filed for Commonwealth by Ryan Rall, ADA.


04/16/2024 The clerk's office has received the appellant's brief and appendix through e-fileMA. The brief and appendix have been accepted for filing and entered on the docket. The appellant shall file with the clerk 4 copies of the brief and 3 copies of the appendix within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellant's brief shall be blue and appendix shall be white.)

04/24/2024 #6 Additional 4 copies of appellant's brief and 3 copies of appendix filed by Commonwealth.

05/06/2024 #7 Motion to extend to date for filing of appellee's brief filed for Philip J. Marquis by Attorney Kathryn Hayne

	Barnwell. (5/17/2024: The motion is Allowed, in part, the appellee's brief is due on or before July 26, 2024).
07/05/2024 #8	Amicus brief filed by Representative Jason Gerhard, Representative Matthew Coulon, Representative Tom Mannion, Representative Nikki McCarter, Representative Diane Kelley, and Representative Leah Cushman.
07/05/2024	The clerk's office has received the amicus brief filed by Jason Gerhard and others (Six New Hampshire State Representatives) through e-fileMA. The brief has been accepted for filing and entered on the docket. The amicus shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of amicus brief shall be green.)
07/08/2024 #9	Additional 4 copies of amicus brief filed by Jason Gerhard and others.
07/08/2024 #10	NOTICE of September argument sent.
07/26/2024 #11	Appellee brief filed for Philip J. Marquis by Attorney Kathryn Hayne Barnwell.
07/26/2024	The clerk's office has received the appellee's brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellee shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellee's brief shall be red.)
07/29/2024 #12	ORDERED for argument on September 9.
07/31/2024 #13	Additional 4 copies of appellee's brief filed by Philip J. Marquis.
08/09/2024 #14	Motion to extend to date for filing of appellant's reply brief filed for Commonwealth by Ryan Rall, ADA. (Allowed to August 26, 2024).
08/19/2024 #15	Amicus brief filed by Jay Edward Simkin.
08/19/2024	The clerk's office has received the amicus brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The amicus curiae Jay Edward Simkin shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (NOTE: The cover of the brief shall be green.)
08/19/2024 #16	Amicus brief filed for The Attorney General by Carlos Eduardo Cousins, AAG, Grace Gohlke, AAG, Nicole Nixon, AAG..
08/20/2024	The clerk's office has received the amicus brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The amicus curiae Attorney General shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (NOTE: The cover of the brief shall be green.)
08/19/2024 #17	Amicus brief filed for State of New Hampshire by Attorney Brandon Chase.
08/20/2024	The clerk's office has received the amicus brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The amicus curiae State of New Hampshire shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (NOTE: The cover of the brief shall be green.)
08/20/2024 #18	Amicus brief filed for Massachusetts Association of Criminal Defense Lawyers by Attorney Joshua M. Daniels, Attorney Lisa Steele.
08/20/2024	The clerk's office has received the amicus brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The amicus curiae Massachusetts Association of Criminal Defense Lawyers shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (NOTE: The cover of the brief shall be green.)
08/21/2024 #19	Amicus brief filed for CATO Institute by Attorney Kevin Powers, Attorney Clark M. Neily, III, and Attorney Christopher D. Barnewolt.
08/21/2024 #20	MOTION to accept amicus brief for filing and to Proceed Pro Hac Vice filed for Attorney Clark M. Neily, III, and Attorney Christopher D. Barnewolt as counsel for The CATO Institute by Attorney Kevin Powers. (Referred to the Quorum)
08/21/2024	The clerk's office has received the amicus brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The amicus curiae CATO Institute shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (NOTE: The cover of the brief shall be green.)
08/22/2024 #21	Additional 4 copies of amicus brief filed by Jay Edward Simkin.
08/23/2024 #22	Additional 4 copies of amicus brief filed by State of New Hampshire.



08/23/2024 #23	Motion to extend to date for filing of appellant's reply brief filed for Commonwealth by Ryan Rall, ADA. (ALLOWED. The reply brief shall be filed by 3:00 PM on August 30, 2024.)
08/28/2024 #24	Additional 4 copies of amicus brief filed by CATO Institute.
08/28/2024 #25	Additional 4 copies of amicus brief filed by The Attorney General.
08/30/2024 #26	Reply brief filed for Commonwealth by Ryan Rall, ADA.
08/30/2024	The clerk's office has received the appellant's reply brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellant shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellant's reply brief shall be grey.)
09/03/2024 #27	Supplemental Citation filed for Philip J. Marquis by Attorney Kathryn Hayne Barnwell.
09/09/2024	Oral argument held. (Budd, C.J., Gaziano, J., Kafker, J., Wendlandt, J., Georges, Jr., J., Wolohojian, J.). <a href="#">View Webcast</a> 
09/11/2024 #28	NOTICE: The video recording of the oral argument in this matter has been posted to the SJC YouTube archive. Subscribe and view: <a href="https://www.youtube.com/c/massachusettsupremesjudicialcourt">https://www.youtube.com/c/massachusettsupremesjudicialcourt</a> .
11/21/2024 #29	Supplemental Citation filed for Philip J. Marquis by Attorney Kathryn Hayne Barnwell.
12/16/2024 #30	Supplemental Citation filed for Commonwealth by Ryan Rall, ADA.
12/30/2024 #31	Supplemental Citation filed for Philip J. Marquis by Attorney Kathryn Hayne Barnwell.
01/10/2025 #32	ORDER waiving 130-Day Guideline.
01/31/2025 #33	Supplemental Citation filed for Philip J. Marquis by Attorney Kathryn Hayne Barnwell.
03/11/2025 #34	RESCRIPT (Full Opinion): The order allowing the defendant's motion to dismiss is reversed. (By the Court)
03/14/2025 #35	Copy of revised opinion sent to the parties. See Revisions for the Massachusetts Reports at <a href="https://www.mass.gov/service-details/opinion-revisions">https://www.mass.gov/service-details/opinion-revisions</a> .
03/21/2025 #36	Copy of revised opinion sent to the parties. See Revisions for the Massachusetts Reports at <a href="https://www.mass.gov/service-details/opinion-revisions">https://www.mass.gov/service-details/opinion-revisions</a> .
04/08/2025	RESCRIPT ISSUED to trial court.
04/11/2025 #37	Copy of revised opinion sent to the parties and the trial court. See Revisions for the Massachusetts Reports at <a href="https://www.mass.gov/service-details/opinion-revisions">https://www.mass.gov/service-details/opinion-revisions</a> .
06/06/2025 #38	U.S. Supreme Court Notice regarding a time extension to file a petition for a writ of certiorari.

As of 06/06/2025 12:20pm

**APPEALS COURT**  
**Full Court Panel Case**  
**Case Docket**

**COMMONWEALTH vs. PHILIP J. MARQUIS**  
**2023-P-1278**

**CASE HEADER**

<b>Case Status</b>	DAR allowed	<b>Status Date</b>	03/20/2024
<b>Nature</b>	Crime: Possession of Gun	<b>Entry Date</b>	11/06/2023
<b>Appellant</b>	Plaintiff	<b>Case Type</b>	Criminal
<b>Brief Status</b>	Awaiting blue brief	<b>Brief Due</b>	02/23/2024
<b>Arg/Submitted Panel</b>		<b>Decision Date</b>	
<b>Lower Court</b>	Lowell District, MI	<b>Citation</b>	
<b>Lower Ct Judge</b>	John F. Coffey, J.	<b>TC Number</b>	
<b>SJ Number</b>		<b>TC Entry Date</b>	10/12/2022
<b>SJC Number</b>	<a href="#">SJC-13562</a>	<b>FAR Number</b>	

**INVOLVED PARTY**

**ATTORNEY APPEARANCE**

**Commonwealth**  
Plaintiff/Appellant  
Awaiting blue brief  
Due 02/23/2024  
1 Enl, 67 Days

[Ryan J. Rall, A.D.A.](#)

**Philip J. Marquis**  
Defendant/Appellee  
Awaiting red brief  
Due 03/25/2024

[Kathryn Hayne Barnwell, Esquire](#)

**DOCKET ENTRIES**

Entry Date	Paper	Entry Text
11/06/2023		Transcript Volume: 08/04/2023 - Motion to Dismiss .
11/06/2023		Transcript Volume: 08/23/2023 - Status Conference .
11/06/2023	#1	Lower Court Assembly of the Record Package
11/06/2023	#2	Notice of entry sent.
11/20/2023	#3	Docketing Statement filed for Commonwealth by Attorney Ryan Rall.
12/11/2023		DAR-29604 opened on MOTION to file DAR application late filed for Commonwealth by Attorney Ryan Rall.
12/18/2023	#4	Motion of Appellant to extend date for filing brief and appendix filed for Commonwealth by Attorney Ryan Rall.
12/19/2023		RE#4: Allowed to 02/23/2024. Notice sent.
03/19/2024		[VACATED AS HAVING BEEN ENTERED IN ERROR] Notice preceding dismissal entered for Commonwealth. *Notice.
03/20/2024		DAR ALLOWED (on 02/16/2024). Case to SJC. Notice to Trial Court. [Inadvertently not docketed when Notice from SJC on 02/16/24]



As of 03/20/2024 2:15pm

**2211CR003931 Commonwealth vs. Marquis, Philip J**

- Case Type:
- Criminal
- Case Status:
- Closed
- File Date
- 10/12/2022
- DCM Track:
- 
- Initiating Action:
- FIREARM, CARRY WITHOUT LICENSE c269 §10(a)
- Status Date:
- 08/23/2023
- Case Judge:
- 
- Next Event:
- 07/30/2025

All Information Party Charge Event Docket Disposition

**Party Information**

**Marquis, Philip J**  
- Defendant

Alias

**Party Attorney**

- Attorney
- CPCS Lowell Office, .
- Bar Code
- CPCSLOW
- Address
- 40-44 Church Street, 1st Floor
- Lowell, MA 01852
- Phone Number
- (978)446-3912

[More Party Information](#)

**Party Charge Information**

- **Marquis, Philip J**
- - Defendant
- **Charge # 1:**
- **269/10/J-1 - Felony** FIREARM, CARRY WITHOUT LICENSE c269 §10(a)

- Original Charge
- 269/10/J-1 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) (Felony)
- Amended Charge
- 

**Charge Disposition**

Disposition Date  
Disposition  
08/23/2023  
Dismissed

- **Marquis, Philip J**
- - Defendant
- **Charge # 2:**
- **269/10/TT - Misdemeanor - more than 100 days incarceration** AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)
- (1)

- Original Charge
- 269/10/TT AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1)  
(Misdemeanor - more than 100 days incarceration)
- Amended Charge
- 

**Charge Disposition**







Disposition Date  
Disposition  
08/23/2023  
Dismissed














**Events**

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
11/01/2022 09:00 AM	Arraignment Session		Arraignment	Defendant defaulted-FI to Appear
11/28/2022 09:00 AM	Arraignment Session		Arraignment	Held - Bail or Conditions of Release ordered
01/10/2023 09:00 AM	Administrative Session		Pretrial Hearing	Held-PT
02/13/2023 09:00 AM	Pretrial Session		Discovery Compliance & Jury Election	Reschedule of Hearing
04/05/2023 09:00 AM	Pretrial Session		Discovery Compliance & Jury Election	Held
05/22/2023 09:00 AM	Trial Session		Motion Hearing (CR)	Held - Motion allowed
05/30/2023 09:00 AM	Trial Session		Jury Trial (CR)	Event Cancelled
07/07/2023 09:00 AM	Administrative Session		Motion to Dismiss	Reschedule of Hearing
08/04/2023 09:00 AM	Administrative Session		Motion to Dismiss	Held - under advisement
08/23/2023 09:00 AM	Administrative Session		Hearing to Review Status	Held - Dismiss or to be Dismiss All Charges
09/29/2023 09:00 AM	Administrative Session		Motion Hearing (CR)	Reschedule of Hearing
10/04/2023 09:00 AM	Administrative Session		Motion Hearing (CR)	Held - Motion denied
05/30/2025 09:00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
07/30/2025 09:00 AM	Administrative Session		Hearing to Review Status	

**Docket Information**

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
10/12/2022	Criminal Complaint issued from Electronic Application: Originating Court: Lowell District Court Case Number: 2211AC004273-SU Receiving Court: Lowell District Court ;	
10/12/2022	Complaint issued with a summons.	

11/01/2022	Event Resulted: Arraignment scheduled on: 11/01/2022 09:00 AM Has been: Defendant defaulted-FI to Appear Hon. Sarah Jubinville, Presiding	
11/01/2022	Default Warrant ordered to issue. Judge: Jubinville, Hon. Sarah	
11/01/2022	Warrant Issued: Straight Warrant issued on 11/01/2022 for Marquis, Philip J	
11/28/2022	Warrant recalled: Straight Warrant cancelled on 11/28/2022 for Marquis, Philip J	
11/28/2022	Event Resulted: Arraignment scheduled on: 11/28/2022 09:00 AM Has been: Held - Bail or Conditions of Release ordered Hon. John F Coffey, Presiding	
11/28/2022	Defendant arraigned before Court, advised of right to counsel. Judge: Coffey, Hon. John F	
11/28/2022	Committee for Public Counsel Services appointed. Judge: Coffey, Hon. John F	
11/28/2022	Advised of trial rights as self-represented defendant. Judge: Coffey, Hon. John F	
11/28/2022	Plea of Not Guilty entered on all charges. Judge: Coffey, Hon. John F	
11/28/2022	Bail revocation warning (276/58) given to the defendant Judge: Coffey, Hon. John F	
11/28/2022	Appearance filed On this date . CPCS Lowell Office added as Appointed - Able to Contribute for Defendant Philip J Marquis Appearance filed for the purpose of Case in Chief by Judge Hon. John F Coffey.	
01/10/2023	Event Resulted: Pretrial Hearing scheduled on: 01/10/2023 09:00 AM Has been: Held-PT Hon. John F Coffey, Presiding	
01/10/2023	Pretrial conference report filed. Judge: Coffey, Hon. John F	  <a href="#">Image</a>
02/13/2023	Event Resulted: Discovery Compliance & Jury Election scheduled on: 02/13/2023 09:00 AM Has been: Held Hon. John F Coffey, Presiding	
04/05/2023	Event Resulted: Discovery Compliance & Jury Election scheduled on: 04/05/2023 09:00 AM Has been: Held Hon. Catherine K Byrne, Presiding	
04/05/2023	Event Scheduled Event: Jury Trial (CR) Date: 05/30/2023 Time: 09:00 AM Result: Event Cancelled	
04/05/2023	Out of Court discovery compliance date ordered to wit 05/16/2023  Judge: Byrne, Hon. Catherine K	
05/18/2023	Defendant's motion to reschedule or continue scheduled court hearing filed with the following, if any, supporting documents:	  <a href="#">Image</a>
05/22/2023	Event Resulted: Motion Hearing (CR) scheduled on: 05/22/2023 09:00 AM Has been: Held - Motion allowed Hon. Stephen B Geary, Presiding	
05/22/2023	Motion to advance and continue ALLOWED.	 

05/22/2023	Event Resulted: Jury Trial (CR) scheduled on: 05/30/2023 09:00 AM Has been: Event Cancelled For the following reason: Brought forward Hon. Stephen B Geary, Presiding	<a href="#">Image</a>
06/27/2023	Defendant's motion to Dismiss filed with the following, if any, supporting documents:	 
07/07/2023	Defendant's motion for production of interstate "triple I" record filed and ALLOWED.	 <a href="#">Image</a>
07/07/2023	Event Resulted: Motion to Dismiss scheduled on: 07/07/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. John F Coffey, Presiding	<a href="#">Image</a>
08/04/2023	Event Resulted: Motion to Dismiss scheduled on: 08/04/2023 09:00 AM Has been: Held - under advisement Hon. John F Coffey, Presiding	
08/23/2023	Event Resulted: Hearing to Review Status scheduled on: 08/23/2023 09:00 AM Has been: Held - Dismiss or to be Dismiss All Charges Hon. John F Coffey, Presiding	
08/23/2023	Charges Disposed:: Charge # 1 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) On: 08/23/2023 Judge: Hon. John F Coffey Dismissed  Charge # 2 AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) On: 08/23/2023 Judge: Hon. John F Coffey Dismissed	
08/23/2023	Court orders all charges to be dismissed forthwith, upon order of the court	
08/23/2023	Written finding of Justice after motion to Dismiss hearing received and filed.  Judge: Coffey, Hon. John F	  <a href="#">Image</a>
09/22/2023	Commonwealth's motion for reconsideration of allowance of defendant's motion to dismiss filed with the following, if any, supporting documents:	  <a href="#">Image</a>
09/29/2023	Event Resulted: Motion Hearing (CR) scheduled on: 09/29/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. John F Coffey, Presiding	
10/04/2023	Event Resulted: Motion Hearing (CR) scheduled on: 10/04/2023 09:00 AM Has been: Held - Motion denied Hon. John F Coffey, Presiding	
10/04/2023	Motion to reconsider prior ruling of allowance of defendant's motion to dismiss DENIED.	 
10/05/2023	Docket report of court proceedings to date  Judge: Coffey, Hon. John F	  <a href="#">Image</a>
10/06/2023	Notice of Appeal to the Appeals Court filed by the Commonwealth.  Judge: Coffey, Hon. John F	  <a href="#">Image</a>
10/25/2023	Misc Entry: Notice of Appearance filed by K. Hayne Barnwell for appeal.  Judge: Coffey, Hon. John F	
11/03/2023	Misc Entry: Emailed Assembled Record to parties.  Judge: Coffey, Hon. John F	
02/29/2024	Certified copy of docket issued to Tim Andrea.	
04/14/2025	Rescript opinion received from the ( Appeals-Supreme Judicial)	

Order allowing the Defendant's Motion to Dismiss is reversed

Judge: Gaziano, Frank M

04/15/2025 Misc Entry: Copy of revised opinion rec'd from SJC

05/30/2025 Event Resulted: Hearing to Review Status scheduled on:  
05/30/2025 09:00 AM

Has been: Reschedule of Hearing  
Hon. John F Coffey, Presiding

For the following reason: On Order of the Court

### Case Disposition

Disposition

Date

Dismissed

08/23/2023

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

DISTRICT COURT DEPARTMENT

DOCKET NO. 2211CR3931

COMMONWEALTH

TRIAL COURT OF MASS.  
DISTRICT COURT DEPT.  
LOWELL DIVISION

v.

PHILIP MARQUIS

DEFENDANT'S MOTION TO DISMISS

Now comes the defendant, Mr. Philip Marquis, and respectfully moves this Honorable Court dismiss the above charges against him. As grounds therefore, Mr. Marquis states that: 1) Massachusetts laws proscribing the possession of a firearm, under M.G.L. c. 269 § 10, impermissibly infringe on the fundamental right to keep and bear arms as provided by the Second Amendment; 2) Massachusetts firearm licensing laws under M.G.L. c. 140 and laws proscribing the possession of a firearm, under M.G.L. c. 269 § 10, impermissibly violate the fundamental rights of nonresidents like Mr. Marquis's fundamental right to keep and bear arms as provided by the Second Amendment; and 3) the statutes violate the Second Amendment and Mr. Marquis's rights to not be subject to cruel and unusual punishments in violation of his rights under Articles 12, 17, and 26 of the Declaration of Rights of the Commonwealth of Massachusetts; the Eighth and Fourteenth Amendments to the Constitution of the United States; and Common Law principles. Further support for this motion may be found in the attached memorandum of law and affidavit of counsel.

on 2/7/23



Respectfully submitted,  
PHILIP MARQUIS,  
By his attorney,

/s/ Lindsey Kelly

---

Lindsey Keily, BBO# 704510  
Committee for Public Counsel Services  
40-44 Church Street, 4th Floor  
Lowell, MA 01852  
(978) 458-7161  
lkelly@publiccounsel.net

Dated: June 23, 2023

**COMMONWEALTH OF MASSACHUSETTS**

**MIDDLESEX, ss**

**DISTRICT COURT DEPARTMENT  
DOCKET NO. 2211 CR 3931**

**COMMONWEALTH**

**v.**

**PHILIP MARQUIS**

**AFFIDAVIT OF COUNSEL IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

I, Lindsey Kelly, state that the following is true to the best of my knowledge, information, and belief:

1. I am an attorney employed by the Committee for Public Counsel Services.
2. On November 28, 2022, the defendant was arraigned before this Court and the undersigned was appointed to represent him.
3. I have thoroughly reviewed the facts of the case, police reports, and researched the relevant case law and statutes.
4. The police report is attached to this motion, subject to the Uniform Rules of Impoundment.
5. Based on my review and research, I do not believe that the Constitutional principles announced by the Supreme Court and the Supreme Judicial Court this past year permit the statutes implicated in these charges to survive constitutional scrutiny.

Signed this 23<sup>rd</sup> day of June under the pains and penalties of perjury.

/s/ Lindsey Kelly

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Lindsey Kelly

**COMMONWEALTH OF MASSACHUSETTS**

**MIDDLESEX, ss**

**DISTRICT COURT DEPARTMENT  
DOCKET NO. 2211 CR 3931**

**COMMONWEALTH**

**v.**

**PHILIP MARQUIS**

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

Now comes the defendant, Mr. Philip Marquis, and respectfully moves this Honorable Court to dismiss the above charges against him. Mr. Marquis submits several grounds under which the charges against him must be dismissed:

- I) Massachusetts laws proscribing the possession of a firearm, under M.G.L. c. 269 § 10, impermissibly infringe on the fundamental right to keep and bear arms;
- II) Massachusetts firearm licensing laws under M.G.L c. 140 and laws proscribing the possession of a firearm, under M.G.L. c. 269 § 10, impermissibly violate the fundamental rights of nonresidents like Mr. Marquis to keep and bear arms;
- III) The sentencing schemes for violations under M.G.L. c. 269 § 10 violate the Second Amendment and Mr. Marquis's rights against cruel and unusual punishments.

**I. REVELANT FACTS**

On November 28, 2022, Mr. Marquis was arraigned on charges of Carrying a Firearm Without a License, in violation of M.G.L. c. 269 § 10(a), and Possession of Ammunition without an FID Card, in violation of M.G.L. c. 269 § 10(h)(1). It is alleged that, on September 22, 2022, Andover State Police were dispatched to Interstate 495 in the city of Lowell to a motor vehicle

accident. Upon arrival, Mr. Philip Marquis was identified as one of the parties that was involved in the motor vehicle accident. In speaking to the police, Mr. Marquis removed a 9MM Ruger Pistol from his pocket and stated, "I just want to let you know that I have this." Trooper Avery Morin asked Mr. Marquis if the firearm was loaded, and Mr. Marquis stated that it was not. Trooper Morin told Mr. Marquis to put the firearm back in his pocket and sit on the guardrail, and Mr. Marquis complied. After Trooper Morin was done speaking with the other driver involved in the accident, he asked Mr. Marquis if he had a license to carry a firearm in Massachusetts, and Mr. Marquis said that he did not. Trooper Morin asked where he was coming from and driving to, to which Mr. Marquis replied that he was traveling from his home in Rochester, New Hampshire to his place of work in Massachusetts. Trooper Morin took possession of the firearm and eventually told Mr. Marquis to go in the tow truck and keep an eye out for a summons in the mail as charges may come for the possession of the firearm.

Mr. Marquis provided police with an address of 150 Rochester Hill, Apt #3 in Rochester, NH and provided a New Hampshire driver's license (photo enclosed). Mr. Marquis lawfully purchased the firearm in New Hampshire (receipt enclosed). New Hampshire does not require law-abiding citizens to obtain a license before exercising their constitutionally-protected right to bear arms. New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111, 2123 n.1 (2022) (citing N. H. Rev. Stat. Ann. § 159:6 (Cum. Supp. 2021)).

## **II. ARGUMENT**

### **A. Massachusetts laws proscribing the possession of a firearm, under M.G.L. c. 269 § 10, impermissibly infringe on the fundamental right to keep and bear arms as guaranteed by the Second Amendment to the U.S. Constitution.**

The right to keep and bear arms for self-defense is a fundamental, enumerated right provided to individuals by the United States Constitution. U.S. Const. amend. II; Bruen, 142 S.

Ct. at 2122, 2151; Caetano v. Massachusetts, 577 U.S. 411, 413 (2016); D.C. v. Heller, 554 U.S. 570, 599 (2008); McDonald v. City of Chicago, Ill., 561 U.S. 742, 767 (2010) (applying Heller to the states). Most recently, the SJC clearly extended Bruen to apply to Massachusetts courts and upheld the constitutional right to possess a firearm outside the home. Commonwealth v. Guardado, 491 Mass 666 (2023). The SJC stated that “the Second Amendment to the United States Constitution protects an individual’s right to carry a firearm in public” and that “possession of a firearm in public is constitutionally protected conduct”. Id at 668. The SJC further held that “possession of a firearm outside the home cannot, absent some extenuating factor ... be punished by the Commonwealth.” Id at 690. The Supreme Court in Bruen provides examples of extenuating factors such as general bans of firearms in schools and courthouses, which are of course not the facts in the present case. The Supreme Court also differentiates laws on dangerous and unusual weapons stating that “the Second Amendment protects the possession and the use of weapons that are in common use at the time”, and specifically states that “handguns are indisputably common use for self-defense today and are in fact the quintessential self-defense weapon”. Id at 2128 and 2142.<sup>1</sup> In the present case, Mr. Marquis possessed a handgun, which is constitutionally protected conduct.

Traditionally, Courts of Appeals in the United States had used a two-step approach in evaluating Second Amendment claims. Bruen at 2126. Despite the popularity of the two-step methodology, the Supreme Court disavowed it as “one step too many.” Id. at 2127. The Court approved of the first step in the methodology saying it was “consistent with Heller, which demands a test rooted in the Second Amendment’s text, as informed by history.” Id. The Court

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<sup>1</sup> Guardado does not impact this holding because the firearm in this case is *not* a high-capacity firearm. The SJC in Guardado declined to apply Bruen to large-capacity firearms, and that portion of the opinion is inapplicable in this case.

rejected the second step of the approach, however, which called for means-end scrutiny.

“Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” Id.

Several Federal Courts have grappled with how Bruen has changed the landscape of Second Amendment analysis with respect to *who* may lawfully possess firearms. Analyses of these challenges have largely centered around the federal law prohibiting people who have been convicted of a crime punishable by more than one year of imprisonment. 18 U.S.C. §922(g)(1). Federal District Courts have generally held that there are historical analogues for excluding convicted felons from the right to bear arms under the Second Amendment. See e.g. U.S. v. Coombes, --- F.Supp.3d ----, 2022 WL 4367056 (N.D. Oklahoma, 2022). However, other restrictions in §922 have been found to be unconstitutional. See U.S. v. Hicks, --- F.Supp.3d ----, 2023 WL 164170 (W.D. Texas, 2023) (holding that §922(n), which made it unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ... receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, is unconstitutional as it lacked an appropriate historical analogue).

The Massachusetts statutes at issue in the current case present a somewhat different problem in terms of their constitutionality. Whereas §922(g)(1) proscribed a specific, limited class of people from possessing firearms, M.G.L. c. 269 § 10 prohibits people from possessing firearms without a license in a blanket fashion. While the Massachusetts licensing laws do enumerate certain people who would be excluded from obtaining a license to carry a firearm, see M.G.L. c. 140 § 131(d), c. 269 § 10 encompasses all people as a baseline. § 10 presents a significant constitutional infirmity in that it is overbroad in the conduct it encompasses.

- i. M.G.L. c. 269 § 10 is overbroad as it ensnares constitutionally protected actions and is, therefore, unconstitutional.

As described in detail below, the Massachusetts firearm licensing laws restrict otherwise law-abiding nonresidents from exercising their right to defend themselves in public by allowing them to carry their firearms only when participating in a shooting competition, hunting, or attending a meeting or exhibition of any organized group of firearms collectors. There are no provisions for nonresidents to bear arms in public for self-defense. Under Bruen, Massachusetts' limits on nonresidents' ability to bear arms are unconstitutional and must fall.

"A statute may be overbroad, and thus unconstitutional, if 'in its reach it prohibits constitutionally protected conduct.'" Commonwealth v. Ora, 451 Mass. 125, 128 (2008) quoting Planned Parenthood League of Mass., Inc. v. Operation Rescue, 406 Mass. 701, 715 (1990). While the government may legitimately prohibit certain actions, those prohibitions must be made narrowly and precisely to avoid suppressing constitutionally protected conduct. Id. Chapter 269 § 10 has thus far survived constitutional challenges, in large part, because Massachusetts courts had construed the decisions in Heller and McDonald to only protect possession of a firearm in one's home. See Gouse, 461 Mass. at 802. However, the SJC recently abrogated Gouse with Guardado stating that, "general prohibition against carrying a firearm outside the home is unconstitutional." Guardado, 491 Mass 666.

Now that the Supreme Court, and the Supreme Judicial Court of Massachusetts in Guardado, has made clear that possession of a firearm outside one's home is also constitutionally protected conduct, chapter 269 § 10 can no longer survive in its current form. While the government may be justified in requiring licensing as a prerequisite to possession of a firearm, generally, and is certainly justified in continuing to proscribe the use of firearms in the



commission of other crimes, the rigidity by which § 10 operates now ensnares and proscribes conduct by otherwise law-abiding citizens, engaged in constitutionally protected behavior, from other jurisdictions. In this way, § 10 has now been clarified as being overbroad in its scope.

Chapter 269 § 10 and its various subsections generally proscribe possession of a firearm unless a person meets one of a handful of exceptions. In relevant part, those exceptions are:

(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

M.G.L. c. 269 § 10(a).

Chapter 140 § 131F requires nonresidents of Massachusetts to apply for a “Temporary License to Carry Firearms” and directs the colonel of the Massachusetts State Police to issue such a license if the nonresident is entering the Commonwealth “for purposes of firearms competition.” Chapter 140 § 131G expands this by not requiring nonresidents to obtain a license, temporary or otherwise, but only if the nonresident is traveling in or through the Commonwealth “for the purpose of taking part in a pistol or revolver competition or attending any meeting or exhibition of any organized group of firearm collectors or for the purpose of hunting.”

The licensing exemptions for nonresidents found in Chapter 140 §§ 129C (h) and 131G do not save the statutes from constitutional failure. Even if the court were to interpret § 129C (h) as applying to all firearms and not just rifles or shotguns,<sup>2</sup> none of the narrow exceptions

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<sup>2</sup> The maxim of negative implication, although a guide and not a command, strongly supports the idea that 129C (h) should not be interpreted this way. See Halebian v. Berv, 457 Mass. 620, 628

provided in either statute comply with the requirements of the Second Amendment, as clarified by the Supreme Court and the SJC. “The Second Amendment’s plain text thus presumptively guarantees ... a right to ‘bear’ arms in public for self-defense.” Bruen, 142 S.Ct. 2135. “It is now incontrovertible that a general prohibition against carrying a firearm outside the home is unconstitutional.” Guardado, 491 Mass at 666. The Supreme Court also found that there is no historical tradition to support restricting public carry of law-abiding citizens only to those who demonstrate a particularized need for self-defense. Bruen, at 2138. When examining the historical framework, one of the closest historical analogues were the Massachusetts “surety” laws from the mid-19<sup>th</sup> century. Id. at 2148. These laws required anyone who was reasonably likely to breach the peace, and who stood accused, to post a bond before being allowed to carry a weapon publicly. Id. The Supreme Court disavowed these laws as providing historical support for restricting public carrying, noting that the only case the Court could find about the laws involved a justice of the peace declining to impose such a bond despite allegations that arms-bearer had threatened to wound, main, and kill the complainant. Id. at 2149. The Court further observed that historical data suggested that these laws were only enforced against black defendants who may have been targeted for selective or pretextual enforcement. Id.

The Massachusetts licensing laws restrict otherwise law-abiding nonresidents to only have the ability carry their firearms when participating in a shooting competition, hunting, or attending a meeting or exhibition of any organized group of firearms collectors. The exceptions

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(2010). Such an interpretation would make 131G superfluous and statutes are to be interpreted such that “none of its words [are] to be regarded as superfluous.” Milford v. Boyd, 434 Mass. 754, 757 (2001). By interpreting 131G as providing special scenarios in which pistols and revolvers may be used within the Commonwealth, as opposed to unloaded and stored, the two statutes can exist in harmony with each other. See DiFiore v. American Airlines, Inc., 454 Mass. 486, 491 (2009).

provided explicitly deny law-abiding nonresidents of the Commonwealth the opportunity to public carry for the purpose of self-defense. “The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees. We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses against him. And it is not how the Second Amendment works when it comes to public carry for self-defense.” Id. at 2156 (internal quotations omitted). The Massachusetts licensing scheme violates the Second and Fourteenth Amendments to the U.S. Constitution “in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” Id. The SJC recently stated that the Second Amendment Right is fully applicable to the States, and “possession of a firearm outside the home is constitutionally protected conduct” that cannot be punished by the Commonwealth absent some extenuating circumstances. Guardado, 491 Mass at 689-690.

Chapter 140 § 131 is silent as to all other classes of otherwise law-abiding, nonresident citizens. Under this rigid licensing regime, an otherwise law-abiding nonresident wishing to visit the Commonwealth for recreation, business, or another purpose must either abandon their fundamental right to self-defense at the border of the Commonwealth or abandon their plans to travel in or through the Commonwealth, even if those persons were licensed to carry such firearms by other jurisdictions in the United States. Massachusetts currently does not

acknowledge valid licenses from ANY other states.<sup>3</sup> Now that the Supreme Court and the Supreme Judicial Court of Massachusetts have made it abundantly clear that possession of a firearm outside the home is constitutionally protected, such an over-reaching licensing scheme cannot stand.

- ii. The licensing scheme in Massachusetts, and its gun control regulations, must now be deemed unconstitutional unless the Commonwealth can identify a historical tradition of firearms regulations that imposed a “comparable burden” on the right to bear arms.

The Supreme Court has clearly established, and the SJC acknowledges and confirms, that the Second Amendment should no longer be subject to the traditional “means-end scrutiny,” but rather strict scrutiny should apply. Bruen 142 S. Ct. at 2127. “Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” Id. If the Commonwealth fails to meet this burden “to identify an American tradition justifying” the regulation at issue, it cannot constitutionally be enforced. Id. Although perhaps anomalous, the Supreme Court’s holding now forbids courts from “consider[ing] the State’s interest in preventing gun violence, the effectiveness of the contested law in achieving that interest, the degree to which the law burdens the Second Amendment right, [or], if appropriate, any less restrictive alternatives.” Id. at 2190 (Breyer, J., dissenting). Rather, reviewing courts must “rely nearly exclusively on history” to decide whether the statute withstands constitutional challenges. Id. at 2174.

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<sup>3</sup> <https://www.mass.gov/info-details/firearms-license-frequently-asked-questions>. The information on this website acknowledges that restricting licenses for purposes of “shooting competitions” or “hunting” are unenforceable after Bruen. However, the statutes remain unchanged at this time and does not acknowledge the recent Guardado decision.

The Petitioners in Bruen itself, Koch and Nash, were granted licenses to carry firearms by the state of New York, but were limited to specific purposes: hunting and target shooting. Id. at 2125. The Supreme Court did not find historical justifications for such specific restrictions, or any, on the right to public carry for self-defense. Id. at 2138 (“But apart from a handful of late-19th-century jurisdictions, the historical record compiled by respondents does not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense. Nor is there any such historical tradition limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense.”). This issue is very prominently similar to the restrictions that nonresidents face in Massachusetts. There was no historical justification for such restrictions in New York and there are none for Massachusetts, as the SJC in Guardado appears to agree as the Court’s ruling admittedly is “dictated by the Court’s decision in Bruen”.

Guardado at 694.

The Supreme Court held that the Court “will not stake [their] interpretation of the Second Amendment upon a single law, in effect in a single State, that contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms for defense in public”. Bruen at 2153. Thus, it translates that the Massachusetts firearm statutes would not be upheld if the Supreme Court were to review this case, and any others similarly situated.

B. Massachusetts laws proscribing the possession of a firearm, under M.G.L. c. 269 § 10, and Massachusetts firearms licensing laws impermissibly infringe on Mr. Marquis’s fundamental right to keep and bear arms as guaranteed by the Second Amendment to the U.S. Constitution.

The Fourteenth Amendment to the U.S. Constitution grants people the fundamental right to equal protection of the laws and the right to travel between and among the several states. U.S. Const. amend. XIV; Shapiro v. Thompson, 394 U.S. 618, 629 (1969). The right to travel freely

between states is a fundamental right provided by the Fourteenth Amendment privileges and immunities clause. See Shapiro, 394 U.S. at 629 (“[T]he nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.”); Saenz v. Roe, 526 U.S. 489, 499-504 (1999) (reaffirming Shapiro and the fundamental right to travel as protected by the Fourteenth Amendment privileges and immunities clause); see also Passenger Cases, 7 How. 283, 48 U. S. 283, 492 (1849) (“[W]e are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.”).

A law implicates the right to travel “when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right.” Attorney Gen. of N.Y. v. Soto-Lopez, 476 U.S. 898, 903 (1986) (internal citations omitted); see also Pollack v. Duff, 793 F.3d 34, 46 (D.C. Cir. 2015) (“Although a durational residence requirement does not directly regulate travel, it does penalize the exercise of that right by prohibiting a person who has recently traveled to the state from receiving a benefit available to a longer-term resident of that state.”).

When the government uses a classification to treat different classes of otherwise-similarly-situated people differently with regard to the exercise of a fundamental right, strict scrutiny applies and the government must proffer a compelling governmental interest that is achieved through narrowly tailored means. See U.S. Const. Amend. XIV; Shapiro v. Thompson, 394 U.S. 618, 629 (1969); Bruen, 142 S. Ct. 2151 (describing that the right to bear arms is “fundamental”). Massachusetts uses gun ownership or possession to penalize the exercise of the

right to interstate travel for otherwise similarly-situated people. That being the case, the firearms restrictions must be narrowly tailored to meet a compelling government interest. While the Commonwealth may put forward that the government interest served by the Massachusetts licensing laws is the prevention of gun violence, no matter how compelling that interest may be, it is inescapable that, in the wake of Bruen and Guardado, it is clear that those laws are not narrowly tailored to meet that interest.

As discussed previously, the core issue at the heart of Bruen was to address issues surrounding licensing for people seeking firearms for self-defense. Bruen, 142 S. Ct. at 2133. The Supreme Court identified this objective as the “central component” of the Second Amendment. Id. Without belaboring points previously discussed, Massachusetts provides no exemption for nonresidents of the Commonwealth to possess firearms for their own self-defense, but rather limits nonresidents to certain activities (shooting competitions, hunting, etc.) for which they may exercise their fundamental right. Further, the SJC recently held that an American’s right to bear arms for purposes of self-defense extends beyond the home and to public carry. Guardado at 698.

At the same time, Massachusetts does provide a 60-day grace period for new residents of the Commonwealth before being required to obtain a license to possess their firearm within the Commonwealth. M.G.L. c. 140 § 129C (j); Harris, 481 Mass at 776. In this way, Massachusetts provides a means by which a person resettling within the Commonwealth can ensure their continued right to self-defense remains unhindered while reasonably restricting the possession of their firearm. On the other hand, visitors to the Commonwealth are provided no such protection. This differential treatment of nonresidents, like Mr. Marquis, and new residents violates nonresidents’ rights to equal protection because this distinction is not narrowly tailored at



achieving the interest in preventing gun violence. See Smith v. D.C., 387 F. Supp. 3d 8, 27 (D.D.C. 2019); cf. Mem'l Hosp. v. Maricopa Cty., 415 U.S. 250, 254-64 (1974) (holding unconstitutional a state law establishing in-state residency of a fixed duration as a prerequisite to receiving free, non-emergency medical care).

Finally, the Commonwealth must again demonstrate historical justification for the rigid restrictions the licensing scheme places on nonresidents of the Commonwealth. While the Commonwealth is free to enact its own regulatory scheme, its wholesale rejection of licensure by any other competent jurisdiction in the nation has no such historical justification. It defies reason that reciprocity is given for other licenses, like for operating motor vehicles, which do not implicate fundamental constitutional rights and not for licenses which do. See M.G.L. c. 90 §§ 3, 10.

The invalidation of the only legal means by which an individual can exercise a fundamental right has significant ramifications on the ability to punish an individual for the exercise of this right: a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license. Shuttlesworth v. City of Birmingham, Ala., 394 U.S. 147, 151 (1969). At the time Mr. Marquis got into a car accident and had an encounter with the police, Massachusetts provided him with only one legal means by which to exercise his right to public carry: to obtain a nonresident temporary license to carry firearms. That path is now unconstitutional under Bruen and Guardado because the licenses Massachusetts provides to nonresidents do not allow for carrying solely for the purpose of self-defense. According to Shuttlesworth, faced with an unconstitutional restriction on his constitutional right, the Defendant was free to engage “with impunity in the exercise of the right . . .” Id.

The SJC makes it clear that if a defendant “engaged in the constitutionally protected conduct of possessing [a] firearm in public” is convicted of a crime solely on that basis, such a conviction would violate his/her constitutional rights. Guardado at 690. The SJC, quoting the Supreme Court, held that “the Second Amendment guarantees an individual right to possess and carry weapons in case of confrontation and confrontation can surely take place outside the home”, which “requires that one have a right to carry handguns publicly.” Id at 690. Further, the ammunition charge must also be dismissed as “a general prohibition on ammunition would violate the Second Amendment” as it would “render it impossible for citizens to use their firearms for purposes of self-defense”. Id at 692-693. “It is undisputed that [Mr. Marquis] – [an] ordinary, law-abiding, adult citizen – [is] part of ‘the people’ whom the Second Amendment protects.” Bruen at 2119. Mr. Marquis’s constitutional rights are being violated by the Commonwealth pursuing these charges, and this Court must dismiss them.

- C. The sentencing schemes, particularly the ones imposing mandatory minimum committed sentences, penalize constitutionally protected conduct and are disproportionately punitive in comparison to other firearms-related offenses and, as such, violate Mr. Marquis’s rights under the Eighth Amendment of the U.S. Constitution and Article 26 of the Massachusetts Declaration of Rights, as well as the Second Amendment of the U.S. Constitution.

In the present case, if Mr. Marquis is convicted of count 1 in the criminal complaint, he will be subject to a mandatory minimum period of incarceration of one year and six months in the house of correction. The Eighth Amendment of the U.S. Constitution and Article 26 of the Massachusetts Declaration of Rights protect an individual from being subjected to cruel and unusual punishments. It comes as no surprise that Chapter 269 § 10 has been subject to such challenges in the past.

A punishment “must be so disproportionate to the crime that it shocks the conscience and offends fundamental notions of human dignity.” Commonwealth v. Jackson, 369 Mass. 904, 910 (1976). The burden rests on the defendant to prove such a disproportion because the Legislature is given broad discretion for determining the punishment of a given offense. Cepulonis v. Com., 384 Mass. 495, 497 (1981). The SJC has laid out a three-prong test to determine if a punishment is so disproportionate.

The first prong requires the Court to “consider[] the nature of the offense and the offender in light of the degree of harm to society.” Jackson, 369 Mass. at 910. The second prong “involves a comparison between the sentence imposed here and punishments prescribed for the commission of more serious crimes in the Commonwealth.” Cepulonis, 384 Mass. at 498. And finally, the Court “examines in the disproportionality analysis is a comparison of the challenged penalty with the penalties prescribed for the same offense in other jurisdictions.”

In the present case, the offenses involved are possessory ones. No violence was alleged to have occurred or even threatened. Police were called to the location because there was a car accident – no illegal behavior was alleged. In addition, Mr. Marquis himself has no prior criminal convictions, is an honorably discharged veteran, and was engaged in presumptively constitutionally protected conduct. Furthermore, Mr. Marquis lawfully purchased the firearm from the state of New Hampshire and New Hampshire does not require him to have a license to carry his firearm.

As to the second and third prongs, the SJC has acknowledged that the penalties, particularly the mandatory minimum ones, in § 10 are in many ways harsher than other offenses involving firearms. Jackson, 369 Mass. at 915. “Compared to punishments for other crimes in the

Commonwealth, the s 10(a) penalty in some instances may be more severe, for an offender could be incarcerated for a longer period of time than one sentenced for a violent crime involving harm to person or property, although the latter carries a longer potential sentence. Also, some offenders, because of the exercise of discretion by a sentencing judge, may serve no time in jail for an offense considered to be more harmful to society.” Id. For instance, had Mr. Marquis been licensed under Massachusetts law and then assaulted and battered someone by means of discharging that firearm, he would not be subject to a mandatory minimum term of incarceration. M.G.L. c. 265 § 15E. The SJC further acknowledged that there appeared to be no other states that punished first-time offenders for simple possession with mandatory minimum periods of incarceration, but noted that some states provided for potentially higher maximum possible penalties. Jackson, 369 Mass. at 913.

The Court ultimately laid the issues to rest by saying, “We do not believe that the disparity between this State and others is so compelling as to indicate ‘more than different exercises of legislative judgment . . . a difference between unrestrained power and that which is exercised under the spirit of constitutional limitations formed to establish justice.” Id. at 914. The Court further held that because the statutes at issue did not impact fundamental constitutional rights, it need only apply a rational basis test to the statute and did, in fact, find that the statute was rationally related to the government interest. Id. at 917-918.

However, the holding of the Jackson Court is no longer valid now that the Supreme Court has made clear, and the SJC acknowledged, that “[t]he constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” Bruen, 142 S.Ct. at 2156 quoting McDonald, 561 U.S. at 780, 130 S.Ct. 3020. This right is a fundamental one guaranteed by the Second Amendment.

Id. at 2151 (observing that the fundamental right of freed slaves to bear arms was systematically thwarted). Such “unrestrained power” can no longer be said to be “exercised under the spirit of constitutional limits.” Jackson, 369 Mass. at 914. Any government regulation restricting this right must be subject to strict scrutiny and, as previously discussed, the Massachusetts licensing scheme is far from narrowly tailored. Bruen, 142 S.Ct. at 2126 (noting that self-defense in public is a core right of the Second Amendment and so courts must apply strict scrutiny when evaluating government restrictions against it). As it stands today, the balancing test now weighs in favor of finding that sentences prescribed under § 10, especially the mandatory minimum ones, particularly those for first-time offenders, shock the conscience and constitute violations of the Eighth Amendment and Article 26.

In any event, in what goes without saying at this point, the Commonwealth still must present the historical justifications for such strict and severe punishments. Such punishments considerably burden one’s fundamental right to bear arms for self-defense. The Supreme Court observed that when considering “whether modern and historical regulations impose a comparable burden on the right of armed self-defense,” Id. at 2133, the nature and severity of the penalty authorized by the regulation are significant factors. See id. at 2149 (concluding that antebellum statutes levying monetary sanctions of uncertain size did not impose burden on right to bear arms comparable to that imposed by New York statute whose violation “can carry a 4-year prison term or a \$5,000 fine”). In fact, Massachusetts paved the way for these mandatory-minimum sentencing schemes for possession-only offenses, even for first time offenders. The mandatory-minimum provisions were first added to § 10 with the so-called “Bartley-Fox” amendment. St.1974, c.649 § 2. No historical justification exists for these sentencing schemes because these were the first laws anywhere in the entire country to impose a mandatory-

minimum sentence on a first-time offender for the mere possession of a firearm. Jackson, 369 Mass. at 913. This lack of historical justification demands, in yet another way, the downfall of Chapter 269 § 10 in its current form, which the SJC in Guardado seems to affirm.

Further, in Second Amendment cases, courts are now forbidden from “consider[ing] the State’s interest in preventing gun violence, the effectiveness of the contested law in achieving that interest, the degree to which the law burdens the Second Amendment right, [or], if appropriate, any less restrictive alternatives.” Bruen at 2190. Instead, reviewing courts must “rely nearly exclusively on history” to decide whether a modern statute passes constitutional muster. Id at 2174. The Supreme Court has held that experimentation of mandatory minimum sentencing schemes is not permitted by the Second Amendment and cannot be at the expense of “the right of armed self-defense”. Id at 2133. Mr. Marquis is challenging the application of the mandatory minimum sentence, which does not “impose a comparable burden on the right of armed self-defense” to the burdens imposed by permissible historical regulations. Id at 2133. The Commonwealth must be able to “affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms” or the regulation may not constitutionally be enforced. Id at 2127. If the Commonwealth is unable to do so, § 10(a)’s mandatory minimum sentencing provision is rendered unconstitutional and this Court must dismiss the pending charges.

### **III. CONCLUSION**

The charges against Mr. Marquis flow from the failure of a New Hampshire resident, who properly purchased a firearm and was able to lawfully possess and carry it in New Hampshire, to obtain a nonresident temporary license pursuant to M.G.L. c. 140, § 131F and an

FID card pursuant to M.G.L. c. 140 § 129B. However, Massachusetts' firearms laws are overbroad and unduly restrictive that gut the core right to carry a firearm in public in order to defend oneself from all nonresidents of Massachusetts – people like Mr. Marquis. The licensing regime forces nonresidents to cut a wide berth around the Commonwealth or else face cruel and harsh penalties for exercising their fundamental rights.

The Legislature must do more than substitute one word for another in a handful of sections in the firearms licensing regime. As it stands today, the Legislature has failed to bring the firearms licensing laws of Massachusetts in line with the commands of the Second Amendment. For this reason, and for all of the reasons discussed herein, the charges against Mr. Marquis must be dismissed.

Respectfully submitted,  
PHILIP MARQUIS,  
By his attorney,

/s/ Lindsey Kelly

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Dated: June 23, 2023

#### **CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing motion upon Assistant District Attorney Timothy Andrea via email at timothy.andrea@state.ma.us on June 23, 2023.

/s/ Lindsey Kelly

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Lindsey Kelly



# INCIDENT REPORT

State Police Andover

Rte. 125  
Andover, MA 01810  
(978) 475-3800

2022-0A1-006161

## Narrative

Narrative by Trooper Avery N Morin #3843

### MARQUIS SUMMONS

On Thursday, September 22, 2022 I, Tpr. Avery Morin #3843, was dispatched to a two motor vehicle crash on Interstate 495 (public way) in the city of Lowell. Prior to arriving on scene I was made aware via the radio that Lt. Dana Atkinson #2296 was on scene assisting the involved parties. At approximately 0801 hours I arrived on scene and observed a 2021 Toyota Tundra bearing NH registration #4842228 stationary in the break down lane positioned behind a 2023 Freightliner M2 boxtruck bearing Massachusetts registration #W80670. I also at this time observed Lt. Atkinson standing in front of the Toyota speaking with two male parties later identified as MARQUIS, PHILIP (NH OLN NHL10523434 DOB 07/19/1967), the operator of the Toyota, and HEREDIA, MANUAL (RI OLN 3070828 DOB 07/27/1993), the operator of the Freightliner. I then exited my cruiser to begin my investigation. I approached the two males in order to retrieve their license and registrations, as I was doing so MARQUIS removed a 9MM Ruger Pistol (SN#31772784) from his pocket and stated "I just want to let you know that I have this." I then asked MARQUIS if the weapon was loaded to which he related it was not and simultaneously began racking the weapon in full view of the public. HEREDIA, observing the same began moving back to his vehicle as he was visibly nervous. I then instructed MARQUIS to secure the weapon back in his pocket and to sit on the guardrail in front of his vehicle. I then escorted HEREDIA back to his vehicle, interviewing him on the circumstances of the crash and examining the damage to his vehicle as I did so.

I then returned to speak with MARQUIS and secure the firearm. Prior to securing the weapon I asked MARQUIS if he possessed a license to carry a firearm in Massachusetts and where he was coming from and driving to. MARQUIS advised that he did not possess a license to carry a firearm in Massachusetts and that he was traveling from his home in Rochester New Hampshire to his place of work in Massachusetts. I then secured the firearm and advised MARQUIS that in order to possess a pistol on his person in Massachusetts he must have a valid license to carry and to transport a firearm through the state it must be in a locked container with an end destination in another state. I informed MARQUIS that he was in violation of Massachusetts law, I would be seizing the pistol and that he would be summonsed to Court. I then returned to my cruiser and confirmed that MARQUIS did not possess a license to carry in Massachusetts as well as confirmed that he was not federally prohibited from

Trooper Avery N Morin #3843

Approved  
Approved by: Sergeant Joseph Hickey ID# 2869  
Signature

Trooper Avery Morin #3843

Supervisor

ID#

09/29/2022 13:47:49





## INCIDENT REPORT

State Police Andover

Rte. 125  
Andover, MA 01810  
(978) 475-3800

2022-0A1-006161

carrying a firearm (therefore legally allowed to carry a firearm in his home state of New Hampshire). I completed an information exchange between the two parties and MARQUIS was issued warning #605847AB for 720CMR9.06 for fail to use care in stopping. Lowell Fleet arrived on scene and towed the Toyota without incident.

The 9MM Ruger Pistol SN#31772784, a Ruger 9MM magazine and 12 9MM rounds were seized and secured as evidence in the A-1 temporary contraband locker.

A BWC and CMC were in use during the investigation of this incident.

This report is a summary of events. I respectfully request this case to be closed.

Trooper Avery N Morin #3843

Approved  
Approved by: Sergeant Joseph Hickey ID# 2869  
Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Joseph Hickey", written over a horizontal line.

Trooper Avery Morin #3843

Supervisor

ID#

09/29/2022 13:47:49



DRIVER LICENSE

NOT FOR FEDERAL IDENTIFICATION

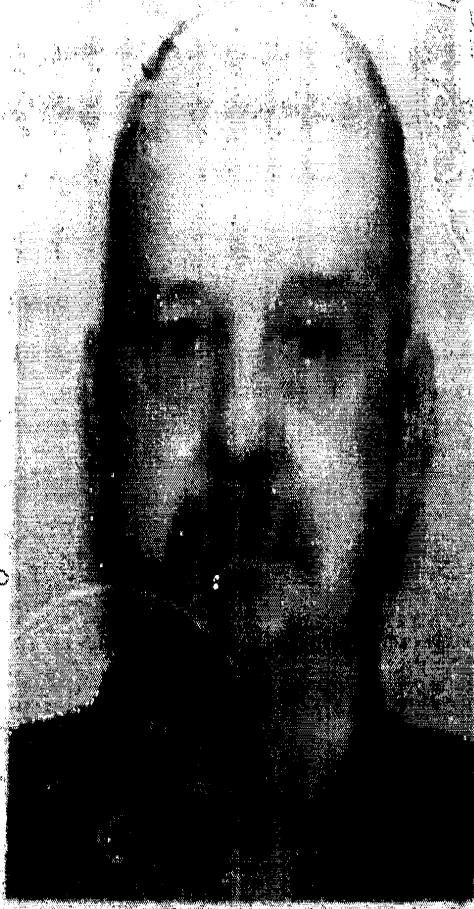
2025

NHL10523434

MARQUIS

PHILIP JOSEPH JR

150 ROCHESTER HILL #3  
ROCHESTER, NH 03867



M 5'-11" 195 lb BLU BRO

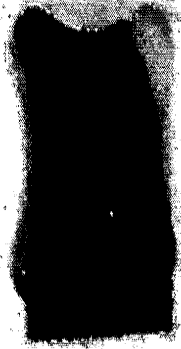
08/15/2022

07/19/1967

CLASS D

RESTRICTIONS  
NONE

ENDORSEMENTS  
NONE



02440654

# RENAISSANCE FIRE ARMS

Thank you for shopping with us

10/6/2018 3:13:17 PM

Layaway 10/4/2018 Payment (10\*22

7)

52.00

PLDER P94

S/N: 208-01992

Subtotal

52.00

Tax

0.00

Total

52.00

Debit

52.00

Change

0.00

Layaway Total

250.00

Layaway 10 \* 22

Layaway Payment

10/4/2018

52.00

10/6/2018

Loyal Customer: philip marquis Jr.

Customer Phone: (803) 981-7804

Your Cashier Today was Colby H.

P081

Store #1

55 Calif HWY STE 1

Barrington, NH 03825

Phone: (803) 984-4887

Email: INFO@RENAISSANCE.COM

Visit us at: WWW.RENAISSANCE.COM



SALE

Invoice: 574384

Account: DEBIT \*\*\*\*\*9123

Payment Type: DEBIT

Cardholder: MARQUIS/PHILIP

Card Entry Mode: Swiped

Result: CAPTURED

Authorization Code: 015590

Approved Amount: US\$ 52.00

077

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

LOWELL DISTRICT COURT  
DOCKET NO. 2211CR003931

COMMONWEALTH

v.

PHILLIP MARQUIS

---

COMMONWEALTH'S NOTICE OF APPEAL

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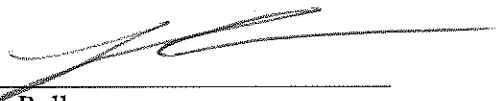
NOW COMES the Commonwealth in the above-entitled matter and respectfully gives notice to this Honorable Court, pursuant to M.R.A.P. 3, of its intent to appeal the opinions, rulings, and judgments of this court, including the allowance of the defendant's motion to dismiss, as well as the denial of the Commonwealth's motion for reconsideration.

Respectfully Submitted,

For the Commonwealth

MARIAN T. RYAN  
DISTRICT ATTORNEY

By:

  
\_\_\_\_\_  
Ryan Rall  
Assistant District Attorney  
Middlesex District Attorney's Office  
15 Commonwealth Avenue  
Woburn, MA 01801

Dated: 10/6/23

**CERTIFICATE OF SERVICE**

I hereby certify that I delivered one copy of this motion to counsel for the defendant via electronic mail on 10/6/23.

By:

A handwritten signature in black ink, appearing to read 'Ryan Rall', written over a horizontal line.

Ryan Rall  
Assistant District Attorney

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

MIDDLESEX, ss.

NO. SJC-13562

COMMONWEALTH

v.

PHILIP MARQUIS

---

ON THE COMMONWEALTH'S APPEAL FROM AN ORDER OF  
THE LOWELL DISTRICT COURT

---

BRIEF FOR THE DEFENDANT-APPELLEE

---

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JULY 26, 2024

ATTORNEY FOR DEFENDANT  
PHILIP MARQUIS

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## ISSUES PRESENTED

1. Statutes supersede advisory opinions. After N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022), the Attorney General advised nonenforcement of any restrictions on nonresident firearm licenses. But the Legislature later reenacted G.L. c. 140, § 131F, retaining the firearms competition restriction to nonresident licenses. May the Commonwealth nevertheless prosecute all unlicensed nonresident travelers under the auspices of G.L. c. 140, § 131F and G.L. c. 269, § 10(a) by relying upon the Attorney General's advisory?
2. To overcome a Second Amendment challenge, the U.S. Supreme Court requires that any law infringing upon this fundamental right comport with a relevantly similar historical tradition. In search of one, the Commonwealth canvasses laws and regulations tailored to dangerous individuals. Does this proposed historical analogue prove insufficient to justify the temporary or indefinite disarmament of all nonresident travelers through a discretionary licensing regime?
3. Nonresidents may not travel with their handguns into Massachusetts unless and until a colonel, in his or her discretion, grants them licenses. Until they obtain licenses, they may either exercise their right to interstate travel or their right to bear arms but not both. Does

the licensing scheme thereby burden or deter Marquis's right to interstate travel without a compelling justification? Where, among other differential treatment, rifle and shotgun-carrying travelers are exempted from a G.L. c. 269, § 10 prosecution while handgun-carrying travelers are not, does this scheme violate Marquis's right to equal protection?

4. G.L. c. 140, § 129B and G.L. c. 269, § 10(h) require that anyone with a residence or place of business in Massachusetts must obtain a firearm identification (FID) card for their firearm and/or ammunition. Marquis has neither Massachusetts residence nor ownership of a Massachusetts business. May the Commonwealth nevertheless prosecute him for possessing ammunition without an FID card?

### **STATEMENT OF THE CASE**

Mr. Marquis is satisfied with the Commonwealth's statement of the case.

### **STATEMENT OF FACTS**

Marquis is also satisfied with the Commonwealth's recitation of the complaint. Any characterizations of Judge Coffey's rulings and rationales, (Comm. Br. pp. 14-16), will be addressed in the Argument section.

## SUMMARY OF ARGUMENT

The Attorney General correctly advised that, due to Bruen, law enforcement officials could no longer enforce any restrictions upon nonresident firearm licenses. Infra pp. 25-29. The Legislature, however, did not heed that advice and reenacted G.L. c. 140, § 131F, which still restricts nonresidents and other categories of people to licenses permitting their carriage of firearms into Massachusetts only for purposes of firearms competition. Infra pp. 19-28. The Legislature also did not disturb its licensing restrictions in § 131G or its unfavorable treatment of nonresident travelers with handguns (as contrasted with travelers carrying rifles or shotguns) in § 129C. Infra pp. 22-23. Where statutes, not advisories, control and where individuals should not bear the burden of an inter-branch conflict, the Commonwealth may not prosecute nonresidents like Marquis under these facially unconstitutional statutes. Infra pp. 24-31.

The U.S. Supreme Court has held that temporarily disarming people found to be dangerous is predicated upon a relevantly similar founding-era tradition and thus, complies with the Second Amendment. Infra pp. 38-39. However, the Commonwealth points to no historical analogue in any way similar to temporarily or indefinitely disarming all nonresidents who travel within Massachusetts borders. Infra pp. 40-45. Conditioning a nonresident traveler's right to bear arms – even if the nonresident is a law-abiding, adult citizen like Marquis – upon a colonel's

amorphous determination of “suitability” is unconstitutional. Infra pp. 32-38, 46-50. As the Supreme Court indicated in Bruen, “may-issue” licensing regimes like Massachusetts’ are destined to be struck down under the Second Amendment. Infra pp. 46-50.

Massachusetts’ unconstitutional licensing regime burdens the fundamental right of interstate travel which Marquis and other similarly situated nonresidents should be able to conduct undeterred. Infra pp. 50-55. Massachusetts treats them not as welcome visitors but as presumptively untrustworthy, even though the exercise of their fundamental constitutional rights interferes with no Massachusetts resident. Infra pp. 51-53. This treatment flies in the face of our historical tradition standing as “one nation.” Infra pp. 43-44. The licensing scheme also privileges some groups over nonresident travelers like Marquis, violating his right to equal protection. Infra pp. 55-58. Pursuant to § 129B and § 129C, the scheme also provides no process by which nonresidents like Marquis may obtain FID cards for their firearm(s) and/or ammunition. Infra pp. 58-60. Thus, the G.L. c. 269, § 10(h) charge for possession of ammunition without an FID card must be dismissed. Infra p. 60.

**Mass. R.A.P. 16(j)(2) Notice:** Philip Marquis joins and adopts by reference Dean Donnell, Jr.’s Arguments I(C), II and III - in his brief filed with this Court. See Commonwealth v. Donnell, SJC-13561.

## ARGUMENT

The district court (Coffey, J.) correctly dismissed the G.L. c. 269, § 10(a) and § 10(h) charges as the interlocking statutes upon which they are predicated, violate the fundamental rights to keep and bear arms, to equal protection, to travel, and to due process - facially and as applied to Philip Marquis - under the Second, Fifth, Fourteenth Amendments, Article IV, § 2 of the United States Constitution as well as Article 12 of the Massachusetts Constitution. Nonresidents also have no avenue by which to apply for a FID card in Massachusetts and thus, the Commonwealth may not prosecute nonresidents under G.L. c. 269, § 10(h).

This Court reviews statutory interpretation issues and constitutional questions de novo. Commonwealth v. Beverly, 485 Mass. 1, 11 (2020); Commonwealth v. Johnson, 470 Mass. 300, 307 (2014). De novo review covers any legal issues raised pursuant to a motion to dismiss. Commonwealth v. Sullivan, 492 Mass. 36, 42 (2023). This Court may also “may affirm [a motion judge’s] ruling on any grounds supported by the record and the findings of fact.” Commonwealth v. Abdallah, 475 Mass. 47, 51 (2016), quoting Commonwealth v. Bartlett, 465 Mass. 112, 117 (2013).

**I. G.L. c. 140, § 131F (eff. Aug 10, 2022) and § 131G, which supersede the Attorney General’s advisory opinion (June 23, 2022), preclude nonresidents from obtaining licenses to carry firearms for self-defense purposes and are thus unconstitutional.**

G.L. c. 140, § 131F provides that, so long as the nonresident is “not a prohibited person” and “not determined unsuitable”, the licensing authority shall issue the nonresident a temporary license only for purposes of firearms competition. G.L. c. 140, § 131F ¶ 1 states:

A temporary license to carry firearms, rifles or shotguns or feeding devices or ammunition therefor, within the commonwealth, shall be issued by the colonel of state police, or persons authorized by him, to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition if it appears that the applicant is not a prohibited person and is not determined unsuitable to be issued a license as set forth in section 131.

Pursuant to G.L. c. 140, § 131G, which the Legislature has not amended since 1975, a nonresident may “carry a pistol or revolver” for a “pistol or revolver competition”, for hunting, or for a meeting with firearm collectors so long as the nonresident has obtained a reciprocal license<sup>1</sup> from his/her home state, and for certain travelers intending to hunt, they must obtain a hunting license “issued by the commonwealth or by the state of their destination.” Once again, this regulatory

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<sup>1</sup> Massachusetts does not recognize licensing reciprocity with New Hampshire. See Commonwealth v. Harris, 481 Mass. 767, 775 (2019). See also N.H. RSA 159:3, 159:6 and Firearms License Frequently Asked Questions, “Transporting Firearms” (Question 5) at: <https://www.mass.gov/info-details/firearms-license-frequently-asked-questions#transporting-firearms-> (last visited 7/24/24).



labyrinth contemplates no self-defense or unrestricted purpose for nonresident gun owners. If a nonresident does not “have in effect a license to carry firearms issued under” § 131F, he or she “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.” G.L. c. 269, § 10(a)(3), ¶ 6.

Although the Legislature eliminated the wide discretion that the licensing authority had possessed with respect to nonresident applicants, it preserved the usual restrictions for such temporary firearm licenses. The Commonwealth claims that § 131F restricts only “aliens”, not nonresidents, to temporary licenses with specific purposes (such as firearms competition) and that, in any case, this is merely an “academic” question due to the lack of enforcement of any such restrictions. (Comm. Br. p. 23 n.5). Its burial of these assertions in a footnote constitutes waiver. “[A]rguments relegated to a footnote do not rise to the level of appellate argument.” Commonwealth v. Vick, 454 Mass. 418, 433 n.15 (2009), citing Mass. R. App. P. 16(a)(4). The claims otherwise fail for the reasons below.

**A. The plain terms of the current statutory provisions, read harmoniously, restrict nonresidents from applying for temporary licenses to carry firearms except for firearms competitions.**

In claiming, in cursory fashion, that § 131F’s firearms competition restriction only applies to “an alien”, the Commonwealth appears to rely upon the

“last antecedent rule” for its interpretation. Otherwise, the Legislature’s categorization of people (i.e., “a nonresident” or “any person” outside the licensing authority’s jurisdiction or “an alien”) in the disjunctive would not suffice to glean whether the firearms competition restriction applies to one or all categories. “The last antecedent rule provides first that a modifying clause is confined to the phrase that immediately precedes it and not to the phrases appearing earlier.” New England Survey Systems, Inc. v. Department of Industrial Accidents, 89 Mass. App. Ct. 631, 638 n. 17 (2016), citing Hopkins v. Hopkins, 287 Mass. 542, 547 (1934).

First, “[t]he last antecedent rule is not always a certain guide.” New England Survey, 89 Mass. App. at 638. See also Lydon v. Contributory Retirement Appeal Board, 101 Mass. App. Ct. 365, 370-371 (2022). Second, “we do not apply the last antecedent rule when ‘there is something in the subject matter or dominant purpose [of the statute] which requires a different interpretation.’” Id. at 638-639, quoting Hopkins, 287 Mass. at 547. The Commonwealth would not dispute that the phrase immediately following “for purposes of firearms competition” – “if it appears that the applicant is not a prohibited person and is not determined unsuitable” - modifies all categories of people before it. “Another principle of statutory construction ‘leads us to relate the words in question to the associated words and

phrases in the statutory context.’ We must ‘construe the various provisions of a statute in harmony with one another, recognizing that the Legislature did not intend internal contradiction.’” Commonwealth v. Gopaul, 86 Mass. App. Ct. 685, 688 (2014) (citations omitted). “When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.” Porto Rico Ry., Light & Power Co. v. Mor, 253 U.S. 345, 348 (1920). If the Legislature sought to divide the two clauses so that they would modify different subjects, it knew how to accomplish that goal. Where it instead kept the two clauses together, the “natural construction of the language” holds.

Finally, “where two or more statutes relate to the same subject matter, they should be construed together so as to constitute a harmonious whole consistent with the legislative purpose.” Young v. Contributory Retirement Appeal Board, 486 Mass. 1, 11 (2020) (citations omitted). See also Commonwealth v. Adams, 482 Mass. 514, 532 (2019). If the Legislature intended to allow nonresidents to carry or transport firearms beyond restricted purposes, then it would have amended § 131G to either include a self-defense allowance or eliminate the sporting, hunting, and firearm collection restrictions altogether. See Commonwealth v. Sampson, 383 Mass. 750, 757 (1981) (“Had the Legislature intended to embrace within the definition of firearm devices other than those that are weapons by design, it could

have used more general terminology”). The Legislature would have also amended § 129C to include exemptions for “firearms” or “handguns” so that rifle or shotgun-carrying travelers are not privileged over revolver or pistol-carrying travelers. See infra pp. 56-57.

The omissions of a self-defense or generalized purpose for a nonresident’s temporary license are significant indicators of legislative intent. This Court must “listen attentively to what a statute says. [It] must also listen attentively to what [the statute] does not say.” Sutherland Statutes and Statutory Construction, Singer and Singer (7th Ed. 2008), Vol. 2A, § 48A:1 at p. 640 (excerpt from Sixth Annual Benjamin N. Cardozo Lecture, by Felix Frankfurter (reprinted in 47 Columbia Law Review 527 (1947))). “There is generally an inference that omissions are intentional.” Sutherland, Vol. 2A, § 47:25 at pp. 430-431.

Thus, read as a harmonious whole and without any other language indicating otherwise, the two successive phrases - “for purposes of firearms competition if it appears that the applicant is not a prohibited person and is not determined unsuitable” - must modify all categories of people, including nonresidents, preceding them. As the Legislature again precludes a nonresident from obtaining a license to carry an ordinary firearm for self-defense across the Massachusetts border, it has again infringed upon “‘the central component’ of the Second Amendment right.” McDonald v. City of Chicago, 561 U.S. 742, 767 (2010),

quoting District of Columbia v. Heller, 554 U.S. 570, 599 (2008). “Nothing in the Second Amendment’s text draws a home/public distinction with respect to the right to keep and bear arms.” N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1, 32 (2022). No doubt prosecutors have relied upon the Attorney General’s advisory opinion and the purported nonenforcement of any restrictions upon nonresident temporary licenses. But “[w]hen statutory language yields a plain meaning, arguments that its application in a particular case will cause a hardship or lead to an inequity should be addressed to the Legislature.” New England Survey, 89 Mass. App. at 634.

**B. The conflict between the Legislative branch and the Executive branch is not a burden that individuals exercising their constitutional rights must bear.**

Before its 2022 amendment, § 131F provided that a “temporary license” “may be issued...to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition and subject to such terms and conditions as said colonel may deem proper; provided, however, that no license shall be issued to a person who” is a prohibited person (i.e., the (i)–(x) categories). 2015 ALM G.L. c. 140, § 131F (Versions 1 & 2) (Addendum (Add.) 106,109) (emphasis added). In its brief in Commonwealth v. Harris, 481 Mass. 767 (2019), the Commonwealth correctly construed § 131F. “G.L. c. 140 § 131F allows for non-

residents visiting the Commonwealth the opportunity to obtain a temporary permit for purposes of firearms competitions.” It went on to argue that “[s]imply because the Commonwealth has no specific exemption for traveling through the Commonwealth with a handgun...does not render the scheme unconstitutional.”<sup>2</sup>

Enter Bruen. The United States Supreme Court confirmed that the Second Amendment right encompassed the right to carry an ordinary firearm (such as a handgun) in public. Bruen, 597 U.S. at 31. Immediately after Bruen’s issuance, the Attorney General and the Executive Office of Public Safety and Security (EOPSS) issued a “Joint Advisory Regarding the Massachusetts Firearm Licensing Scheme After the Supreme Court’s Decision in [...*Bruen*].” (Add. 143). Its Executive Summary states, in part: “Authorities should no longer deny, or impose restrictions on a license to carry because the applicant lacks a sufficiently good reason to carry a firearm. An applicant who is neither a ‘prohibited person’ or ‘unsuitable’ must be issued an unrestricted license to carry.” (Add. 143).

The Attorney General further states that the “Colonel of the Massachusetts State Police will continue issuing temporary licenses to carry under G.L. c. 140, § 131F, but those licenses will no longer be issued with ‘terms and restrictions.’”

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<sup>2</sup> Commonwealth’s Brief at p. 19 in Commonwealth v. Harris, SJC-12607, available at: [https://www.ma-appellatecourts.org/pdf/SJC-12607/SJC-12607\\_05\\_Appellee\\_Commonwealth\\_Brief.pdf](https://www.ma-appellatecourts.org/pdf/SJC-12607/SJC-12607_05_Appellee_Commonwealth_Brief.pdf) (also filed by the Middlesex District Attorney’s office).

(Add. 145, n. 1). The Attorney General’s advisory likely caused the Department of Criminal Justice Information Services to issue its own undated, online advisory<sup>3</sup> that anyone “will be provided a new LTC [License To Carry] without any such restrictions provided that the licensing authority does not deem [the person] to be a ‘prohibited person’ or ‘unsuitable’ under the law.”

Presumably knowledgeable of both Bruen (issued June 2022) and the Attorney General’s advisory opinion (issued June 2022), in August 2022, the Legislature struck from § 131F the additional layer of discretion granted to the licensing authority for nonresident applicants. 2021 Mass. HB 5163. (See Add. 115 (legislative history striking “may” from “[a] temporary license to carry firearms...may be issued” and replacing “may” with “shall”)). It also struck the ability of the licensing authority to place additional “terms and conditions” upon any temporary license. (Add. 115). But it preserved the firearms competition restriction and let § 131G stand as is. See Sullivan v. Town of Brookline, 435 Mass. 353, 359 (2001) (reasoning that the Legislature’s decision to “preserve” a statutory provision reflected a “conscious choice” to apply it despite substantial amendments to another related statutory provision) and Sutherland, Vol. 2A, § 47:38 at p. 518-519.

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<sup>3</sup> See <https://www.mass.gov/info-details/firearms-license-frequently-asked-questions> (last visited 7/24/24)

Statutes supersede advisory opinions. See Casseus v. Eastern Bus Company, Inc., 478 Mass. 786, 793 n.12 (2018) (concluding that a provision of the common carrier statute supersedes the Attorney General’s advisory opinion “to the extent that they conflict”) and Mahajan v. Dep’t of Env’tl. Prot., 464 Mass. 604, 613 n.13 (2013) (although the courts carefully consider the Attorney General’s advisory opinions, the courts “retain the power to determine for themselves” the proper interpretation of an issue of law) (citation omitted). This is especially true where the statute post-dates the conflicting advisory opinion and retains the previously enacted restrictions. A “statute is not to be deemed to repeal or supersede a prior statute in whole or in part in the absence of express words to that effect or of clear implication.” Commonwealth v. Keefner, 461 Mass. 507, 513 (2012) (citations omitted).

The patently unconstitutional terms of § 131F and § 131G leave the Attorney General’s office in a bind. On the one hand, it must faithfully execute the law as the Legislature enacts. G.L. c. 12, §§ 3, 27; Commonwealth v. Anthes, 71 Mass. 185, 263 (1855). On the other hand, it must also uphold the Constitution and provide advice to the other branches as to what the Constitution requires. See Planned Parenthood League, Inc. v. Attorney Gen., 391 Mass. 709, 714-717 (1984) and G.L. c. 12, § 9. However, this is a conflict exclusively between the Executive and Legislative branches. It is immaterial why, despite the Attorney General’s



advisory opinion, the Legislature chose to continue treating nonresidents differently from residents. See Commonwealth v. Newberry, 483 Mass. 186, 195 (2019) (“Whatever the Legislature’s reasoning in treating ordinary adult offenders differently, we may not rewrite the pretrial diversion statute to contain language the Legislature did not see fit to include.”) And the Legislature’s choice is not a burden to be borne by individuals exercising their constitutional rights. The Commonwealth has a clear remedy which is to join the defendants’ claims that the statutes, as promulgated, facially violate the Second and Fourteenth Amendments and have that be so declared by this Court. See District Attorney for Suffolk Dist. v. Watson, 381 Mass. 648, 660-671 (1980) (allowing District Attorney to file a complaint regarding the validity of the death penalty and issuing a declaratory judgment that the death penalty violated Article 26’s prohibition against cruel or unusual punishment).

Until this Court strikes down these facially unconstitutional statutes, individuals may not be prosecuted under their auspices no matter how well-intentioned their enforcers. “Courts may not read into a statute a provision that the Legislature did not enact, nor ‘add words that the Legislature had an option to, but chose not to include[.]’” Newberry, 483 Mass. at 195-196, citing Commissioner of Correction v. Superior Court Dep’t of the Trial Court, 446 Mass. 123, 126 (2006). The Legislature drafted and re-enacted statutory provisions which do not include a

generalized or self-defense purpose for a nonresident seeking a temporary license to carry an ordinary firearm into Massachusetts. Given that the constitutional flaw repeats itself throughout G.L. c. 140, §§§ 129C, 131F, and 131G, this Court cannot add or broaden these terms “without the ‘quintessentially legislative work’ of rewriting State law.” Ramirez v. Commonwealth, 479 Mass. 331, 339 (2018). It is up to the Legislature - not the courts – to fix the statutes to comply with the constitutional protections of keeping and bearing arms, equal protection, and travel. Infra pp. 31-58.

**C. People are presumed to know laws, not advisory opinions.**

The law is plain that nonresidents may carry firearms into the Commonwealth only for specific, delineated purposes that do not include self-defense. “The Legislature must be presumed to have meant what the words plainly say[.]” Condon v. Haitsma, 325 Mass. 371, 373 (1950). People are presumed to know laws, not advisories. See Commonwealth v. Everson, 140 Mass. 292, 295 (1885). There is no allegation in any case that Marquis knew about any post-Bruen advisories issued in Massachusetts. If a presumption about advisories did exist, then it would be reasonable for a person to rely upon the statute, rather than an advisory, as controlling authority.

Ordinary people would be reasonable to keep wary of law enforcement promises in the face of a clear and contrary legislative directive. They would be

right to find the Commonwealth “prescribing one rule to one man and a different one to another, this day punishing and tomorrow exempting from punishment, under the same circumstances so that no man, be he ever so honest, can know by what rule of law to square his conduct, faithfully perform his social duty, and avoid the penalties of the law.” Anthes, 71 Mass. at 224. “Neither can [this Court] rely upon prosecutorial discretion to narrow the statute’s scope.” Marinello v. United States, 584 U.S. 1, 11 (2018). The Constitution “protects against the Government; it does not leave us at the mercy of *noblesse oblige*.” United States v. Stevens, 559 U.S. 460, 480 (2010).

The Legislature’s passage of unconstitutional terms does not inject ambiguity into the plain terms it chose to re-enact or preserve. If it does, then any such ambiguity inures to the defendants under threat of prosecution and the specter of an 18-month mandatory minimum sentence. Ordinary people should not have to guess the scope of their rights and responsibilities. “It is a fundamental tenet of due process that ‘[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.’” United States v. Batchelder, 442 U.S. 114, 123 (1979), quoting Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939). As the statutes stand, they violate the Second, Fifth, Fourteenth Amendments, and Article IV, § 2 of the United States Constitution as well as Article 12 by depriving

nonresidents the ability to obtain temporary licenses for unrestricted or self-defense purposes when traveling with a handgun in Massachusetts.

**II. The Commonwealth has not proven any historical tradition relevantly similar to a state disarming any nonresident traveling in it until the state police department grants, at its discretion, the nonresident a license.**

Should this Court adopt the Attorney General's advisory opinion as operative law, the law so construed still fails to comply with the Second Amendment. The Commonwealth conditions a nonresident's ability to exercise their Second Amendment right to carry a firearm and ammunition into Massachusetts upon the colonel's discretionary grant of a license. Marquis is a law-abiding, adult citizen authorized by his home state of New Hampshire to keep and carry an ordinary firearm and ammunition. He is the paradigmatic person entitled to exercise his Second Amendment rights without infringement, as contemplated by the United States Supreme Court. See Heller, 554 U.S. at 635; McDonald, 561 U.S. at 790; and Bruen, 597 U.S. at 31-32. Yet merely crossing the Massachusetts border nullifies his Second Amendment rights unless and until he obtains a license which the colonel need not grant him. Bruen's historical tradition test, as reaffirmed by United States v. Rahimi, 219 L. Ed. 2d 351, 144 S. Ct. 1889 (2024), does not countenance such disarmament and prosecution.

**A. Marquis has standing to litigate his claims.**

Judge Coffey decided that G.L. c. 269, § 10(a) was unconstitutional as applied to Donnell and Marquis who are both law-abiding, adult citizens of other states. Although he was then analyzing the Full Faith and Credit Clause, Judge Coffey aptly points out that before Bruen, carrying in public was regarded as a privilege in Massachusetts, but it is now a federal constitutional right. (Record Appendix (RA) 39). Bruen thus undermined the premise of denying standing in Powell and other pre-Bruen opinions, which was that there was no right to carry outside the home in the first instance. See Commonwealth v. Powell, 459 Mass. 572, 589 (2011); Commonwealth v. Johnson, 461 Mass. 44, 57 (2011) (construing Heller as guaranteeing only the “right to keep and bear firearms in one’s home for the purpose of self-defense”); Commonwealth v. Loadholt, 460 Mass. 723, 726 (2011) (holding that Heller “identified an individual right to carry and bear arms that is limited in scope.”); and Commonwealth v. Gouse, 461 Mass. 787, 802 (2012) (“The case before us does not implicate this [Second Amendment] right: the defendant was charged with and convicted of possessing a firearm in an automobile, not his home, and there was no evidence or suggestion that it was possessed for the purpose of defending the same.”).

The *only* means by which Marquis could exercise his Second Amendment rights in Massachusetts was to obtain a temporary license at the colonel’s

discretion. By contrast, in Powell, the defendant had at least had some means (i.e., an FID card) by which to exercise his Second Amendment right, at least as this Court understood it at the time (as confined to the home). See Powell, 459 Mass. at 589-590. Marquis has thus suffered injury by this criminal prosecution which is fairly traceable to the unconstitutional Massachusetts licensing scheme. See Horne v. Flores, 557 U.S. 433, 445 (2009) and Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150, 156 (2002) (invalidating permit requirement even though “Petitioners did not apply for a permit.”).

Marquis also has a fundamentally different complaint from the defendant in Powell. His complaint is that he should not have to even apply for a Massachusetts temporary license given his authorization from his home state. Powell did not challenge the submission, in and of itself, to the Massachusetts licensing authority.<sup>4</sup> His complaint instead lodged against a specific requirement within the licensing process. See Powell, supra at 588-589 (where Powell challenged only the minimum age requirement (i.e., 21 years old) for a firearm license, “we review

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<sup>4</sup> Although the defendants in Loadholt and Johnson broadly challenged the Massachusetts licensing scheme, based upon pre-Bruen law and this Court’s precedent at the time, they did not argue that they could mount as-applied challenges. See Loadholt, 460 Mass. at 725-726; Johnson, 461 Mass. at 58-59. Furthermore, “[e]ven if the defendant had applied for a license to carry a firearm or an FID card, his prior felony drug conviction would have rendered him ineligible, and the Supreme Court has expressly approved of this type of disqualification.” Johnson, 461 Mass. at 58-59. See also Loadholt, 460 Mass. at 726 n.7 (also felony disqualification).

only the statutory provisions that apply to the defendant”). As for the defendant in Harris, he did “not explain how G.L. c. 269, § 10(a), and G.L. c. 150, § 129C (h), act together to prohibit nonresidents from traveling with handguns in or through the Commonwealth” and waived the argument by not raising it in his (denied) motion to dismiss. Harris, 481 Mass. at 774. There is no such impediment here. Infra pp. 50-58; (RA 11-32).

The U.S. Court of Appeals for the Third Circuit has afforded standing to 18-20-year-old plaintiffs challenging Pennsylvania statutes that effectively preclude them from openly carrying firearms during an ongoing emergency. Lara v. Commissioner, 91 F.4th 122, 127 & 139-140 (3rd Cir. 2024) (petition for rehearing en banc denied at 97 F.4th 156 (March 27, 2024), certiorari pending, see Commissioner v. Lara, USCOT No. 23A980). The Commissioner had claimed that he was powerless to issue them licenses and thus, the plaintiffs were deprived of standing as against himself. Lara, 91 F.4th at 139-140. In rejecting that argument, the court reasoned that the 18-20-year-old plaintiffs were “agnostic” as to whether they qualified for licenses or whether they can instead openly carry a firearm in an emergency. Id. “In other words, the existence of a license is not what they are fighting about; it is the right to openly carry a gun regardless of a state of emergency. And they contend that enjoining the Commissioner from arresting 18-

to-20-year-olds who openly carry firearms would in fact redress their constitutional injuries.” Id. at 139.

Similarly, here, dismissal of these charges would both affirm Marquis’s constitutional rights, which should not be contingent upon a colonel’s approval, and redress the injury dealt by this prosecution (exacerbated by the looming draconian sentence). Again, Marquis’s main complaint is that, as a law-abiding, adult citizen authorized by his home state to keep and carry a firearm and ammunition, he need not “prove” himself again or submit himself to a discretionary licensing regime, so that he may exercise his Second Amendment rights. “His injury flows from the application itself, not from his asserted ineligibility for a license.” Antonyuk v. Chimento, 89 F.4th 271, 310 (2nd Cir. 2023) (vacated and remanded by the U.S. Supreme Court on July 2, 2024, in light of Rahimi, see Antonyuk v. James, 2024 U.S. LEXIS 2929, No. 23-910).

Finally, none of this Court’s prior rulings about standing as they relate to the Second Amendment detract from Marquis’s standing to litigate his right to travel claim. Other than Harris, none of the aforementioned cases involve the right to travel. The defendant in Harris only raised a facial challenge as to all constitutional claims (right to travel, Second Amendment, and equal protection). Also, rather than a traveler, Mr. Harris “had been a resident of Massachusetts for several months.” Harris, supra at 776. This Court did not then consider whether a proper



defendant at least has standing to mount a right to travel claim. Here, unlike Harris, Marquis had traveled with his firearm and ammunition from his residence in New Hampshire into Massachusetts where he had no residence. This Court previously encountered no standing complication with the juvenile's right to travel claim in Commonwealth v. Weston W., 455 Mass. 24, 30-41 (2009) or the defendant's right to travel claim in Commonwealth v. George, 430 Mass. 276, 281-284 (1999). It should find no standing complication here either. And where the right to travel and the right to bear arms are intertwined in Marquis's circumstances, this Court should find he has standing to raise both.

This Court cannot analyze Marquis's right to travel without weighing the chilling effect upon his right to bear arms, and vice-versa. This case implicates "a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression"" or here, the constitutionally protected right to keep and bear arms. Commonwealth v. Provost, 418 Mass. 416, 422 (1994), quoting Marshfield Family Skateland, Inc. v. Marshfield, 389 Mass. 436, 444 (1983). § 131F, as it reads, does not permit Marquis to travel with a handgun in Massachusetts for unrestricted or self-defense purposes. He must trade one constitutional right for another. And even if this Court could adopt the Attorney General's advisory opinion as judicial gloss, Marquis's right to travel with a handgun in Massachusetts remains

unconstitutionally conditional, resulting in a similar chilling effect upon both sets of rights.

If this Court limits itself to a facial challenge, it must grapple with the merits of the claims, as it has before.<sup>5</sup> See Commonwealth v. Gordon, 354 Mass. 722, 725 (1968) (“But in a prosecution for violation of a licensing statute which is unconstitutional on its face, the issue of its validity is presented even in the absence of an application for a license.”) and Ramirez, 479 Mass. at 337 (facially invalidating the stun gun ban because “the possession of stun guns may be regulated, but not absolutely banned”). In Rahimi, the U.S. Supreme Court also substantively addressed the merits of the defendant’s facial challenge and canvassed historical traditions and regulations before ultimately deciding, in a narrow decision, that 18 U.S.C. § 922(g)(8) was constitutional. Rahimi, 219 L. Ed. 2d at 364-368. Compare United States v. Decastro, 682 F.3d 160, 166 (2nd Cir. 2012) (enunciating a pre-Bruen, ahistorical test that “heightened scrutiny is triggered only by those restrictions that (like the complete prohibition on handguns struck down in Heller) operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes).”)

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<sup>5</sup> The Commonwealth argues that Marquis and Donnell must prove the statutes are facially unconstitutional “beyond a reasonable doubt.” (Comm. Br. p. 26). Such a standard has no basis in law.

It is never constitutional to disarm all nonresidents whenever they cross the Massachusetts border while a colonel decides if they may have a license and then mandate substantial imprisonment if they do not submit to that disarmament. See Rahimi, 219 L. Ed. 2d at 368 (concluding that “the penalty” is “another relevant aspect of the burden” upon the Second Amendment right) and United States v. Salerno, 481 U.S. 739, 752 (1987) (reasoning that the Bail Reform Act contained “extensive safeguards” before individuals could be detained for dangerousness and those safeguards “suffice[d] to repel a facial challenge.”) Put another way, it is never constitutional to disarm all nonresidents unless and until they submit to and succeed in obtaining a license from a colonel. Such conditioning of constitutional rights is especially problematic and ahistorical in a discretionary regime like Massachusetts’ and as applied to people like Marquis. Historical tradition and Supreme Court precedent establish this.

**B. Bruen, as reaffirmed by Rahimi, dispatches the Commonwealth’s proposed, relevantly similar traditions of disarming dangerous, untrustworthy, or disloyal people.**

As Judge Coffey found, “[t]he Commonwealth points to no historical precedent limiting the reach of one’s exercise [of] a federal constitutional right to only within that resident’s state’s borders.” (RA 39). The Commonwealth has thereby infringed Marquis’s Second Amendment rights. To infringe means not just to ban or prohibit but also “to encroach upon in a way that violates law or

the rights of another.” Infringe, Merriam-Webster Dictionary, available at: <https://www.merriam-webster.com/dictionary/infringe>. The historical tradition of temporarily disarming or imprisoning dangerous people does not provide a free-for-all analogue to temporarily or indefinitely disarming the wider public.

“[O]ur Nation’s tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not. The conclusion that focused regulations like the surety laws are not a historical analogue for a broad prohibitory regime like New York’s does not mean that they cannot be an appropriate analogue for a narrow one.” Rahimi, *supra* at 369. Massachusetts, like New York, has a “broad prohibitory regime.” Bruen’s reasoning about mid-19th century surety laws thus holds here: “These laws were not *bans* on public carry, and they typically targeted only those threatening to do harm.” Bruen, *supra* at 55 (emphasis in original). “[T]he surety statutes *presumed* that individuals had a right to public carry that could be burdened only if another could make out a specific showing of ‘reasonable cause to fear an injury, or breach of the peace.’ Mass. Rev. Stat., ch. 134, § 16 (1836).” Bruen, *supra* at 56 (emphasis in original). The Commonwealth cannot fit a square peg (i.e., temporarily disarming only dangerous people) into a round hole (i.e., temporarily disarming all nonresidents).

Perhaps foreseeing this problem, the Commonwealth argues that “in the 19th century, states continued to regulate and disarm irresponsible citizens from carrying arms[.]” (Comm. Br. p. 40). It also claims that “[o]ur nation’s history in the colonial and founding eras also contained numerous firearm restrictions that prohibited classes of people deemed dangerous *or* untrustworthy by the state from possessing firearms[.]” (Comm. Br. p. 38 n.12) (emphasis added). But after the Commonwealth submitted its brief, the Supreme Court held: “[W]e reject the Government’s contention that Rahimi may be disarmed simply because he is not ‘responsible.’... ‘Responsible’ is a vague term. It is unclear what such a rule would entail. Nor does such a line derive from our case law.” Rahimi, supra at 369-370. “Untrustworthy” is equally vague and finds no purchase in Supreme Court precedent.

As for the historical tradition of disarmament based upon “disloyalty” (often as pretext for bigotry and/or suppression of speech), (see Comm. Br. pp. 38-39), the Supreme Court has answered: “Through these centuries, English law had disarmed not only brigands and highwaymen but also political opponents and disfavored religious groups. By the time of the founding, however, state constitutions and the Second Amendment had largely eliminated governmental authority to disarm political opponents on this side of the Atlantic.” Rahimi, supra at 365, citing Heller, 554 U.S. at 594-595.

The Giffords Law Center to Prevent Gun Violence and Brady Center to Prevent Gun Violence (“Giffords”) amicus brief opens its proposed historical tradition with a 1633 Massachusetts law. “Massachusetts required that no ‘person sell, give or barter, directly or indirectly, any gun or guns . . . to any person inhabiting out of this jurisdiction.’ Laws of the Colony of Massachusetts 1633, 37. § 2, reprinted in *The Charters and General Laws of the Colony and Province of Massachusetts Bay* at 133 (1814).” (Giffords Amicus Br. p. 16). The ellipses omit important words and context which are emboldened: “Nor shall any person sell, give or barter, directly or indirectly, any gun or guns, **powder, bullets, shot, lead, to any Indian whatsoever, or** to any person inhabiting out of this jurisdiction: [...]” (Add. 98). This Massachusetts law, undoubtedly unconstitutional today, was directed to ensuring that “Indians” did not obtain (directly or indirectly) guns or ammunition.

Giffords’ amicus brief then retreads historical arguments that failed in Bruen. The U.S. Supreme Court has squarely rejected its reliance upon “reasonable-cause” laws as broadly applied to the public. Bruen, supra at 56. (Compare Giffords Amicus Br. pp. 17-18). Just as the founding-era “going-armed” laws, applicable to people found to be dangerous, do not justify a “proper cause” licensing requirement, applicable to all New York residents, see Bruen, supra at

40-46, they also do not justify temporary or indefinite disarmament, dependent upon the colonel's discretion, as applied to all nonresidents.

When analyzing a Second Amendment claim, contemporary public safety rationales may not be weighed and means-end scrutiny may not be applied to the particular statute(s) at issue. McDonald, 561 U.S. at 790; Bruen, supra at 16-24. (Compare Giffords Amicus Br. pp. 22-25). “History, not policy, is the proper guide.” Rahimi, supra at 380 (Kavanaugh, J., concurring). Although the focal point of the historical tradition should be 1791 as far as what the Framers intended and designed, the Commonwealth fails to provide any relevantly similar tradition in either the 18th or 19th century. Thus, the resolution of that question can await another day. See Bruen, supra at 37-38 and Rahimi, supra at 364 n.1 (finding same).

“Even when a law regulates arms-bearing for a permissible reason, ...it may not be compatible with the right if it does so to an extent beyond what was done at the founding.” Rahimi, supra at 364. There is no historical law or regulation allowing the government to collectively disarm a broad swath of the public so as to ferret out any individual who is or could be dangerous or “unsuitable.” The Commonwealth cannot point to any precedent going that far. See Worth v. Jacobson, 2024 U.S. App. LEXIS 17347, \_\_\_ F.4th \_\_\_ (8th Cir. July 16, 2024) (facially invalidating Minnesota’s 21-year-old age requirement for firearms

licenses where after Bruen and Rahimi, banning all 18-20-year-olds from firearms “cannot be justified on a dangerousness rationale.”) “In essence, American law recognized a zone of immunity surrounding the privately owned guns of citizens.” Robert H. Churchill, Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment, 25 L. & Hist. Rev. 139, 142 (2007) (reviewing the first fourteen states’ codes from 1607 to 1815).

Nor can the Commonwealth point to any historical law or regulation demonstrating that residents of one colony or state reflexively distrusted armed residents of another colony or state. That absence in the historical record makes sense because Americans had just fought and stood victorious against the British, overthrowing the King, and standing as “one nation.” See Ware v. Hylton, 3 U.S. 199, \*p. 49\* (1796) (“The war was waged against all America as one nation, or community; and the peace was concluded on the same principles.”) and The Rapid, 12 U.S. 155, 161 (1814) (“The whole nation are embarked in one common bottom, and must be reconciled to submit to one common fate.”) The Constitution was “framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not



division.” Saenz v. Roe, 526 U.S. 489, 511 (1999) (citation omitted). The source of the new nation’s strength was in its solidarity among the citizenry and a resolute protestation against any curtailment of their freedoms.

The wait time before learning of one’s ability to carry a firearm into Massachusetts is another significant curtailment of this freedom. According to the application, “[i]f you are a first time applicant or a renewal applicant that requires an in-person appearance, you will be contacted by mail or email in 2-3 weeks with your scheduled appointment date.” (Non-Resident Application Instructions at p. 4, last revised Feb. 2021), available at: <https://www.mass.gov/doc/non-resident-application/download> (last visited 7/24/24). For nonresident applicants, “[l]icense processing may take up to 90 days.” <https://www.mass.gov/how-to/apply-for-a-firearms-license> (last visited 7/24/24). See also G.L. c. 140, § 131(e)&(f). No grace period or self-defense exception exists during this time. As the U.S. Court of Appeals for the Fourth Circuit has reasoned, weighing Maryland’s shorter time lag in issuing licenses, such delay facially violates the Second Amendment.

In Maryland, if you are a law-abiding person who wants a handgun, you must wait up to thirty days for the state to give you its blessing. Until then, there is nothing you can do; the issue is out of your control. Maryland has not shown that this regime is consistent with our Nation’s historical tradition of firearm regulation. [...] Maryland has not pointed to any historical laws that operated by preemptively depriving *all* citizens of firearms to keep them out of dangerous hands.

Md. Shall Issue, Inc. v. Moore, 86 F.4th 1038, 1049 (4th Cir. 2023) (emphasis in original) (petition for rehearing en banc granted, Md. Shall Issue, Inc. v. Moore, 2024 U.S. App. LEXIS 766 (Jan. 11, 2024) (argued en banc on March 21, 2024). See also Bruen, *supra* at 38 n.9 (“we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry”).

Justice Barrett accurately forecasts methodological strain in determining how broad the historical analogue may be to validate a particular regulation. “One difficulty is a level of generality problem: Must the government produce a founding-era relative of the challenged regulation—if not a twin, a cousin?”

Rahimi, *supra* at 394 (Barrett, J., concurring). But however distant the relation, the analogue must at least appear on the same family tree. Otherwise, historical tradition provides a test with no teeth and governments may revert to enacting whatever laws and regulations they deem reasonable to protect the public.

“Perhaps judges’ jobs would be easier if they could simply strike the policy balance they prefer. And a principle that the government always wins surely would be simple for judges to implement. But either approach would let judges stray far from the Constitution’s promise.” Rahimi, *supra* at 377 (Gorsuch, J., concurring), citing Heller, 554 U. S. at 634.

**C. The U.S. Supreme Court has signaled that discretionary licensing regimes are unconstitutional.**

If this Court deems that law-abiding and otherwise authorized nonresidents must still apply for a temporary Massachusetts license, the Massachusetts licensing scheme remains “may-issue” after Bruen, rendering it unconstitutional. The Legislature eliminated the “good reason” licensing requirement but preserved the “suitability” requirement. The definition of “unsuitability” is open-ended and allows the colonel to declare, without any objective criteria, that an applicant is unsuitable. “A determination of unsuitability shall be based on reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others.” G.L. c. 140, § 131(d).

Bruen has signaled that a “suitability” standard is unconstitutional given its reliance upon such discretionary determinations. “New York is not alone in requiring a permit to carry a handgun in public. But the vast majority of States—43 by our count—are ‘shall issue’ jurisdictions, where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability.” Bruen, *supra* at 13. The U.S. Supreme Court generally approves “shall-issue” licensing regimes so long as they “contain only ‘narrow, objective, and definite standards’ guiding licensing officials,

Shuttlesworth v. Birmingham, 394 U. S. 147, 151 [...] (1969), rather than requiring the ‘appraisal of facts, the exercise of judgment, and the formation of an opinion,’ Cantwell v. Connecticut, 310 U. S. 296, 305 [...] (1940)—features that typify proper-cause standards like New York’s.” Bruen, *supra* at 38 n.9. See also Bruen, *supra* at 79 (Kavanaugh, J., concurring) (“New York’s outlier may-issue regime is constitutionally problematic because it grants open-ended discretion to licensing officials and authorizes licenses only to those applicants who can show some special need apart from self-defense.”)

Because the Legislature’s amorphous suitability standard permits (indeed requires) the colonel to appraise “credible” and “reliable” facts and then judge an applicant unsuitable upon mere *suggestion* of *perhaps* a public safety risk, the standard fails both as a matter of law and as a matter of practice. For example, it is still good law in Massachusetts that a person may be deemed unsuitable simply when he “invoked his constitutional rights and refused to cooperate with the police” in an investigation the police deemed serious. Godfrey v. Chief of Police, 35 Mass. App. Ct. 42, 43 (1993). Furthermore, the determination about whether one achieves “suitability” before exercising one’s Second Amendment rights rests with the Executive Branch. No due process exists at that stage and the burden apparently remains upon the applicant to show he/she is not unsuitable.

If denied a license, an applicant must then take on the difficult burden of proving that discretionary call was “arbitrary or capricious.” See Firearms Records Bureau v. Simkin, 466 Mass. 168, 179-180 (2013). “The [arbitrary and capricious] rule leaves applicants little recourse if their local licensing officer denies a permit.” Bruen, supra at 13. In the First Amendment context, the U.S. Supreme Court “has recognized that the lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not. This thus sanctions a device for the suppression of the communication of ideas and permits the official to act as a censor.” Cox v. Louisiana, 379 U.S. 536, 557 (1965). Nor may such broad discretion lodge in a colonel to decide which people may keep and bear arms. Despite its enumeration, First Amendment protections are not elevated above Second Amendment protections. The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” Bruen, supra at 70, quoting McDonald, 561 U.S. at 780.

Nor does any refashioning of “suitability” into an objective and narrowly tailored determination of *actual* “dangerousness” cure the Second Amendment violation. See Antonyuk, 89 F.4th at 313-317 (refashioning New York’s “good moral character” licensing requirement into one tailored to dangerousness) (later vacated in light of Rahimi). Not only would it require this Court to rewrite the law

which it is rightly loath to do, see Ramirez, 479 Mass. at 338-339, but it would also require this Court to uphold the Executive Branch deciding which law-abiding citizens get to exercise their rights.

A law enforcement official, rather than a neutral arbiter, would determine any applicant's "dangerousness" according to that official's own assessment of "credible" and "reliable" information pursuant to G.L. c. 140, § 131(d). The U.S. Supreme Court emphasized that with respect to the applicability of historical precedent as to "dangerousness", its holding in Rahimi was a narrow one. "[W]e conclude only this: An individual *found by a court* to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." Rahimi, supra at 370 (emphasis added). See also Id. at 377 (Gorsuch, J., concurring): ("we do not decide today whether the government may disarm a person without a judicial finding that he poses a 'credible threat' to another's physical safety. [18 U.S.C.] § 922(g)(8)(C)(i)[.]" )

Placing the exercise of one's constitutional rights in the hands of the Executive Branch is antithetical to American tradition. Blackstone described the Second Amendment as protecting the "natural right of resistance and self-preservation, when the sanctions of society and law are found insufficient to restrain the violence of oppression." 2 William Blackstone, Commentaries \*139 (1765). According to founding-era views, "when the able-bodied men of a nation

are trained in arms and organized, they are better able to resist tyranny.” Heller, 554 U.S. at 598. Their experiences as Englishmen caused them “to be extremely wary of concentrated military forces run by the state and to be jealous of their arms.” Id. at 593. Given their continuing concerns about tyrannical takeover, the Founders would have recoiled at one’s Second Amendment rights being conditioned upon a king or a modern-day police force granting them. And the Commonwealth can point to no historical laws or regulations that entrusted the grant of one’s Second Amendment rights to the Executive Branch.

**III. The Legislature disfavors unlicensed nonresidents who carry handguns into Massachusetts while favoring other unlicensed groups, thereby violating Marquis’s and other nonresidents’ rights to interstate travel and equal protection.**

**A. The Legislature has burdened and deterred Marquis’s right to interstate travel.**

“Freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.” Dunn v. Blumstein, 405 U.S. 330, 338 (1972), quoting United States v. Guest, 383 U.S. 745, 758 (1966). “A state law implicates the right to travel when it actually deters such travel, ... when impeding travel is its primary objective, ... , or when it uses ‘any classification which serves to penalize the exercise of that right.’” Attorney Gen. of New York v. Soto-Lopez, 476 U.S. 898, 903 (1986) (citations omitted). “The right to travel is an ‘unconditional personal right,’ a right whose exercise may not be conditioned.”

Dunn, 405 U.S. at 341 (citation omitted). Nonresidents, who wish to cross the Massachusetts line with their firearm, will find their interstate travel conditioned. Their interstate travel is thus either burdened or deterred.

Nonresidents may not enter Massachusetts with an ordinary firearm without a temporary Massachusetts license. Their submission to this unconstitutional licensing regime, supra pp. 38-50, is mandatory with no exceptions including for self-defense, emergency, accident, or unknowing crossing of the Massachusetts border. Given the two interlocking constitutional rights, the penalty incurred by the nonresident traveler is two-fold. If an otherwise law-abiding person travels into Massachusetts with a firearm, without a discretionary license, then that person must suffer disarmament, arrest and/or prosecution and become exposed to an 18-month mandatory minimum sentence. If that person does not wish to meet this fate, then the person must relinquish the firearm prior to travel and thereby yield Second Amendment rights.

The unchanneled discretion lodged with a colonel as well as lengthy wait times for any license, supra pp. 43-50, to which nonresident travelers must submit before they may exercise their “natural” and “pre-existing” Second Amendment rights in Massachusetts, see Heller, 554 U.S. at 599; McDonald, 561 U.S. at 843, deter (if not preclude) nonresident travel into Massachusetts. Given these significant intrusions, the Commonwealth cannot impeach Judge Coffey’s rationale



that he “can think of no other constitutional right which a person loses simply by traveling beyond his home state’s border into another state continuing to exercise that right and instantaneously becomes a felon subject to mandatory minimum sentence of incarceration.” (RA 42-43). The Commonwealth thus violates the right of a nonresident “to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State.” Saenz, 526 U.S. at 500.

“Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest.” Shapiro v. Thompson, 394 U.S. 618, 638 (1969) (emphasis in original). “Where activities or enjoyment, natural and often necessary to the well-being of an American citizen, such as travel, are involved, we will construe narrowly all delegated powers that curtail or dilute them.” Kent v. Dulles, 357 U.S. 116, 129 (1958). The Commonwealth only proffers an “interest in maintaining a firearm licensing scheme, and prosecuting those who violate it[.]” (Comm. Br. p. 46) as well as a “public-safety interest in obtaining relevant and updated information about people who apply for firearms licenses.” (Comm. Br. p. 47). The Commonwealth may not use the guise of these general police powers to temporarily or indefinitely disarm nonresident travelers. See Bigelow v. Virginia, 421 U.S. 809, 824-825 (1975) (“But it may not, under the guise of exercising internal police powers, bar a citizen of another State from

disseminating information about an activity that is legal in that State.”)

“Expediency, convenience, or ease of administration or enforcement do not justify constitutional infringement of privileges and immunities.” Connecticut ex rel. Blumenthal v. Crotty, 346 F.3d 84, 99 (2nd Cir. 2003).

To justify the intrusions that this scheme imposes, the Commonwealth relies upon pre-Bruen cases, the bases of which are undermined now that the right to keep a firearm in the home and carry it in public are on equal footing under the Second Amendment. See Chief of Police of the City of Worcester v. Holden, 470 Mass. 845, 857-858 (2015) (“the right to carry in public implicates more peripheral Second Amendment concerns than keeping and bearing arms in the home”) and Culp v. Raoul, 921 F.3d 646, 654 (7th Cir. 2019) (“the absence of historical support for a broad, unfettered right to carry a gun in public brings with it a legal consequence: the Second Amendment allows Illinois, in the name of important and substantial public-safety interests, to restrict the public carrying of firearms by those most likely to misuse them.”) Reliance upon sensible policy or upon a state’s prerogative as a “laboratory of democracy”<sup>6</sup>, (see Comm. Br. pp. 46-52) are not satisfactory answers in a post-Bruen landscape. Supra pp. 42-43. “A constitutional

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<sup>6</sup> The Commonwealth notes that in Bruen, the U.S. Supreme Court wrote “approvingly of 43 states’ licensing schemes, many with differing licensing requirements (if any) and no guarantees of reciprocity among them.” (Comm. Br. p. 54). But it did not include Massachusetts as one of these 43 states.

guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." Bruen, *supra* at 23, quoting Heller, 554 U.S. at 634. Thus, the Commonwealth's arguments grounded in pre-Bruen law fail.

Even if the Commonwealth has demonstrated a compelling justification for this scheme, it must be narrowly tailored. First, as the scheme applies to all nonresidents in the apparent assumption that some of them could be dangerous or untrustworthy, it is not narrowly tailored. *See Shapiro*, 394 U.S. at 631 ("the class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits.") *See also Memorial Hospital v. Maricopa County*, 415 U.S. 250, 263-264 (1974).

Second, noncompliance with these regulations results in a criminal, draconian penalty where a civil penalty would suffice. As in Weston W., "the Commonwealth has failed to meet its burden to show that the use of criminal penalties provides an increased benefit over the civil enforcement mechanisms of the ordinance sufficient to offset their greater intrusion on the fundamental right." Weston W., 455 Mass. at 40.

Third, choosing the less restrictive means to regulate gun-carrying nonresidents does not mean that it would inspire lawlessness in these travelers. *See Commonwealth v. Pike*, 428 Mass. 393, 405 (1998): ("the Commonwealth has not

explained how the defendant's presence on a Massachusetts roadway, as opposed to a roadway in some other State, was a critical influence sparking his criminal conduct").

Fourth and finally, "[t]here was no possibility that appellant's activity would...infringe on other rights [of Massachusetts residents]." Bigelow, 421 U.S. at 828. Marquis, a law-abiding New Hampshire resident, was simply trying to drive to work in Massachusetts while exercising his Second Amendment rights. Where the licensing scheme further disfavors such nonresident travelers compared with other groups, infra pp. 55-58, it violates equal protection.

**B. By imposing greater burdens upon unlicensed nonresidents to exercise their fundamental rights to travel and to carry handguns, the Legislature has violated their rights to equal protection.**

The equal protection mandate "is essentially a direction that all persons similarly situated should be treated alike." Plyler v. Doe, 457 U.S. 202, 216 (1982). It is immaterial that the Commonwealth has drawn non-suspect classes because the laws implicate two fundamental rights and thus the laws must be strictly scrutinized. Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 669-670 (1966). "Absent a compelling state interest, a State may not burden the right to travel [or the right to keep and bear arms] in this way." Dunn, 405 U.S. at 342. The delineated groups (residents, new/returning residents, and nonresidents) are similarly situated whenever they are exercising their Second Amendment rights in

public. As § 131, § 131F and § 131G plainly read, nonresidents can only obtain firearms licenses restricted to sporting or firearms competition purposes while residents enjoy no licensing restrictions. Supra pp. 20-29. The Commonwealth further treats nonresident travelers like Marquis differently and detrimentally through the following three classifications:

1. Nonresident travelers who carry rifles and shotguns (so long as they are unloaded and enclosed in a case) “in or through” the Commonwealth are exempt from any G.L. c. 269, § 10 prosecution while nonresident travelers who carry handguns “in or through” the Commonwealth are not. G.L. c. 140, § 129C(h); G.L. c. 269, § 10(a)(4) & (h)(1); Harris, supra at 773; Commonwealth v. Paul, 96 Mass. App. Ct. 263, 267 n.2 (2019). Since Harris and Bruen, the Legislature has not amended G.L. c. 140, § 131G, which, as this Court construed, allows nonresidents licensed in their home states to travel with a “pistol or revolver” “for a number of purposes” but notably not for self-defense. Harris, supra at 774. “A general tenet of statutory construction is that the ‘statutory expression of one thing is an implied exclusion of other things omitted from the statute.’” Commonwealth v. Ronald R., 450 Mass. 262, 266 (2007) (citation omitted). This tenet is particularly pertinent to a statute last amended in 1975 during a time when this Court recognized no right to keep and bear arms under either the

Massachusetts Constitution or the U.S. Constitution. Commonwealth v. Davis, 369 Mass. 886, 889-890 (1976).

It “is no answer to say...that it is permissible to ban the possession of handguns so long as the possession of other firearms (i.e., long guns) is allowed.” Heller, supra at 629. Applying the Supreme Court’s rationale here, a handgun, the “quintessential self-defense weapon”, Id. at 629, may not be treated any differently as an “arm” than a rifle or shotgun. After Bruen, this reasoning applies equally when any person carries a handgun outside the home. The effect of the Legislature’s differential treatment is that one group with the “preferred” firearms avoids a felony prosecution, and the other does not.

2. Newly arrived/returning residents have a sixty-day grace period in which they may not be prosecuted under G.L. c. 269, § 10 for not having a license or FID card for their firearm, rifle, shotgun, or ammunition. G.L. c. 140, § 129C(j). No such grace period exists for nonresidents. Paul, 96 Mass. App. at 269-271. Compare Commonwealth v. Becker, 71 Mass. App. Ct. 81, 93 (2008) (defendant “was not subjected [by SORB] to any harsher regulation than any other citizen of the Commonwealth”)

3. First-time nonresident applicants must wait up to 90 days for their licenses. Supra p. 44. By contrast, G.L. c. 140, § 131(d)&(e) require the licensing official to process resident applications within 40 days of their submission. No

such time limit or restriction exists for nonresidents. See § 131F. Typical nonresidents must renew their licenses every year while residents need only renew them every five-to-six years. § 131(i) and § 131F ¶ 2. (RA 40-41). Nonresidents must then pay \$500 while residents only pay \$100 over five years to maintain their licenses. § 131(i) and § 131F ¶ 4.<sup>7</sup> Beyond reflexive attitudes discriminating against nonresidents, there is no evidence that nonresidents, as a class, are less trustworthy or more dangerous than residents.

The Commonwealth cannot show rational (much less compelling) justifications for this disparate treatment disfavoring nonresidents.

#### **IV. Nonresident travelers are statutorily ineligible for FID cards.**

“We interpret a statute in accordance with the plain meaning of its text.” Reading Coop. Bank v. Suffolk Constr. Co., 464 Mass. 543, 548 (2013). G.L. c. 140, § 129C states: “No person, other than a licensed dealer or one who has been issued a license to carry a pistol or revolver or an exempt person as hereinafter described, shall own or possess any firearm, rifle, shotgun or ammunition unless he has been issued a firearm identification card by the licensing authority pursuant to the provisions of section one hundred and twenty-nine B.” § 129C then depends upon the “provisions of” § 129B which states: “Any person *residing or having a*

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<sup>7</sup> See also <https://www.mass.gov/how-to/renew-a-firearms-license> (last visited 7/24/24).

*place of business within the jurisdiction of the licensing authority* or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority an application for a firearm identification card[...]" (emphasis added).

Even beyond a futile act, nonresidents like Marquis are statutorily precluded from any process to obtain an FID card. The Commonwealth may be relying upon § 129C's language that "[n]o person" may have a gun or ammunition without an FID card. However, that language comes with the caveat: "pursuant to" § 129B and § 129B generally only applies to residents. "[W]herever possible, no provision of a legislative enactment should be treated as superfluous." Casa Loma, Inc. v. Alcoholic Beverages Control Com., 377 Mass. 231, 234 (1979). Although Marquis was headed towards his workplace in Massachusetts, this Court has held off on construing whether "having a place of business" applies to employees. For its part, the Commonwealth has maintained that this phrase "is applicable only where the individual is the owner or proprietor of the business." Commonwealth v. Guardado, 491 Mass. 666, 686 n.9 (2023).

The Commonwealth's construction is correct. First, "[w]hen applied to property[,] ["having"] imports ownership." Busteed v. Cambridge Sav. Bank, 306 Mass. 9, 14 (1940). Second, the Revised Seventh Edition of the Black's Law Dictionary defines "place of business" as "[a] location at which one carries on a



business” while distinguishing “place of employment” as “[t]he location at which work done in connection with a business is carried out[.]” Black’s Law Dictionary 1169 (West Group, 1999). Where Marquis’s conduct falls in the latter category – traveling to his “place of employment” – the Legislature does not require him to apply for an FID card.

It also makes sense that nonresidents are generally ineligible for FID cards because all nonresidents must have a license to carry before they may even enter Massachusetts. And all such license holders would be exempted from § 129C’s requirement of an FID card, making FID cards unnecessary for travelers. Because the Commonwealth may not punish Marquis for failing to obtain what he could not obtain, this Court should affirm the dismissal of the § 10(h) charge.

## **CONCLUSION**

This Court should affirm the District Court’s dismissal of both charges.

Date: July 26, 2024

Respectfully Submitted,

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## USCS Const. Amend. 2

Current through the ratification of the 27th Amendment on May 7, 1992.

**United States Code Service > Amendments > Amendment 2 Right to bear arms.**

### **Amendment 2 Right to bear arms.**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

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## USCS Const. Amend. 5, Part 1 of 13

Current through the ratification of the 27th Amendment on May 7, 1992.

**United States Code Service > Amendments > Amendment 5 Criminal actions—Provisions concerning—  
Due process of law and just compensation clauses.**

### **Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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## USCS Const. Amend. 14, Part 1 of 15

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 14

### Amendment 14

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**Sec. 1. [Citizens of the United States.]** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Sec. 2. [Representatives—Power to reduce apportionment.]** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Sec. 3. [Disqualification to hold office.]** No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to be paid.]** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Sec. 5. [Power to enforce amendment.]** The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

## USCS Const. Art. IV, § 2, Cl 1

Current through the ratification of the 27th Amendment on May 7, 1992.

**United States Code Service > ARTICLE IV. RELATIONS BETWEEN STATES. > Sec. 2.**

### **Cl 1. Privileges and immunities of citizens.**

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The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

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## ALM Constitution Pt. 1, Art. XII

Constitution text current through the November 2023 Election

**Annotated Constitution of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > PART  
THE FIRST A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts**

### **Art. XII. Prosecutions Regulated; Jury Trial.**

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No subject shall be held to answer for any crimes or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

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## ALM Constitution Pt. 1, Art. XXVI

Constitution text current through the November 2023 Election

**Annotated Constitution of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > PART  
THE FIRST A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts**

### **Art. XXVI. Excessive Bail or Fines, and Cruel Punishments Prohibited.**

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No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments. No provision of the Constitution, however, shall be construed as prohibiting the imposition of the punishment of death. The general court may, for the purpose of protecting the general welfare of the citizens, authorize the imposition of the punishment of death by the courts of law having jurisdiction of crimes subject to the punishment of death.

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## ALM GL ch. 140, § 121

Current through Chapter 29 of the 2024 Legislative Session of the 193rd General Court

**Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182)  
> TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY  
AND GOOD ORDER (Chs. 133 — 148A) > Chapter 140 Licenses (§§ 1 — 206)**

### **§ 121. Firearms — Definitions; Licensing Authority; Exceptions.**

As used in sections 122 to 131Y, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Ammunition”, cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun. The term “ammunition” shall also mean tear gas cartridges.

“Assault weapon”, shall have the same meaning as a semiautomatic assault weapon as defined in the federal Public Safety and Recreational Firearms Use Protection Act, [18 U.S.C. section 921\(a\)\(30\)](#) as appearing in such section on September 13, 1994, and shall include, but not be limited to, any of the weapons, or copies or duplicates of the weapons, of any caliber, known as: (i) Avtomat Kalashnikov (AK) (all models); (ii) Action Arms Israeli Military Industries UZI and Galil; (iii) Beretta Ar70 (SC-70); (iv) Colt AR-15; (v) Fabrique National FN/FAL, FN/LAR and FNC; (vi) SWD M-10, M-11, M-11/9 and M-12; (vi) Steyr AUG; (vii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and (viii) revolving cylinder shotguns, such as, or similar to, the Street Sweeper and Striker 12; provided, however, that the term assault weapon shall not include: (i) any of the weapons, or replicas or duplicates of such weapons, specified in appendix A to [18 U.S.C. section 922](#) as appearing in such appendix on September 13, 1994, as such weapons were manufactured on October 1, 1993; (ii) any weapon that is operated by manual bolt, pump, lever or slide action; (iii) any weapon that has been rendered permanently inoperable or otherwise rendered permanently unable to be designated a semiautomatic assault weapon; (iv) any weapon that was manufactured prior to the year 1899; (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable assault weapon; (vi) any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition; or (vii) any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.

“Bump stock”, any device for a weapon that increases the rate of fire achievable with such weapon by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

“Conviction”, a finding or verdict of guilt or a plea of guilty, whether or not final sentence is imposed.

“Court”, as used in sections 131R to 131Y, inclusive, the division of the district court department or the Boston municipal court department of the trial court having jurisdiction in the city or town in which the respondent resides.

“Deceptive weapon device”, any device that is intended to convey the presence of a rifle, shotgun or firearm that is used in the commission of a violent crime, as defined in this section, and which presents an objective threat of immediate death or serious bodily harm to a person of reasonable and average sensibility.

“Extreme risk protection order”, an order by the court ordering the immediate suspension and surrender of any license to carry firearms or firearm identification card which the respondent may hold and ordering the respondent to surrender all firearms, rifles, shotguns, machine guns, weapons or ammunition which the respondent then controls, owns or possesses; provided, however, that an extreme risk protection order shall be in effect for up to 1 year from the date of issuance and may be renewed upon petition.

“Family or household member”, a person who: (i) is or was married to the respondent; (ii) is or was residing with the respondent in the same household; (iii) is or was related by blood or marriage to the respondent; (iv) has or is having a child in common with the respondent, regardless of whether they have ever married or lived together; (v) is or has been in a substantive dating relationship with the respondent; or (vi) is or has been engaged to the respondent.

“Firearm”, a stun gun or a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk-through metal detectors.

“Gunsmith”, any person who engages in the business of repairing, altering, cleaning, polishing, engraving, blueing or performing any mechanical operation on any firearm, rifle, shotgun or machine gun.

“Imitation firearm”, any weapon which is designed, manufactured or altered in such a way as to render it incapable of discharging a shot or bullet.

“Large capacity feeding device”, (i) a fixed or detachable magazine, box, drum, feed strip or similar device capable of accepting, or that can be readily converted to accept, more than ten rounds of ammunition or more than five shotgun shells; or (ii) a large capacity ammunition feeding device as defined in the federal Public Safety and Recreational Firearms Use Protection Act, [18 U.S.C. section 921\(a\)\(31\)](#) as appearing in such section on September 13, 1994. The term “large capacity feeding device” shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber ammunition.

“Large capacity weapon”, any firearm, rifle or shotgun: (i) that is semiautomatic with a fixed large capacity feeding device; (ii) that is semiautomatic and capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; (iii) that employs a rotating cylinder capable of accepting more than ten rounds of ammunition in a rifle or firearm and more than five shotgun shells in the case of a shotgun or firearm; or (iv) that is an assault weapon. The term “large capacity weapon” shall be a secondary designation and shall apply to a weapon in addition to its primary designation as a firearm, rifle or shotgun and shall not include: (i) any weapon that was manufactured in or prior to the year 1899; (ii) any weapon that operates by manual bolt, pump, lever or slide action; (iii) any weapon that is a single-shot weapon; (iv) any weapon that has been modified so as to render it permanently inoperable or otherwise rendered permanently unable to be designated a large capacity weapon; or (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable large capacity weapon.

“Length of barrel” or “barrel length”, that portion of a firearm, rifle, shotgun or machine gun through which a shot or bullet is driven, guided or stabilized and shall include the chamber.

“Licensing authority”, the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.

“Machine gun”, a weapon of any description, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged by one continuous activation of the trigger, including a submachine gun; provided, however, that “machine gun” shall include bump stocks and trigger cranks.

“Petition”, a request filed with the court by a petitioner for the issuance or renewal of an extreme risk protection order.

“Petitioner”, the family or household member, or the licensing authority of the municipality where the respondent resides, filing a petition.

“Purchase” and “sale” shall include exchange; the word “purchaser” shall include exchanger; and the verbs “sell” and “purchase”, in their different forms and tenses, shall include the verb exchange in its appropriate form and tense.

“Respondent”, the person identified as the respondent in a petition against whom an extreme risk protection order is sought.

“Rifle”, a weapon having a rifled bore with a barrel length equal to or greater than 16 inches and capable of discharging a shot or bullet for each pull of the trigger.

“Sawed-off shotgun”, any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon as modified has one or more barrels less than 18 inches in length or as modified has an overall length of less than 26 inches.

“Semiautomatic”, capable of utilizing a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and requiring a separate pull of the trigger to fire each cartridge.

“Shotgun”, a weapon having a smooth bore with a barrel length equal to or greater than 18 inches with an overall length equal to or greater than 26 inches, and capable of discharging a shot or bullet for each pull of the trigger.

“Stun gun”, a portable device or weapon, regardless of whether it passes an electrical shock by means of a dart or projectile via a wire lead, from which an electrical current, impulse, wave or beam that is designed to incapacitate temporarily, injure or kill may be directed.

“Substantive dating relationship”, a relationship as determined by the court after consideration of the following factors: (i) the length of time of the relationship; (ii) the type of relationship; (iii) the frequency of interaction between the parties; and (iv) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

“Trigger crank”, any device to be attached to a weapon that repeatedly activates the trigger of the weapon through the use of a lever or other part that is turned in a circular motion; provided, however, that “trigger crank” shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.

“Violent crime”, shall mean any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.

“Weapon”, any rifle, shotgun or firearm.

Where the local licensing authority has the power to issue licenses or cards under this chapter, but no such licensing authority exists, any resident or applicant may apply for such license or firearm identification card directly to the colonel of state police and said colonel shall for this purpose be the licensing authority.

The provisions of sections 122 to 129D, inclusive, and sections 131, 131A, 131B and 131E shall not apply to:

- (A) any firearm, rifle or shotgun manufactured in or prior to the year 1899;
- (B) any replica of any firearm, rifle or shotgun described in clause (A) if such replica: (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and
- (C) manufacturers or wholesalers of firearms, rifles, shotguns or machine guns.

## History

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## ALM GL ch. 140, § 121

1911, 495, §§ 1, 11; 1922, 485, § 1; 1927, 326, § 1; 1934, 359, § 1; 1957, 688, § 4; 1959, 296, § 1; 1960, 186; 1968, 737, § 1; 1969, 799, § 1; 1971, 456, § 1; 1973, 892, § 1; 1983, 516, § 1; 1984, 116, § 1; 1989, 433; [1990, 511, § 1](#); [1996, 151, §§ 300, 301](#); [1998, 180, § 8](#); [1999, 1, § 1](#); [2004, 150, §§ 1-3](#); [2014, 284, §§ 19-21](#); [2017, 110, §§ 18-20](#), effective November 3, 2017; [2018, 123, §§ 1-7](#), effective August 17, 2018.

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## ALM GL ch. 140, § 129B

Current through Chapter 29 of the 2024 Legislative Session of the 193rd General Court

**Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182)  
> TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY  
AND GOOD ORDER (Chs. 133 — 148A) > Chapter 140 Licenses (§§ 1 — 206)**

### **§ 129B. Firearms — Purchase — Identification Card.**

A firearm identification card shall be issued and possessed subject to the following conditions and restrictions:

(1) Any person residing or having a place of business within the jurisdiction of the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority an application for a firearm identification card, or renewal of the same, which the licensing authority shall issue if it appears that the applicant is not a prohibited person. A prohibited person shall be a person who:

(i) has ever, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, or both as defined in [section 52 of chapter 119](#), for the commission of: (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of controlled substances, as defined in [section 1 of chapter 94C](#), including, but not limited to, a violation under said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in [18 U.S.C. 921\(a\)\(33\)](#); provided, however, that, except for the commission of a felony, a misdemeanor crime of domestic violence, a violent crime or a crime involving the trafficking of controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever occurs last, for 5 or more years immediately preceding such application, then the applicant's right or ability to possess a non-large capacity rifle or shotgun shall be deemed restored in the commonwealth with respect to such conviction or adjudication and that conviction or adjudication shall not disqualify the applicant for a firearm identification card;

(ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of: (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of controlled substances, as defined in [section 1 of chapter 94C](#), including, but not limited to, a violation under said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in [18 U.S.C. 921\(a\)\(33\)](#); provided, however, that, except for the commission of felony, a misdemeanor crime of domestic violence, a violent crime or a crime involving the trafficking of weapons or controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever occurs last, for 5 or more years immediately preceding such application and the applicant's right or ability to possess a rifle or shotgun has been fully restored in the jurisdiction wherein the conviction or adjudication was entered, then the conviction or adjudication shall not disqualify such applicant for a firearm identification card;

(iii) is or has been: (A) except in the case of a commitment pursuant to [sections 35](#) or [36C of chapter 123](#), committed to any hospital or institution for mental illness, alcohol or substance abuse, unless after 5 years from the date of the confinement, the applicant submits with the application an affidavit of a licensed

physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that in the physician's or psychologist's opinion the applicant is not disabled by a mental illness, alcohol or substance abuse in a manner that should prevent the applicant from possessing a firearm, rifle or shotgun; (B) committed by an order of a court to any hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court's order pursuant to said [section 36C of said chapter 123](#) and submits a copy of the order for relief with the application; (C) subject to an order of the probate court appointing a guardian or conservator for an incapacitated person on the grounds that that applicant lacks the mental capacity to contract or manage affairs, unless the applicant was granted a petition for relief pursuant to [section 56C of chapter 215](#) and submits a copy of the order for relief with the application; or (D) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said [section 35 of said chapter 123](#), unless the applicant was granted a petition for relief of the court's order pursuant to said [section 35 of said chapter 123](#) and submits a copy of the order for relief with the application;

- (iv) is at the time of the application younger than 14 years of age; provided however that the applicant shall not be issued the card until the applicant reaches the age of 15.
- (v) is at the time of the application more than 14 but less than 18 years of age, unless the applicant submits with the application a certificate of a parent or guardian granting the applicant permission to apply for a card;
- (vi) is an alien who does not maintain lawful permanent residency;
- (vii) is currently subject to: (A) an order for suspension or surrender issued pursuant to [section 3B](#) or [3C of chapter 209A](#) or a similar order issued by another jurisdiction; (B) a permanent or temporary protection order issued pursuant to chapter 209A, a similar order issued by another jurisdiction, including an order described in [18 U.S.C. 922\(g\)\(8\)](#); or (C) an extreme risk protection order issued pursuant to sections 131R to 131X, inclusive, or a similar order issued by another jurisdiction;
- (viii) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;
- (ix) has been discharged from the armed forces of the United States under dishonorable conditions;
- (x) is a fugitive from justice; or
- (xi) having been a citizen of the United States, has renounced that citizenship.

(1½)

(a) Notwithstanding paragraph (1) to the contrary, the licensing authority may file a petition to request that an applicant be denied the issuance or renewal of a firearm identification card, or to suspend or revoke such a card in the district court of jurisdiction. If the licensing authority files any such petition it shall be accompanied by written notice to the applicant describing the specific evidence in the petition. Such petition shall be founded upon a written statement of the reasons for supporting a finding of unsuitability pursuant to subsection (d).

(b) Upon the filing of a petition to deny the issuance or renewal of a firearm identification card, the court shall within 90 days hold a hearing to determine if the applicant is unsuitable under subsection (d) of this paragraph. Such a petition shall serve to stay the issuance or renewal of the firearm identification card pending a judicial determination on such petition.

(c) Upon the filing of a petition to suspend or revoke a firearm identification card, the court shall within 15 days determine whether there is sufficient evidence to support a finding that the applicant is unsuitable. Such petition shall serve to effect the suspension or revocation pending a judicial determination on the sufficiency of evidence. If a court determines that insufficient evidence exists to support a finding of unsuitability, the licensing authority shall not file a petition under this subsection for the same applicant within 75 days of the licensing authority's previous petition for that applicant. If a court determines that sufficient evidence exists to support a finding of unsuitability, the court shall within 75 days hold a hearing to determine if the applicant is unsuitable under subsection (d); provided, however, that such initial suspension or revocation shall remain in effect pending a judicial determination thereon.



- (d) A determination of unsuitability shall be based on a preponderance of evidence that there exists: (i) reliable, articulable, and credible information that the applicant has exhibited or engaged in behavior to suggest the applicant could potentially create a risk to public safety; or (ii) existing factors that suggest that the applicant could potentially create a risk to public safety. If a court enters a judgment that an applicant is unsuitable the court shall notify the applicant in a writing setting forth the specific reasons for such determination. If a court has not entered a judgment that an applicant is unsuitable under this clause within 90 days for petitions under clause (ii) or within 75 days under clause (iii), the court shall enter a judgment that the applicant is suitable for the purposes of this paragraph.
- (2) Within seven days of the receipt of a completed application for a card, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall, within 30 days, advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a card; provided, however, that the taking of fingerprints shall not be required in issuing the renewal of a card if the renewal applicant's fingerprints are on file with the department of state police. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of mental health, department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. If the information available to the colonel does not indicate that the possession of a non-large capacity rifle or shotgun by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within such 30 day period. The licensing authority shall provide to the applicant a receipt indicating that it received the applicant's application. The receipt shall be provided to the applicant within 7 days by mail if the application was received by mail or immediately if the application was made in person; provided, however, that the receipt shall include the applicants' name, address, current firearm identification card number, if any, the current card's expiration date, if any, the date when the application was received by the licensing authority, the name of the licensing authority and its agent that received the application, the licensing authority's address and telephone number, the type of application and whether it is an application for a new card or for renewal of an existing card; and provided further, that a copy of the receipt shall be kept by the licensing authority for not less than 1 year and a copy shall be furnished to the applicant if requested by the applicant.
- (3) The licensing authority may not prescribe any other condition for the issuance of a firearm identification card and shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such card shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a rifle or shotgun by the applicant would be in violation of state or federal law.
- (4) A firearm identification card shall be revoked or suspended by the licensing authority or his designee upon the occurrence of any event that would have disqualified the holder from being issued such card or from having such card renewed or for a violation of a restriction provided under this section. Any revocation or suspension of a card shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such card and receipt for fee paid for such card, and the person whose card is so revoked or suspended shall take all action required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended card may be reinstated only upon the termination of all disqualifying conditions.
- (5) Any applicant or holder aggrieved by a denial, revocation or suspension of a firearm identification card, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receipt of notice of such denial, revocation or suspension or within 90 days after the expiration of the time limit in which the licensing authority is required to respond to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in the city or town wherein the applicant filed for or was issued such card. A justice of such court, after a hearing, may direct that a card be issued or reinstated to the petitioner if the justice finds that such petitioner is not prohibited by law from possessing such card.

(6) A firearm identification card shall not entitle a holder thereof to possess: (i) a large capacity firearm or large capacity feeding device therefor, except under a license issued to a shooting club as provided under section 131 or under the direct supervision of a holder of a license issued to an individual under said section 131 at an incorporated shooting club or licensed shooting range; or (ii) a non-large capacity firearm or large capacity rifle or shotgun or large capacity feeding device therefor, except under a license issued to a shooting club as provided under said section 131 or under the direct supervision of a holder of a license issued to an individual under said section 131 at an incorporated shooting club or licensed shooting range. A firearm identification card shall not entitle a holder thereof to possess any rifle or shotgun that is, or in such manner that is, otherwise prohibited by law. A firearm identification card issued pursuant to subclause (vi) of clause (1) of section 122D, shall be valid to purchase and possess chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate. Except as otherwise provided herein, a firearm identification card shall not be valid for the use, possession, ownership, transfer, purchase, sale, lease, rental or transportation of a rifle or shotgun if such rifle or shotgun is a large capacity weapon as defined in section 121.

(7) A firearm identification card shall be in a standard form provided by the commissioner of the department of criminal justice information services in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to [section 8 of chapter 90](#) and shall contain an identification number, name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the cardholder and shall be marked "Firearm Identification Card" and shall provide in a legible font size and style the phone numbers for the National Suicide Prevention Lifeline and the Samaritans Statewide Helpline. If a firearm identification card is issued for the sole purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate, such card shall clearly state that such card is valid for such limited purpose only. The application for such card shall be made in a standard form provided by the commissioner of the department of criminal justice information services which shall require the applicant to affirmatively state, under the pains and penalties of perjury, that he is not disqualified on any of the grounds enumerated in clauses (i) to (ix), inclusive, from being issued such card.

(8) Any person who knowingly files an application containing false information shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

(9) A firearm identification card shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issuance, except that if the cardholder applied for renewal before the card expired, the card shall remain valid after the expiration date on the card for all lawful purposes, until the application for renewal is approved or denied; provided, however, if the cardholder is on active duty with the armed forces of the United States on the expiration date of the card, the card shall remain valid until the cardholder is released from active duty and for a period of not less than 180 days following such release, except that if the cardholder applied for renewal prior to the end of such period, the card shall remain valid after the expiration date on the card for all lawful purposes, until the application for renewal is approved or denied. A card issued on February 29 shall expire on March 1. The commissioner of criminal justice information services shall send electronically or by first class mail to the holder of a firearm identification card, a notice of the expiration of the card not less than 90 days before its expiration and shall enclose with the notice a form for the renewal of the card. The form for renewal shall include an affidavit whereby the applicant shall verify that the applicant has not lost a firearm or had a firearm stolen from the applicant's possession since the date of the applicant's last renewal or issuance. The commissioner of criminal justice information services shall include in the notice all pertinent information about the penalties that may be imposed if the firearm identification card is not renewed. The commissioner of criminal justice information services shall provide electronic notice of expiration only upon the request of a cardholder. A request for electronic notice of expiration shall be forwarded to the department on a form furnished by the commissioner. Any electronic address maintained by the department to provide electronic notice of expiration shall be considered a firearms record and shall not be disclosed except as provided in [section 10 of chapter 66](#).

(9A) Except as provided in paragraph. (9B), the fee for an application for a firearm identification card shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited in the General Fund; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund.

Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly that portion of the firearm identification card application fee which is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year.

**(9B)** The application fee for a firearm identification card issued for the sole purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate shall be \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain 50 per cent of the fee and the remaining portion shall be deposited in the General Fund. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly that portion of the firearm identification card application fee which is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. There shall be no application fee for the renewal of a firearm identification card issued under this paragraph.

A firearm identification card issued under this paragraph shall display, in clear and conspicuous language, that the card shall be valid only for the purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate.

**(9C)** Except as provided in paragraph (9B), the fee for an application for a firearm identification card for any person under the age of 18 shall be \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain 50 per cent of the fee and the remaining portion shall be deposited into the General Fund. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly that portion of the firearm identification card application fee which is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year.

**(10)** Any person over the age of 70 shall be exempt from the requirement of paying a renewal fee for a firearm identification card.

**(11)** A cardholder shall notify, in writing, the licensing authority that issued such card, the chief of police into whose jurisdiction such cardholder moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of such card.

**(12)** Notwithstanding the provisions of [section 10 of chapter 269](#), any person in possession of a non-large capacity rifle or shotgun whose firearm identification card issued under this section is invalid for the sole reason that it has expired, not including licenses that remain valid under paragraph (9) because the licensee applied for renewal before the license expired but who shall not be disqualified from renewal upon application therefor under this section, shall be subject to a civil fine of not less than \$100 nor more than \$5,000 and the provisions of said [section 10 of said chapter 269](#) shall not apply; provided, however, that the exemption from the provisions of said [section 10 of said chapter 269](#) provided herein shall not apply if: (i) such firearm identification card has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such firearm identification card is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such firearm identification card has been denied. Any law enforcement officer who discovers a person to be in possession of a rifle or shotgun after such person's firearm identification card has expired, meaning after 90 days beyond the stated expiration date on the card, or has been revoked or suspended solely for failure to give notice of a change of address shall confiscate any rifle or shotgun and such expired or suspended card then in possession, and such officer shall forward such card to the licensing authority by whom it was issued as soon as practicable. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended card within one year of such confiscation or such weapon may be otherwise disposed of in accordance with the provisions of section 129D. Pending the issuance of a renewed firearm identification card, a receipt for the fee paid, after five days following issuance, shall serve as a valid substitute and any rifle or shotgun so confiscated shall be returned, unless the applicant is disqualified. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131 or 131F.

(13) Upon issuance of a firearm identification card under this section, the licensing authority shall forward a copy of such approved application and card to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a firearm identification card under this section.

(14) Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

(15) The secretary of the executive office of public safety, or his designee, may promulgate regulations to carry out the purposes of this section.

## History

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1968, 737, § 7; 1969, 799, § 7; 1971, 225; 1972, 312, §§ 1, 2; 1976, 239; 1989, 339; [1994, 24, §§ 1, 2](#); [1996, 151, § 317](#); [1996, 200, § 27](#); [1998, 180, § 29](#); [1998, 358, § 4](#); [2000, 159, § 233](#); [2000, 236, §§ 18, 19](#); [2002, 513, § 1](#); 2003, 26, § 428; [2003, 46, § 102](#); [2003, 140, § 34](#); [2004, 65, §§ 23, 24](#); [2004, 150, §§ 4-8](#); [2010, 256, § 93](#); [2010, 466, § 1](#); [2011, 9, §§ 14, 15](#); [2011, 68, § 93](#); [2014, 284, §§ 30, 31, 33, 34, 35A, 35B, 36, 38, 39](#); [2018, 123, §§ 9, 10](#), effective August 17, 2018.

Annotated Laws of Massachusetts  
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## ALM GL ch. 140, § 129C

Current through Chapter 89 of the 2023 Legislative Session of the 193rd General Court

**Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182)  
> TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY  
AND GOOD ORDER (Chs. 133 — 148A) > Chapter 140 Licenses (§§ 1 — 206)**

### **§ 129C. Firearms — Possession; Exemptions.**

No person, other than a licensed dealer or one who has been issued a license to carry a pistol or revolver or an exempt person as hereinafter described, shall own or possess any firearm, rifle, shotgun or ammunition unless he has been issued a firearm identification card by the licensing authority pursuant to the provisions of section one hundred and twenty-nine B.

No person shall sell, give away, loan or otherwise transfer a rifle or shotgun or ammunition other than (a) by operation of law, or (b) to an exempt person as hereinafter described, or (c) to a licensed dealer, or (d) to a person who displays his firearm identification card, or license to carry a pistol or revolver.

A seller shall, within seven days, report all such transfers to the commissioner of the department of criminal justice information services according to the provisions set forth in section one hundred and twenty-eight A, and in the case of loss, theft or recovery of any firearm, rifle, shotgun or machine gun, a similar report shall be made forthwith to both the commissioner of the department of criminal justice information services and the licensing authority in the city or town where the owner resides. Whoever fails to report the loss or theft of a firearm, rifle, shotgun or machine gun or the recovery of a firearm, rifle, shotgun or machine gun previously reported lost or stolen to the commissioner of the department of criminal justice information services and the licensing authority in the city or town where the owner resides shall be punished by a fine of not less than \$500 nor more than \$1,000 for a first offense, by a fine of not less than \$2,500 nor more than \$7,500 for a second offense and by a fine of not less than \$7,500 nor more than \$10,000 or imprisonment for not less than 1 year nor more than 5 years, or by both such fine and imprisonment, for a third or subsequent offense. Failure to so report shall be a cause for suspension or permanent revocation of a person's firearm identification card or license to carry firearms, or both. Notwithstanding this paragraph or any general or special law to the contrary, no person, who in good faith, reports a loss or theft under this paragraph for the first time shall be subject to suspension, revocation or be considered unsuitable under section 131 for the renewal of a lawfully held firearm identification card or license to carry firearms; provided, however, that persons reporting loss or theft under this paragraph or under section 129B on a second or subsequent occasion may be subject to suspension, revocation or be considered unsuitable under said section 131 for the renewal of a lawfully held firearm identification card or license to carry firearms.

The provisions of this section shall not apply to the following exempted persons and uses:

- (a) Any device used exclusively for signalling or distress use and required or recommended by the United States Coast Guard or the Interstate Commerce Commission, or for the firing of stud cartridges, explosive rivets or similar industrial ammunition;
- (b) Federally licensed firearms manufacturers or wholesale dealers, or persons employed by them or by licensed dealers, or on their behalf, when possession of firearms, rifles or shotguns is necessary for manufacture, display, storage, transport, installation, inspection or testing;
- (c) To a person voluntarily surrendering a firearm, rifle or shotgun and ammunition therefor to a licensing authority, the colonel of the state police or his designee if prior written notice has been given by said person to the licensing authority or the colonel of the state police, stating the place and approximate time of said surrender;
- (d) The regular and ordinary transport of firearms, rifles or shotguns as merchandise by any common carrier;

- (e) Possession by retail customers for the purpose of firing at duly licensed target concessions at amusement parks, piers and similar locations, provided that the firearms, rifles or shotguns to be so used are firmly chained or affixed to the counter and that the proprietor is in possession of a firearm identification card or license to carry firearms;
- (f) Possession of rifles and shotguns and ammunition therefor by nonresident hunters with valid nonresident hunting licenses during hunting season;
- (g) Possession of rifles and shotguns and ammunition therefor by nonresidents while on a firing or shooting range;
- (h) Possession of rifles and shotguns and ammunition therefor by nonresidents traveling in or through the commonwealth, providing that any rifles or shotguns are unloaded and enclosed in a case;
- (i) Possession of rifles and shotguns by nonresidents while at a firearm showing or display organized by a regularly existing gun collectors' club or association;
- (j) Any resident of the commonwealth returning after having been absent from the commonwealth for not less than 180 consecutive days or any new resident moving into the commonwealth, with respect to any firearm, rifle or shotgun and any ammunition therefor then in his possession, for 60 days after such return or entry into the commonwealth.
- (k) Any person under the age of fifteen with respect to the use of a rifle or shotgun by such person in hunting or target shooting, provided that such use is otherwise permitted by law and is under the immediate supervision of a person holding a firearm identification card or a license to carry firearms, or a duly commissioned officer, noncommissioned officer or enlisted member of the United States Army, Navy, Marine Corps, Air Force or Coast Guard, or the National Guard or military service of the commonwealth or reserve components thereof, while in the performance of his duty;
- (l) The possession or utilization of any rifle or shotgun during the course of any television, movie, stage or other similar theatrical production, or by a professional photographer or writer for examination purposes in the pursuit of his profession, providing such possession or utilization is under the immediate supervision of a holder of a firearm identification card or a license to carry firearms;
- (m) The temporary holding, handling or firing of a firearm for examination, trial or instruction in the presence of a holder of a license to carry firearms, or the temporary holding, handling or firing of a rifle or shotgun for examination, trial or instruction in the presence of a holder of a firearm identification card, or where such holding, handling or firing is for a lawful purpose;
- (n) The transfer of a firearm, rifle or shotgun upon the death of an owner to his heir or legatee shall be subject to the provisions of this section, provided that said heir or legatee shall within one hundred and eighty days of such transfer, obtain a firearm identification card or a license to carry firearms if not otherwise an exempt person who is qualified to receive such or apply to the licensing authority for such further limited period as may be necessary for the disposition of such firearm, rifle or shotgun;
- (o) Persons in the military or other service of any state or of the United States, and police officers and other peace officers of any jurisdiction, in the performance of their official duty or when duly authorized to possess them;
- (p) Carrying or possession by residents or nonresidents of so-called black powder rifles, shotguns, and ammunition therefor as described in such paragraphs (A) and (B) of the third paragraph of section 121, and the carrying or possession of conventional rifles, shotguns, and ammunition therefor by nonresidents who meet the requirements for such carrying or possession in the state in which they reside.
- (q) [Stricken.]
- (r) Possession by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service and possession by the members of any such organization when on official parade duty or ceremonial occasions.

(s) Possession by federal, state and local historical societies, museums, and institutional collections open to the public, provided such firearms, rifles or shotguns are unloaded, properly housed and secured from unauthorized handling;

(t) the possession of firearms, rifles, shotguns, machine guns and ammunition, by banks or institutional lenders, or their agents, servants or employees, when the same are possessed as collateral for a secured commercial transaction or as a result of a default under a secured commercial transaction.

(u) Any nonresident who is eighteen years of age or older at the time of acquiring a rifle or shotgun from a licensed firearms dealer; provided, however, that such nonresident must hold a valid firearms license from his state of residence; provided, further, that the licensing requirements of such nonresident's state of residence are as stringent as the requirements of the commonwealth for a firearm identification card, as determined by the colonel of the state police who shall, annually, publish a list of those states whose requirements comply with the provisions of this clause.

Any person, exempted by clauses (o), (p) and (q), purchasing a rifle or shotgun or ammunition therefor shall submit to the seller such full and clear proof of identification, including shield number, serial number, military or governmental order or authorization, military or other official identification, other state firearms license, or proof of nonresidence, as may be applicable.

Nothing in this section shall permit the sale of rifles or shotguns or ammunition therefor to a minor under the age of eighteen in violation of section one hundred and thirty nor may any firearm be sold to a person under the age of 21 nor to any person who is not licensed to carry firearms under section one hundred and thirty-one unless he presents a valid firearm identification card and a permit to purchase issued under section one hundred and thirty-one A, or presents such permit to purchase and is a properly documented exempt person as hereinbefore described.

Nothing in this section shall permit the sale or transfer of a large capacity rifle, shotgun or firearm or large capacity feeding device therefor to a person not in possession of a license to carry firearms issued pursuant to section 131.

The possession of a firearm identification card issued under section one hundred and twenty-nine B shall not entitle any person to carry a firearm in violation of section ten of chapter two hundred and sixty-nine and, the possession of a firearm identification card issued under section 129B shall not entitle any person to possess any large capacity rifle or shotgun or large capacity feeding device therefor in violation of subsection (m) of said [section 10 of said chapter 269](#).

Any person who, while not being within the limits of his own property or residence, or such person whose property or residence is under lawful search, and who is not exempt under this section, shall on demand of a police officer or other law enforcement officer, exhibit his license to carry firearms, or his firearm identification card or receipt for fee paid for such card, or, after January first, nineteen hundred and seventy, exhibit a valid hunting license issued to him which shall bear the number officially inscribed of such license to carry or card if any. Upon failure to do so such person may be required to surrender to such officer said firearm, rifle or shotgun which shall be taken into custody as under the provisions of section one hundred and twenty-nine D, except that such firearm, rifle or shotgun shall be returned forthwith upon presentation within thirty days of said license to carry firearms, firearm identification card or receipt for fee paid for such card or hunting license as hereinbefore described. Any person subject to the conditions of this paragraph may, even though no firearm, rifle or shotgun was surrendered, be required to produce within thirty days said license to carry firearms, firearm identification card or receipt for fee paid for such card, or said hunting license, failing which the conditions of section one hundred and twenty-nine D will apply. Nothing in this section shall prevent any person from being prosecuted for any violation of this chapter.

## History

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1968, 737, § 7; 1969, 799, § 8; 1971, 456, § 4; 1972, 312, § 3; 1973, 892, §§ 3-5; 1974, 289; 1975, 378, § 1; 1978, 551, § 1; 1984, 172; [1991, 82, §§ 2, 3](#); [1991, 89](#); [1996, 151, §§ 318-322](#); [1998, 180, §§ 30-35](#); [1998, 358, § 5](#); [1999, 1, § 2](#); [2010, 256, § 94](#); [2010, 466, § 2](#); [2014, 284, §§ 40, 41](#).

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## [ALM GL ch. 140, § 131](#)

Current through Chapter 89 of the 2023 Legislative Session of the 193rd General Court

**Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182)  
> TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY  
AND GOOD ORDER (Chs. 133 — 148A) > Chapter 140 Licenses (§§ 1 — 206)**

### **§ 131. Firearms — Possession — License to Carry.**

The issuance and possession of a license to carry firearms shall be subject to the following conditions and restrictions:

(a) A license shall entitle a holder thereof of a license to purchase, rent, lease, borrow, possess and carry: (i) firearms, including large capacity firearms, and feeding devices and ammunition therefor, for all lawful purposes; and (ii) rifles and shotguns, including large capacity weapons, and feeding devices and ammunition therefor, for all lawful purposes.

(b) The colonel of state police may, after an investigation, grant a license to a club or facility with an on-site shooting range or gallery, which club is incorporated under the laws of the commonwealth for the possession, storage and use of large capacity weapons, ammunition therefor and large capacity feeding devices for use with such weapons on the premises of the club; provided, however, that not less than 1 shareholder of the club shall be qualified and suitable to be issued a license; and provided further, that such large capacity weapons and ammunition feeding devices may be used under the club license only by a member that possesses a valid firearm identification card issued pursuant to section 129B or a valid license to carry firearms, or by such other person that the club permits while under the direct supervision of a certified firearms safety instructor or club member who, in the case of a large capacity firearm, possesses a valid license to carry firearms or, in the case of a large capacity rifle or shotgun, possesses a valid license to carry firearms. The club shall not permit shooting at targets that depict human figures, human effigies, human silhouettes or any human images thereof, except by public safety personnel performing in line with their official duties.

No large capacity weapon or large capacity feeding device shall be removed from the premises except to: (i) transfer the firearm or feeding device to a licensed dealer; (ii) transport the firearm or feeding device to a licensed gunsmith for repair; (iii) target, trap or skeet shoot on the premises of another club incorporated under the laws of the commonwealth and to transport thereto; (iv) attend an exhibition or educational project or event that is sponsored by, conducted under the supervision of or approved by a public law enforcement agency or a nationally or state recognized entity that promotes proficiency in or education about semiautomatic weapons and to transport thereto and therefrom; (v) hunt pursuant to chapter 131; or (vi) surrender the firearm or feeding device pursuant to section 129D. Any large capacity weapon or large capacity feeding device kept on the premises of a lawfully incorporated shooting club shall, when not in use, be secured in a locked container and shall be unloaded during any lawful transport. The clerk or other corporate officer of the club shall annually file a report with the colonel of state police and the commissioner of the department of criminal justice information services listing all large capacity weapons and large capacity feeding devices owned or possessed under the license. The colonel or a designee may inspect all firearms owned or possessed by the club upon request during regular business hours and the colonel may revoke or suspend a club license for a violation of this chapter or chapter 269 relative to the ownership, use or possession of large capacity weapons or large capacity feeding devices.

(c) A license to carry firearms shall be valid to own, possess, purchase and transfer non-large capacity rifles and shotguns, consistent with the entitlements conferred by a firearm identification card issued under section 129B.

(d) A person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal

jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police an application for a license to carry firearms, or renewal of the same, which the licensing authority or the colonel shall issue if it appears that the applicant is neither a prohibited person nor determined to be unsuitable to be issued a license as set forth in this section, provided that upon an initial application for a license to carry firearms, the licensing authority shall conduct a personal interview with the applicant.

A prohibited person shall be a person who:

- (i) has, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in [section 52 of chapter 119](#), for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in [section 1 of chapter 94C](#) including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in [18 U.S.C. 921\(a\)\(33\)](#);
- (ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in said [section 1 of said chapter 94C](#) including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in [18 U.S.C. 921\(a\)\(33\)](#);
- (iii) is or has been (A) committed to a hospital or institution for mental illness, alcohol or substance abuse, except a commitment pursuant to [sections 35](#) or [36C of chapter 123](#), unless after 5 years from the date of the confinement, the applicant submits with the application an affidavit of a licensed physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that in the physician's or psychologist's opinion, the applicant is not disabled by a mental illness, alcohol or substance abuse in a manner that shall prevent the applicant from possessing a firearm, rifle or shotgun; (B) committed by a court order to a hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court order pursuant to said [section 36C of said chapter 123](#) and submits a copy of the court order with the application; (C) subject to an order of the probate court appointing a guardian or conservator for an incapacitated person on the grounds that the applicant lacks the mental capacity to contract or manage the applicant's affairs, unless the applicant was granted a petition for relief of the order of the probate court pursuant to [section 56C of chapter 215](#) and submits a copy of the order of the probate court with the application; or (D) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said [section 35 of said chapter 123](#), unless the applicant was granted a petition for relief of the court order pursuant to said section 35 and submits a copy of the court order with the application;
- (iv) is younger than 21 years of age at the time of the application;
- (v) is an alien who does not maintain lawful permanent residency;
- (vi) is currently subject to: (A) an order for suspension or surrender issued pursuant to [sections 3B](#) or [3C of chapter 209A](#) or a similar order issued by another jurisdiction; (B) a permanent or temporary protection order issued pursuant to said chapter 209A or a similar order issued by another jurisdiction, including any order described in [18 U.S.C. 922\(g\)\(8\)](#); (C) a permanent or temporary harassment prevention order issued pursuant to chapter 258E or a similar order issued by another jurisdiction; or (D) an extreme risk protection order issued pursuant to sections 131R to 131X, inclusive, or a similar order issued by another jurisdiction;
- (vii) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;
- (viii) has been discharged from the armed forces of the United States under dishonorable conditions;

- (ix) is a fugitive from justice; or
- (x) having been a citizen of the United States, has renounced that citizenship.

The licensing authority shall deny the application or renewal of a license to carry, or suspend or revoke a license issued under this section if the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others. Upon denial of an application or renewal of a license based on a determination of unsuitability, the licensing authority shall notify the applicant in writing setting forth the specific reasons for the determination in accordance with paragraph (e). Upon revoking or suspending a license based on a determination of unsuitability, the licensing authority shall notify the holder of a license in writing setting forth the specific reasons for the determination in accordance with paragraph (f). The determination of unsuitability shall be subject to judicial review under said paragraph (f).

(e) Within seven days of the receipt of a completed application for a license to carry or possess firearms, or renewal of same, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a license to carry or possess firearms. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. The colonel shall inquire of the commissioner of the department of mental health relative to whether the applicant is disqualified from being so licensed. If the information available to the colonel does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within said 30 day period.

The licensing authority may also make inquiries concerning the applicant to: (i) the commissioner of the department of criminal justice information services relative to any disqualifying condition and records of purchases, sales, rentals, leases and transfers of weapons or ammunition concerning the applicant; (ii) the commissioner of probation relative to any record contained within the department of probation or the statewide domestic violence record keeping system concerning the applicant; and (iii) the commissioner of the department of mental health relative to whether the applicant is a suitable person to possess firearms or is not a suitable person to possess firearms. The director or commissioner to whom the licensing authority makes such inquiry shall provide prompt and full cooperation for that purpose in any investigation of the applicant.

The licensing authority shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such license shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law.

The licensing authority shall provide to the applicant a receipt indicating that it received the application. The receipt shall be provided to the applicant within 7 days by mail if the application was received by mail or immediately if the application was made in person; provided, however, that the receipt shall include the applicant's name and address; current license number and license expiration date, if any; the date the licensing authority received the application; the name, address and telephone number of the licensing authority; the agent of the licensing authority that received the application; the type of application; and whether the application is for a new license or a renewal of an existing license. The licensing authority shall keep a copy of the receipt for not less than 1 year and shall furnish a copy to the applicant if requested by the applicant.

**(f)** A license issued under this section shall be revoked or suspended by the licensing authority, or his designee, upon the occurrence of any event that would have disqualified the holder from being issued such license or from having such license renewed. A license shall be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such license and the person whose license is so revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended license may be reinstated only upon the termination of all disqualifying conditions, if any.

Any applicant or holder aggrieved by a denial, revocation or suspension of a license, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receiving notice of the denial, revocation or suspension or within 90 days after the expiration of the time limit during which the licensing authority shall respond to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in the city or town in which the applicant filed the application or in which the license was issued. If after a hearing a justice of the court finds that there was no reasonable ground for denying, suspending or revoking the license and that the petitioner is not prohibited by law from possessing a license, the justice may order a license to be issued or reinstated to the petitioner.

**(g)** A license shall be in a standard form provided by the commissioner of the department of criminal justice information services in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to [section 8 of chapter 90](#) and shall contain a license number which shall clearly indicate the name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the licensee. The license shall be clearly marked "License to Carry Firearms". The license shall provide in a legible font size and style the phone numbers for the National Suicide Prevention Lifeline and the Samaritans Statewide Helpline. The application for such license shall be made in a standard form provided by the commissioner of the department of criminal justice information services, which form shall require the applicant to affirmatively state under the pains and penalties of perjury that such applicant is not disqualified on any of the grounds enumerated above from being issued such license.

**(h)** Any person who knowingly files an application containing false information shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

**(i)** A license to carry or possess firearms shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue and shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of issue; provided, however, that, if the licensee applied for renewal before the license expired, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. If a licensee is on active duty with the armed forces of the United States on the expiration date of the license, the license shall remain valid until the licensee is released from active duty and for a period not less than 180 days following the release; provided, however, that, if the licensee applied for renewal prior to the end of that period, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. Any renewal thereof shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years but not more than 6 years from the effective date of such license. Any license issued to an applicant born on February 29 shall expire on March 1. The fee for the application shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth and not less than \$50,000 of the funds deposited into the General Fund shall be allocated to the Firearm Licensing Review Board, established in section 130B, for its operations and that any funds not expended by said board for its operations shall revert back to the General Fund; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. For active and retired law enforcement officials, or local, state, or federal government entities acting on their behalf, the fee for the application shall be set at \$25, which shall be payable to the licensing authority and shall not be

prorated or refunded in case of revocation or denial. The licensing authority shall retain \$12.50 of the fee, and \$12.50 of the fee shall be deposited into the general fund of the commonwealth. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit such portion of the license application fee into the Firearms Record Keeping Fund quarterly, not later than January 1, April 1, July 1 and October 1 of each year. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly such portion of the license application fee as is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. For the purposes of [section 10 of chapter 269](#), an expired license to carry firearms shall be deemed to be valid for a period not to exceed 90 days beyond the stated date of expiration, unless such license to carry firearms has been revoked.

Any person over the age of 70 and any law enforcement officer applying for a license to carry firearms through his employing agency shall be exempt from the requirement of paying a renewal fee for a license to carry.

(j)

(1) No license shall be required for the carrying or possession of a firearm known as a detonator and commonly used on vehicles as a signaling and marking device, when carried or possessed for such signaling or marking purposes.

(2) No license to carry shall be required for the possession of an unloaded large capacity rifle or shotgun or an unloaded feeding device therefor by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service, or by the members of any such organization when on official parade duty or during ceremonial occasions. For purposes of this subparagraph, an "unloaded large capacity rifle or shotgun" and an "unloaded feeding device therefor" shall include any large capacity rifle, shotgun or feeding device therefor loaded with a blank cartridge or blank cartridges, so-called, which contain no projectile within such blank or blanks or within the bore or chamber of such large capacity rifle or shotgun.

(k) Whoever knowingly issues a license in violation of this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a jail or house of correction, or by both such fine and imprisonment.

(l) The commissioner of the department of criminal justice information services shall send electronically or by first class mail to the holder of each such license to carry firearms, a notice of the expiration of such license not less than 90 days prior to such expiration and shall enclose therein a form for the renewal of such license. The form for renewal shall include an affidavit in which the applicant shall verify that the applicant has not lost any firearms or had any firearms stolen from the applicant since the date of the applicant's last renewal or issuance. The taking of fingerprints shall not be required in issuing the renewal of a license if the renewal applicant's fingerprints are on file with the department of the state police. Any licensee shall notify, in writing, the licensing authority who issued said license, the chief of police into whose jurisdiction the licensee moves and the commissioner of the department of criminal justice information services of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of said license. The commissioner of the department of criminal justice information services shall provide electronic notice of expiration only upon the request of a cardholder. A request for electronic notice of expiration shall be forwarded to the department on a form furnished by the commissioner. Any electronic address maintained by the department for the purpose of providing electronic notice of expiration shall be considered a firearms record and shall not be disclosed except as provided in [section 10 of chapter 66](#).

(m) Notwithstanding the provisions of [section 10 of chapter 269](#), any person in possession of a firearm, rifle or shotgun whose license issued under this section is invalid for the sole reason that it has expired, not including licenses that remain valid under paragraph (i) because the licensee applied for renewal before the license expired, but who shall not be disqualified from renewal upon application therefor pursuant to this section, shall be subject to a civil fine of not less than \$100 nor more than \$5,000 and the provisions of [section 10 of chapter 269](#) shall not apply; provided, however, that the exemption from the provisions of said [section 10 of said chapter 269](#) provided herein shall not apply if: (i) such license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or

suspension of such license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such license has been denied. Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or shotgun after such person's license has expired, meaning after 90 days beyond the stated expiration date on the license, has been revoked or suspended, solely for failure to give notice of a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended license then in possession and such officer, shall forward such license to the licensing authority by whom it was issued as soon as practicable. The officer shall, at the time of confiscation, provide to the person whose firearm, rifle or shotgun has been confiscated, a written inventory and receipt for all firearms, rifles or shotguns confiscated and the officer and his employer shall exercise due care in the handling, holding and storage of these items. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended license within one year of such confiscation or may be otherwise disposed of in accordance with the provisions of section 129D. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131F.

**(n)** Upon issuance of a license to carry or possess firearms under this section, the licensing authority shall forward a copy of such approved application and license to the commissioner of the department of criminal justice information services, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a license under this section.

**(o)** No person shall be issued a license to carry or possess a machine gun in the commonwealth, except that a licensing authority or the colonel of state police may issue a machine gun license to:

**(i)** a firearm instructor certified by the municipal police training committee for the sole purpose of firearm instruction to police personnel;

**(ii)** a bona fide collector of firearms upon application or upon application for renewal of such license.

Clauses (i) and (ii) of this paragraph shall not apply to bump stocks and trigger cranks.

**(p)** The commissioner of the department of criminal justice information services shall promulgate regulations in accordance with chapter 30A to establish criteria for persons who shall be classified as bona fide collectors of firearms.

**(q)** Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

**(r)** The secretary of the executive office of public safety or his designee may promulgate regulations to carry out the purposes of this section.

## History

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1906, 172, § 1; 1911, 548, § 1; 1919, 207, § 1; 1922, 485, § 9; 1925, 284, § 4; 1927, 326, § 3; 1936, 302; 1951, 201; 1953, 319, § 20; 1953, 454; 1957, 688, § 15; 1959, 296, § 6; 1960, 293; 1969, 799, § 11; 1972, 415; 1973, 138; 1973, 892, § 7; 1974, 312; 1974, 649, § 1; 1975, 4, § 1; 1975, 113, § 1; 1984, 420, § 2; 1986, 481, § 2; 1987, 465, § 33; [1994, 24, § 3](#); [1996, 151, §§ 325-329](#); [1996, 200, § 28](#); [1998, 180, § 41](#); [1998, 358, §§ 6-9](#); [2002, 196, § 22](#); [2002, 513, § 2](#); 2003, 26, § 429; [2003, 46, § 103](#); [2004, 150, §§ 10-16](#); [2008, 224](#); [2010, 256, § 97](#); [2010, 466, § 3](#); [2011, 9, §§ 16, 17](#); [2014, 284, §§ 46-57](#); [2017, 110, § 21](#), effective February 1, 2018; [2018, 123, §§ 11, 12](#), effective August 17, 2018; [2022, 175, §§ 4-17A](#), effective August 10, 2022.



## ALM GL ch. 140, § 131F

Current through Chapter 89 of the 2023 Legislative Session of the 193rd General Court

**Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182)  
> TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY  
AND GOOD ORDER (Chs. 133 — 148A) > Chapter 140 Licenses (§§ 1 — 206)**

### **§ 131F. Firearms — Possession — Temporary License to Carry.**

A temporary license to carry firearms, rifles or shotguns or feeding devices or ammunition therefor, within the commonwealth, shall be issued by the colonel of state police, or persons authorized by him, to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition if it appears that the applicant is not a prohibited person and is not determined unsuitable to be issued a license as set forth in section 131.

Such license shall be valid for a period of one year but the colonel may renew such license if such renewal is necessary.

The colonel shall issue such license in accordance with the provisions of section 131 to any resident of the commonwealth for the purposes of sports competition.

A temporary license issued pursuant to this section shall be clearly marked “Temporary License to Carry Firearms” and shall not be used to purchase firearms in the commonwealth as provided in section 131E. A large capacity firearm and a large capacity feeding device therefor may be carried if the person has been issued a license. The colonel may permit a licensee to possess a large capacity rifle or shotgun or both; provided, however, that this entitlement shall be clearly indicated on the license. The fee for an application for the license shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. A license issued under the provisions of this section to a nonresident who is in the employ of a bank, public utility corporation, or a firm engaged in the business of transferring monies, or business of similar nature, or a firm licensed as a private detective under the provisions of chapter one hundred and forty-seven, and whose application is endorsed by his employer, or who is a member of the armed services and is stationed within the territorial boundaries of the commonwealth and has the written consent of his commanding officer, may be issued for any term not to exceed two years, and said licenses shall expire in accordance with the provisions of section one hundred and thirty-one.

A license, otherwise in accordance with provisions of this section, may be issued to a nonresident employee, whose application is endorsed by his employer, of a federally licensed Massachusetts manufacturer of machine guns to possess within the commonwealth a machine gun for the purpose of transporting or testing relative to the manufacture of machine guns, and the license shall be marked “temporary license to possess a machine gun” and may be issued for any term not to exceed two years and shall expire in accordance with the provisions of section one hundred and thirty-one.

### **History**

1957, 688, § 20; 1959, 296, § 8; 1969, 799, § 12A; 1978, 551, § 2; 1980, 572, § 254; 1984, 189, § 102; 1984, 420, § 3; [1996, 151, §§ 333, 334](#); [1996, 200, § 29](#); [1998, 180, § 46](#); 2003, 26, § 431; [2014, 284, §§ 60-63](#); [2022, 175, §§ 17B-22](#), effective August 10, 2022.

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## ALM GL ch. 140, § 131G

Current through Chapter 89 of the 2023 Legislative Session of the 193rd General Court

**Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182)  
> TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY  
AND GOOD ORDER (Chs. 133 — 148A) > Chapter 140 Licenses (§§ 1 — 206)**

### § 131G. Firearms — Possession — License to Carry — Nonresidents — Exceptions.

Any person who is not a resident of the commonwealth may carry a pistol or revolver in or through the commonwealth for the purpose of taking part in a pistol or revolver competition or attending any meeting or exhibition of any organized group of firearm collectors or for the purpose of hunting; provided, that such person is a resident of the United States and has a permit or license to carry firearms issued under the laws of any state, district or territory thereof which has licensing requirements which prohibit the issuance of permits or licenses to persons who have been convicted of a felony or who have been convicted of the unlawful use, possession or sale of narcotic or harmful drugs; provided, further, that in the case of a person traveling in or through the commonwealth for the purpose of hunting, he has on his person a hunting or sporting license issued by the commonwealth or by the state of his destination. Police officers and other peace officers of any state, territory or jurisdiction within the United States duly authorized to possess firearms by the laws thereof shall, for the purposes of this section, be deemed to have a permit or license to carry firearms as described in this section.

### History

1964, 447; 1965, 86; 1975, 378, § 2.

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## ALM GL ch. 269, § 10

Current through Chapter 89 of the 2023 Legislative Session of the 193rd General Court

**Annotated Laws of Massachusetts > PART IV CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES (Chs. 263 - 280) > TITLE I CRIMES AND PUNISHMENTS (Chs. 263 - 274) > TITLE I CRIMES AND PUNISHMENTS (Chs. 263 — 274) > Chapter 269 Crimes Against Public Peace (§§ 1 — 19)**

### **§ 10. Weapons — Dangerous Weapons — Unlawfully Carrying.**

(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 2½ 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.

(k) [None.]

(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.

## History

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1935, 290; 1936, 227, § 1; 1937, 250, § 1; 1955, 160; 1956, 172; 1957, 688, § 23; 1968, 737, §§ 11-14; 1969, 441; 1969, 799, §§ 14-16; 1971, 456, §§ 5, 6; 1972, 312, § 5; 1973, 588; 1974, 649, § 2; 1975, 113, §§ 2, 3; 1975, 585, § 1; 1978, 175, §§ 1, 2; 1982, 254; 1983, 516, §§ 2, 3; 1985, 349; 1986, 481, § 3; 1986, 581, § 1; 1987, 150, §§ 1, 2; 1989, 648; [1990, 511, §§ 2, 3](#); [1996, 20](#); [1996, 151, §§ 487, 488](#); [1998, 180, §§ 68-70](#); [2006, 48, §§ 5-7](#); [2014, 284, §§ 89, 92](#), effective August 13, 2014; [2014, 284, § 90](#), effective January 1, 2015; [2014, 284, § 91](#), effective January 1, 2021.

# The Charters And General Laws Of The Colony And Province Of Massachusetts Bay Page 133, Image 140 (1814) available at The DUKE CENTER FOR FIREARMS LAW Making of Modern Law: Primary Sources.

*YEAR:* 1633

*CATEGORY:* Felons,  
Foreigners and  
Others Deemed  
Dangerous By  
the State

*JURISDICTION:* Colonial,  
State

Laws of the Colony of Massachusetts 1633, 37. § 2. And it is ordered, that no person whatsoever, shall henceforth buy land of any Indian without license first had and obtained of the general court, and if any offend herein, such land so bought shall be forfeited to the

country. Nor shall any person sell, give or barter, directly or indirectly, any gun or guns, powder, bullets, shot, lead, to any Indian whatsoever, or to any person inhabiting out of this jurisdiction: Nor shall any amend or repair any gun belonging to any Indian, nor shall sell any armor or weapons, upon penalty of ten pounds for every gun, armor or weapons so sold, given or bartered, five pounds for every pound of powder, forty shillings for every pound of shot or lead, and proportionately for any greater or lesser quantity.

**§ 131. Firearms — Possession — License to Carry.**

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The issuance and possession of a license to carry firearms shall be subject to the following conditions and restrictions:

(a) A license shall entitle a holder thereof of a license to purchase, rent, lease, borrow, possess and carry: (i) firearms, including large capacity firearms, and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority considers proper; and (ii) rifles and shotguns, including large capacity weapons, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as it considers proper. A violation of a restriction imposed by the licensing authority under this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that [section 10 of chapter 269](#) shall not apply to a violation of this paragraph.

(b) The colonel of state police may, after an investigation, grant a license to a club or facility with an on-site shooting range or gallery, which club is incorporated under the laws of the commonwealth for the possession, storage and use of large capacity weapons, ammunition therefor and large capacity feeding devices for use with such weapons on the premises of the club; provided, however, that not less than 1 shareholder of the club shall be qualified and suitable to be issued a license; and provided further, that such large capacity weapons and ammunition feeding devices may be used under the club license only by a member that possesses a valid firearm identification card issued pursuant to section 129B or a valid license to carry firearms, or by such other person that the club permits while under the direct supervision of a certified firearms safety instructor or club member who, in the case of a large capacity firearm, possesses a valid license to carry firearms or, in the case of a large capacity rifle or shotgun, possesses a valid license to carry firearms. The club shall not permit shooting at targets that depict human figures, human effigies, human silhouettes or any human images thereof, except by public safety personnel performing in line with their official duties.

No large capacity weapon or large capacity feeding device shall be removed from the premises except to: (i) transfer the firearm or feeding device to a licensed dealer; (ii) transport the firearm or feeding device to a licensed gunsmith for repair; (iii) target, trap or skeet shoot on the premises of another club incorporated under the laws of the commonwealth and to transport thereto; (iv) attend an exhibition or educational project or event that is sponsored by, conducted under the supervision of or approved by a public law enforcement agency or a nationally or state recognized entity that promotes proficiency in or education about semiautomatic weapons and to transport thereto and therefrom; (v) hunt pursuant to chapter 131; or (vi) surrender the firearm or feeding device pursuant to section 129D. Any large capacity weapon or large capacity feeding device kept on the premises of a lawfully incorporated shooting club shall, when not in use, be secured in a locked container and shall be unloaded during any lawful transport. The clerk or other corporate officer of the club shall annually file a report with the colonel of state police and the commissioner of criminal justice information services listing all large capacity weapons and large capacity feeding devices owned or possessed under the license. The colonel or a designee may inspect all firearms owned or possessed by the club upon request during regular business hours and the colonel may revoke or suspend a club license for a violation of this chapter or chapter 269 relative to the ownership, use or possession of large capacity weapons or large capacity feeding devices.

(c) A license to carry firearms shall be valid to own, possess, purchase and transfer non-large capacity rifles and shotguns, consistent with the entitlements conferred by a firearm identification card issued under section 129B.



(d) A person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police an application for a license to carry firearms, or renewal of the same, which the licensing authority or the colonel may issue if it appears that the applicant is not a prohibited person as set forth in this section to be issued a license and that the applicant has good reason to fear injury to the applicant or the applicant's property or for any other reason, including the carrying of firearms for use in sport or target practice only, subject to the restrictions expressed or authorized under this section.

A prohibited person shall be a person who:

- (i) has, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in [section 52 of chapter 119](#), for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in [section 1 of chapter 94C](#) including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in [18 U.S.C. 921\(a\)\(33\)](#);
- (ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in said [section 1 of said chapter 94C](#) including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in [18 U.S.C. 921\(a\)\(33\)](#);
- (iii) is or has been (A) committed to a hospital or institution for mental illness, alcohol or substance abuse, except a commitment pursuant to [sections 35 or 36C of chapter 123](#), unless after 5 years from the date of the confinement, the applicant submits with the application an affidavit of a licensed physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that in the physician's or psychologist's opinion, the applicant is not disabled by a mental illness, alcohol or substance abuse in a manner that shall prevent the applicant from possessing a firearm, rifle or shotgun; (B) committed by a court order to a hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court order pursuant to said [section 36C of said chapter 123](#) and submits a copy of the court order with the application; (C) subject to an order of the probate court appointing a guardian or conservator for an incapacitated person on the grounds that the applicant lacks the mental capacity to contract or manage the applicant's affairs, unless the applicant was granted a petition for relief of the order of the probate court pursuant to [section 56C of chapter 215](#) and submits a copy of the order of the probate court with the application; or (D) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said [section 35 of said chapter 123](#), unless the applicant was granted a petition for relief of the court order pursuant to said section 35 and submits a copy of the court order with the application;
- (iv) is younger than 21 years of age at the time of the application;
- (v) is an alien who does not maintain lawful permanent residency;
- (vi) is currently subject to: (A) an order for suspension or surrender issued pursuant to [sections 3B or 3C of chapter 209A](#) or a similar order issued by another jurisdiction; or (B) a permanent or temporary protection order issued pursuant to said chapter 209A or a similar order issued by another jurisdiction, including any order described in [18 U.S.C. 922\(g\)\(8\)](#);
- (vii) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;
- (viii) has been discharged from the armed forces of the United States under dishonorable conditions;

- (ix) is a fugitive from justice; or
- (x) having been a citizen of the United States, has renounced that citizenship.

The licensing authority may deny the application or renewal of a license to carry, or suspend or revoke a license issued under this section if, in a reasonable exercise of discretion, the licensing authority determines that the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on: (i) reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety. Upon denial of an application or renewal of a license based on a determination of unsuitability, the licensing authority shall notify the applicant in writing setting forth the specific reasons for the determination in accordance with paragraph (e). Upon revoking or suspending a license based on a determination of unsuitability, the licensing authority shall notify the holder of a license in writing setting forth the specific reasons for the determination in accordance with paragraph (f). The determination of unsuitability shall be subject to judicial review under said paragraph (f).

(e) Within seven days of the receipt of a completed application for a license to carry or possess firearms, or renewal of same, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a license to carry or possess firearms. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. The colonel shall inquire of the commissioner of the department of mental health relative to whether the applicant is disqualified from being so licensed. If the information available to the colonel does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within said 30 day period.

The licensing authority may also make inquiries concerning the applicant to: (i) the commissioner of the department of criminal justice information services relative to any disqualifying condition and records of purchases, sales, rentals, leases and transfers of weapons or ammunition concerning the applicant; (ii) the commissioner of probation relative to any record contained within the department of probation or the statewide domestic violence record keeping system concerning the applicant; and (iii) the commissioner of the department of mental health relative to whether the applicant is a suitable person to possess firearms or is not a suitable person to possess firearms. The director or commissioner to whom the licensing authority makes such inquiry shall provide prompt and full cooperation for that purpose in any investigation of the applicant.

The licensing authority shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such license shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law.

The licensing authority shall provide to the applicant a receipt indicating that it received the application. The receipt shall be provided to the applicant within 7 days by mail if the application was received by mail or immediately if the application was made in person; provided, however, that the receipt shall include the applicant's name and address; current license number and license expiration date, if any; the date the licensing authority received the application; the name, address and telephone number of the licensing authority; the agent of the licensing authority that received the application; the type of application; and whether the application is for a new license or a renewal of an existing license. The licensing authority shall

keep a copy of the receipt for not less than 1 year and shall furnish a copy to the applicant if requested by the applicant.

**(f)** A license issued under this section shall be revoked or suspended by the licensing authority, or his designee, upon the occurrence of any event that would have disqualified the holder from being issued such license or from having such license renewed. A license may be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such license and the person whose license is so revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended license may be reinstated only upon the termination of all disqualifying conditions, if any.

Any applicant or holder aggrieved by a denial, revocation, suspension or restriction placed on a license, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receiving notice of the denial, revocation or suspension or within 90 days after the expiration of the time limit during which the licensing authority shall respond to the applicant or, in the case of a restriction, any time after a restriction is placed on the license pursuant to this section, file a petition to obtain judicial review in the district court having jurisdiction in the city or town in which the applicant filed the application or in which the license was issued. If after a hearing a justice of the court finds that there was no reasonable ground for denying, suspending, revoking or restricting the license and that the petitioner is not prohibited by law from possessing a license, the justice may order a license to be issued or reinstated to the petitioner or may order the licensing authority to remove certain restrictions placed on the license.

**(g)** A license shall be in a standard form provided by the commissioner of criminal justice information services in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to [section 8 of chapter 90](#) and shall contain a license number which shall clearly indicate the name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the licensee. The license shall be clearly marked "License to Carry Firearms". The license shall provide in a legible font size and style the phone numbers for the National Suicide Prevention Lifeline and the Samaritans Statewide Helpline. The application for such license shall be made in a standard form provided by the executive director of the criminal history systems board, which form shall require the applicant to affirmatively state under the pains and penalties of perjury that such applicant is not disqualified on any of the grounds enumerated above from being issued such license.

**(h)** Any person who knowingly files an application containing false information shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

**(i)** A license to carry or possess firearms shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue and shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of issue; provided, however, that, if the licensee applied for renewal before the license expired, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. If a licensee is on active duty with the armed forces of the United States on the expiration date of the license, the license shall remain valid until the licensee is released from active duty and for a period not less than 180 days following the release; provided, however, that, if the licensee applied for renewal prior to the end of that period, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. An application for renewal of a Class B license filed before the license has expired shall not extend the license beyond the stated expiration date; provided, that the Class B license shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of issue. If a licensee is on active duty with the armed forces of the United States on the expiration date of the license, the license shall remain valid until the licensee is released from active duty and for a period not less than 180 days following the release; provided, however, that, if the licensee applied for renewal prior to the end of that period, the license shall remain valid after its expiration date

for all lawful purposes until the application for renewal is approved or denied. The fee for the application shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth and not less than \$50,000 of the funds deposited into the General Fund shall be allocated to the Firearm Licensing Review Board, established in section 130B, for its operations and that any funds not expended by said board for its operations shall revert back to the General Fund; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. For active and retired law enforcement officials, or local, state, or federal government entities acting on their behalf, the fee for the application shall be set at \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$12.50 of the fee, and \$12.50 of the fee shall be deposited into the general fund of the commonwealth. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit such portion of the license application fee into the Firearms Record Keeping Fund quarterly, not later than January 1, April 1, July 1 and October 1 of each year. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly such portion of the license application fee as is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. For the purposes of [section 10 of chapter 269](#), an expired license to carry firearms shall be deemed to be valid for a period not to exceed 90 days beyond the stated date of expiration, unless such license to carry firearms has been revoked.

Any person over the age of 70 and any law enforcement officer applying for a license to carry firearms through his employing agency shall be exempt from the requirement of paying a renewal fee for a Class A or Class B license to carry.

(j)

(1) No license shall be required for the carrying or possession of a firearm known as a detonator and commonly used on vehicles as a signaling and marking device, when carried or possessed for such signaling or marking purposes.

(2) No license to carry shall be required for the possession of an unloaded large capacity rifle or shotgun or an unloaded feeding device therefor by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service, or by the members of any such organization when on official parade duty or during ceremonial occasions. For purposes of this subparagraph, an "unloaded large capacity rifle or shotgun" and an "unloaded feeding device therefor" shall include any large capacity rifle, shotgun or feeding device therefor loaded with a blank cartridge or blank cartridges, so-called, which contain no projectile within such blank or blanks or within the bore or chamber of such large capacity rifle or shotgun.

(k) Whoever knowingly issues a license in violation of this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a jail or house of correction, or by both such fine and imprisonment.

(l) The executive director of the criminal history systems board shall send electronically or by first class mail to the holder of each such license to carry firearms, a notice of the expiration of such license not less than 90 days prior to such expiration and shall enclose therein a form for the renewal of such license. The form for renewal shall include an affidavit in which the applicant shall verify that the applicant has not lost any firearms or had any firearms stolen from the applicant since the date of the applicant's last renewal or issuance. The taking of fingerprints shall not be required in issuing the renewal of a license if the renewal applicant's fingerprints are on file with the department of the state police. Any licensee shall notify, in writing, the licensing authority who issued said license, the chief of police into whose jurisdiction the licensee moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of said license. The commissioner of criminal justice information services shall provide electronic notice of expiration only upon the request of a cardholder. A request for electronic notice of expiration shall be forwarded to the department on a form furnished by the commissioner. Any electronic address maintained by the department for the purpose of

providing electronic notice of expiration shall be considered a firearms record and shall not be disclosed except as provided in [section 10 of chapter 66](#).

**(m)** Notwithstanding the provisions of [section 10 of chapter 269](#), any person in possession of a firearm, rifle or shotgun whose license issued under this section is invalid for the sole reason that it has expired, not including licenses that remain valid under paragraph (i) because the licensee applied for renewal before the license expired, but who shall not be disqualified from renewal upon application therefor pursuant to this section, shall be subject to a civil fine of not less than \$100 nor more than \$5,000 and the provisions of [section 10 of chapter 269](#) shall not apply; provided, however, that the exemption from the provisions of said [section 10 of said chapter 269](#) provided herein shall not apply if: (i) such license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such license has been denied. Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or shotgun after such person's license has expired, meaning after 90 days beyond the stated expiration date on the license, has been revoked or suspended, solely for failure to give notice of a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended license then in possession and such officer, shall forward such license to the licensing authority by whom it was issued as soon as practicable. The officer shall, at the time of confiscation, provide to the person whose firearm, rifle or shotgun has been confiscated, a written inventory and receipt for all firearms, rifles or shotguns confiscated and the officer and his employer shall exercise due care in the handling, holding and storage of these items. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended license within one year of such confiscation or may be otherwise disposed of in accordance with the provisions of section 129D. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131F.

**(n)** Upon issuance of a license to carry or possess firearms under this section, the licensing authority shall forward a copy of such approved application and license to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a license under this section.

**(o)** No person shall be issued a license to carry or possess a machine gun in the commonwealth, except that a licensing authority or the colonel of state police may issue a machine gun license to:

- (i)** a firearm instructor certified by the municipal police training committee for the sole purpose of firearm instruction to police personnel;
- (ii)** a bona fide collector of firearms upon application or upon application for renewal of such license.

Clauses (i) and (ii) of this paragraph shall not apply to bump stocks and trigger cranks.

**(p)** The executive director of the criminal history systems board shall promulgate regulations in accordance with chapter 30A to establish criteria for persons who shall be classified as bona fide collectors of firearms.

**(q)** Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

**(r)** The secretary of the executive office of public safety or his designee may promulgate regulations to carry out the purposes of this section.

## History

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1906, 172, § 1; 1911, 548, § 1; 1919, 207, § 1; 1922, 485, § 9; 1925, 284, § 4; 1927, 326, § 3; 1936, 302; 1951, 201; 1953, 319, § 20; 1953, 454; 1957, 688, § 15; 1959, 296, § 6; 1960, 293; 1969, 799, § 11; 1972, 415; 1973, 138; 1973, 892, § 7; 1974, 312; 1974, 649, § 1; 1975, 4, § 1; 1975, 113, § 1; 1984, 420, § 2; 1986, 481, § 2; 1987, 465, § 33; [1994, 24, § 3](#); [1996, 151, §§ 325–329](#); [1996, 200, § 28](#); [1998, 180, § 41](#); [1998, 358, §§ 6–9](#); [2002, 196, § 22](#); [2002, 513, § 2](#); 2003, 26, § 429; [2003, 46, § 103](#);

[2004, 150, §§ 10–16](#); [2008, 224](#); [2010, 256, § 97](#); [2010, 466, § 3](#); [2011, 9, §§ 16, 17](#); [2014, 284, §§ 46–57](#); [2017, 110, § 21](#), effective February 1, 2018; [2018, 123, §§ 11, 12](#), effective August 17, 2018.

Annotated Laws of Massachusetts  
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[2015 ALM GL ch. 140, § 131F](#)

2015 Massachusetts Code Archive

*Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT > TITLE XX  
PUBLIC SAFETY AND GOOD ORDER > Chapter 140 Licenses*

## Notice

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 *First of two.* This section has more than one version with varying effective dates.

*First of two versions of this section.*

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A Class A or Class B temporary license to carry firearms or feeding devices or ammunition therefor, within the commonwealth, may be issued by the colonel of state police, or persons authorized by him, to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition and subject to such terms and conditions as said colonel may deem proper; provided, however, that no license shall be issued to a person who:

- (i) has, in any state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in [section 1 of chapter 94C](#); or (F) a misdemeanor crime of domestic violence as defined in [18 U. S. C. 921\(a\)\(33\)](#).
- (ii) has been confined to any hospital or institution for mental illness, unless the applicant submits with his application an affidavit of a registered physician attesting that such physician is familiar with the applicant's mental illness and that in such physician's opinion the applicant is not disabled by such an illness in a manner that should prevent such applicant from possessing a firearm;
- (iii) is or has been under treatment for or confinement for drug addiction or habitual drunkenness, unless such applicant is deemed to be cured of such



condition by a licensed physician, and such applicant may make application for said license after the expiration of five years from the date of such confinement or treatment and upon presentment of an affidavit issued by such physician stating that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant is deemed cured;

(iv) is currently subject to: (A) an order for suspension or surrender issued pursuant to section 3B or [3C of chapter 209A](#) or a similar order issued by another jurisdiction; or (B) a permanent or temporary protection order issued pursuant to chapter 209A or a similar order issued by another jurisdiction;

(v) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;

(vi) has been discharged from the armed forces of the United States under dishonorable conditions;

(vii) is a fugitive from justice;

(viii) having been a citizen of the United States, has renounced that citizenship;

(ix) not being a citizen or national of the United States, is illegally or unlawfully in the United States; or

(x) not being a citizen or national of the United States, has been admitted to the United States under a nonimmigrant visa as defined in [8 U. S. C. 1101](#)(a)(26), unless the person has been admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States or another exception set forth in [18 U. S. C. 922](#)(y)(2) applies.

Such license shall be valid for a period of one year but the colonel may renew such license, if in his discretion, such renewal is necessary.

The colonel may also issue such license, subject to such terms and conditions as he deems proper, to any resident of the commonwealth for the purposes of sports competition.

A temporary license issued under this section shall be marked "Temporary License to Carry Firearms", shall clearly indicate whether it is Class A or Class B and shall not be used to purchase firearms in the commonwealth as provided under section 131E. Neither a large capacity firearm nor large capacity feeding device therefor may be carried unless such person has been issued a Class A license; provided, however, that the colonel may permit a Class A or Class B licensee to possess large capacity rifles or shotguns or both, and such entitlement shall be clearly indicated on such license. The fee for an application for the license shall be \$ 100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of



revocation or denial. The licensing authority shall retain \$ 25 of the fee; \$ 50 of the fee shall be deposited into the general fund of the commonwealth; and \$ 25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. A license issued under the provisions of this section to a nonresident who is in the employ of a bank, public utility corporation, or a firm engaged in the business of transferring monies, or business of similar nature, or a firm licensed as a private detective under the provisions of chapter one hundred and forty-seven, and whose application is endorsed by his employer, or who is a member of the armed services and is stationed within the territorial boundaries of the commonwealth and has the written consent of his commanding officer, may be issued for any term not to exceed two years, and said licenses shall expire in accordance with the provisions of section one hundred and thirty-one.

A license, otherwise in accordance with provisions of this section, may be issued to a nonresident employee, whose application is endorsed by his employer, of a federally licensed Massachusetts manufacturer of machine guns to possess within the commonwealth a machine gun for the purpose of transporting or testing relative to the manufacture of machine guns, and the license shall be marked "temporary license to possess a machine gun" and may be issued for any term not to exceed two years and shall expire in accordance with the provisions of section one hundred and thirty-one.

## History

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1957, 688, § 20; 1959, 296, § 8; 1969, 799, § 12A; 1978, 551, § 2; 1980, 572, § 254; 1984, 189, § 102; 1984, 420, § 3; [1996, 151, §§ 333](#), 334; [1996, 200, § 29](#); [1998, 180, § 46](#); 2003, 26, § 431; [2014, 284, §§ 61](#), 62.

Annotated Laws of Massachusetts

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[2015 ALM GL ch. 140, § 131F](#)

2015 Massachusetts Code Archive

*Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT > TITLE XX  
PUBLIC SAFETY AND GOOD ORDER > Chapter 140 Licenses*

## Notice

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🚩 This document has more than one version with varying effective dates.

***Second of two versions of this section.***

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A temporary license to carry firearms or feeding devices or ammunition therefor, within the commonwealth, may be issued by the colonel of state police, or persons authorized by him, to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition and subject to such terms and conditions as said colonel may deem proper; provided, however, that no license shall be issued to a person who:

- (i) has, in any state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in [section 1 of chapter 94C](#); or (F) a misdemeanor crime of domestic violence as defined in [18 U. S. C. 921\(a\)\(33\)](#).
- (ii) has been confined to any hospital or institution for mental illness, unless the applicant submits with his application an affidavit of a registered physician attesting that such physician is familiar with the applicant's mental illness and that in such physician's opinion the applicant is not disabled by such an illness in a manner that should prevent such applicant from possessing a firearm;
- (iii) is or has been under treatment for or confinement for drug addiction or habitual drunkenness, unless such applicant is deemed to be cured of such condition by a licensed physician, and such applicant may make application for

said license after the expiration of five years from the date of such confinement or treatment and upon presentment of an affidavit issued by such physician stating that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant is deemed cured;

(iv) is currently subject to: (A) an order for suspension or surrender issued pursuant to section 3B or [3C of chapter 209A](#) or a similar order issued by another jurisdiction; or (B) a permanent or temporary protection order issued pursuant to chapter 209A or a similar order issued by another jurisdiction;

(v) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;

(vi) has been discharged from the armed forces of the United States under dishonorable conditions;

(vii) is a fugitive from justice;

(viii) having been a citizen of the United States, has renounced that citizenship;

(ix) not being a citizen or national of the United States, is illegally or unlawfully in the United States; or

(x) not being a citizen or national of the United States, has been admitted to the United States under a nonimmigrant visa as defined in [8 U. S. C. 1101](#)(a)(26), unless the person has been admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States or another exception set forth in [18 U. S. C. 922](#)(y)(2) applies.

Such license shall be valid for a period of one year but the colonel may renew such license, if in his discretion, such renewal is necessary.

The colonel may also issue such license, subject to such terms and conditions as he deems proper, to any resident of the commonwealth for the purposes of sports competition.

A temporary license issued pursuant to this section shall be clearly marked "Temporary License to Carry Firearms" and shall not be used to purchase firearms in the commonwealth as provided in section 131E. A large capacity firearm and a large capacity feeding device therefor may be carried if the person has been issued a license. The colonel may permit a licensee to possess a large capacity rifle or shotgun or both; provided, however, that this entitlement shall be clearly indicated on the license. The fee for an application for the license shall be \$ 100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$ 25 of the fee; \$ 50 of the fee shall be deposited into the general fund of the commonwealth; and \$ 25 of the

fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. A license issued under the provisions of this section to a nonresident who is in the employ of a bank, public utility corporation, or a firm engaged in the business of transferring monies, or business of similar nature, or a firm licensed as a private detective under the provisions of chapter one hundred and forty-seven, and whose application is endorsed by his employer, or who is a member of the armed services and is stationed within the territorial boundaries of the commonwealth and has the written consent of his commanding officer, may be issued for any term not to exceed two years, and said licenses shall expire in accordance with the provisions of section one hundred and thirty-one.

A license, otherwise in accordance with provisions of this section, may be issued to a nonresident employee, whose application is endorsed by his employer, of a federally licensed Massachusetts manufacturer of machine guns to possess within the commonwealth a machine gun for the purpose of transporting or testing relative to the manufacture of machine guns, and the license shall be marked "temporary license to possess a machine gun" and may be issued for any term not to exceed two years and shall expire in accordance with the provisions of section one hundred and thirty-one.

## History

---

1957, 688, § 20; 1959, 296, § 8; 1969, 799, § 12A; 1978, 551, § 2; 1980, 572, § 254; 1984, 189, § 102; 1984, 420, § 3; [1996, 151, §§ 333](#), 334; [1996, 200, § 29](#); [1998, 180, § 46](#); 2003, 26, § 431; [2014, 284, §§ 60-63](#).

Annotated Laws of Massachusetts

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## 2021 Mass. HB 5163

Enacted, August 10, 2022

### Reporter

2022 Mass. ALS 175; 2022 Mass. Ch. 175; 2021 Mass. HB 5163; 2022 Mass. Acts 175

MASSACHUSETTS ADVANCE LEGISLATIVE SERVICE > MASSACHUSETTS 192ND GENERAL COURT - 2022  
REGULAR SESSION > CHAPTER 175 > HOUSE BILL 5163

### Notice

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### Synopsis

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AN ACT TO IMPROVE AND MODERNIZE THE INFORMATION TECHNOLOGY SYSTEMS AND CAPACITIES OF  
THE JUDICIARY

### Text

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Whereas, The deferred operation of this act would tend to defeat its purpose, which is to improve and modernize the information technology systems and capacities of the judiciary, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

#### SECTION 1.

To provide for a program to improve and modernize the information technology infrastructure of the supreme judicial court, appeals court, trial court and departments of the trial court of the commonwealth, the sums set forth in this act, for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds; provided, however, that the amounts specified in an item or for a particular project may be adjusted in order to facilitate projects authorized in this act. The sums made available in this act shall be in addition to any amounts previously made available for these purposes.

#### SECTION 2.

##### JUDICIARY

0330-6000.. For costs associated with establishing digital courthouses and courtrooms; provided, that projects funded in this item shall include an access to justice portal to enable electronic file storage and electronic access to case information by court users; provided further, that projects funded in this item shall include a remote video interpreting system; provided further, that projects funded in this item shall include a content management system to manage electronically filed documents, forms and evidence with a workflow engine to manage court operations and enable system wide real-time docketing and data access; provided further, that projects funded in this item shall include wireless internet access in courthouses for court staff and court users; provided further, that projects funded in this item shall include digital signage in all courthouses; provided further, that projects funded in this item shall include the

costs associated with planning for the replacement of a case management system for the trial court of the commonwealth; provided further, that projects funded in this item shall include replacement of the appellate court case management system; provided further, that projects funded in this item shall include a supreme judicial court digital reporting system that permits self-publishing for the supreme judicial court and appeals court; provided further, that not less than \$1,000,000 shall be expended for the parole board of the department of correction to record and securely store audio recordings of parole board hearings; provided further, that not less than \$500,000 shall be expended for New England Partners in Faith and Omnipoint Technology to provide affordable and free internet service to the lowest income residents, with limited internet access, impacted by the Judicial system, to promote equitable access to virtual filing and appearance services of the court, court services, and public safety services in Liberty Heights, Memorial Square, South End, Old Hill, Upper Hill, Six Corners, Bay, Pine Point, McKnight neighborhoods and any other low-income neighborhood of Springfield; provided further, that projects funded in this item shall include technology for direct electronic video conferencing with registrars' and magistrates' offices of the trial court during hours of operation for attorneys and members of the public; and provided further, that projects funded in this item shall be funded in consultation, as applicable, with the secretary of technology services and security..... \$95,000,000

## **SECTION 2A.**

### **JUDICIARY**

0330-6001.. For costs associated with establishing a modern and secure judiciary; provided, that projects funded in this item shall include costs associated with establishing a digital security system to protect court systems, networks and data; provided further, that projects funded in this item shall include court system-wide replacement of physical security hardware, which shall include, but not be limited to, video surveillance systems, duress systems, security scanning systems and inter-personnel communications equipment; provided further, that funds in this item shall be expended for projects to support the safety of victims and witnesses while in court-system facilities; provided further, that projects funded in this item shall include centralized law enforcement communication systems; and provided further, that projects funded in this item shall be funded in consultation, as applicable, with the secretary of technology services and security..... \$35,000,000

## **SECTION 2B.**

### **JUDICIARY**

0330-6002.. For costs associated with the technological modernization of court administrative operations; provided, that projects funded in this item shall include court system-wide secure voice over internet protocol phone systems; provided further, that projects funded in this item shall include an energy management system; provided further, that projects funded in this item shall include a data storage system of sufficient capacity to meet the needs of the court system; provided further, that projects funded in this item shall include costs associated with enterprise resource planning; provided further, that projects funded in this item shall include costs associated with establishing a virtual private network to enable court employee remote access to court systems and data; provided further, that projects funded in this item shall include costs associated with increased bandwidth capacity in all court locations to accommodate a digital court system; provided further, that not less than \$500,000 shall be expended for the improvement and modernization of the information technology systems at the Framingham and Natick District Court; and provided further, that projects funded in this item shall be funded in consultation, as applicable, with the secretary of technology services and security..... \$35,500,000

**SECTION 3.** Section 9B of chapter 4 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following sentence:- Electronically imprinting the established seal of a court in a form authorized by the supreme judicial court, appeals court, the trial court or any department of the trial court of the commonwealth shall be taken and held to be the seal of such court.

**SECTION 3A.** Chapter 127 of the General Laws is hereby amended by adding the following section:-

**Section 170.**

The parole board shall record and securely store all audio for all parole board hearings. Audio from each parolee's hearing(s) shall be securely stored and may only be deleted when that individual is no longer on parole or is deceased.

**SECTION 4.** Section 131 of chapter 140 of the General Laws, as so appearing, is hereby amended by striking out, in lines 6 to 8, inclusive, the words “, subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority considers proper”.

**SECTION 5.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 10 to 17, inclusive, the words “; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as it considers proper. A violation of a restriction imposed by the licensing authority under this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that section 10 of chapter 269 shall not apply to a violation of this paragraph.”

**SECTION 6.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by inserting after the word “of”, in lines 55, 256 and in line 364, the second time it appears, the following words: - the department of.

**SECTION 7.** Subsection (d) of said section 131 of said chapter 140, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

A person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police an application for a license to carry firearms, or renewal of the same, which the licensing authority or the colonel shall issue if it appears that the applicant is neither a prohibited person nor determined to be unsuitable to be issued a license as set forth in this section, provided that upon an initial application for a license to carry firearms, the licensing authority shall conduct a personal interview with the applicant.

**SECTION 8.** Said section 131 of said Chapter 140, as so appearing, is hereby further amended by striking out, in line 1737, the words “or (C)” and inserting in place thereof the following words:- (C) a permanent or temporary harassment prevention order issued pursuant to chapter 258E or a similar order issued by another jurisdiction; or (D).

**SECTION 9.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 147, the word “may” and inserting in place thereof the following word:- shall.

**SECTION 10.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 149 and 150 the words “, in a reasonable exercise of discretion, the licensing authority determines that”.

**SECTION 11.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 152 to 157, inclusive, the words “: (i) reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety” and inserting in place thereof the following words: - reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others.

**SECTION 12.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 225, the word “may” and inserting in place thereof the following word:- shall.

**SECTION 13.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 239 and 240 the words “, suspension or restriction placed on” and inserting in place thereof the following words:- or suspension of.

**SECTION 14.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 244 to 246, inclusive, the words “or, in the case of a restriction, any time after a restriction is placed on the license pursuant to this section”.

**SECTION 15.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 250, the words “, revoking or restricting” and inserting in place thereof the following words:- or revoking.

**SECTION 16.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 253 and 254 the words “or may order the licensing authority to remove certain restrictions placed on the license”.

**SECTION 17.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 266 and 267, 348, 360 and 361, 409 and 410, and 424, each time they appear, the words “executive director of the criminal history systems board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

**SECTION 17A.** Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 325, the words “Class A or Class B”.

**SECTION 17B.** Section 131F of said chapter 140, as so appearing, is hereby amended by inserting after the word “firearms”, in line 1, the following words:- , rifles or shotguns.

**SECTION 18.** Said section 131F of said chapter 140, as so appearing, is hereby further amended by striking out, in line 2, the word “may” and inserting in place thereof the following word:- shall.

**SECTION 19.** Said section 131F of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 6 to 8, inclusive, the words “and subject to such terms and conditions as said colonel may deem proper; provided, however, that no license shall be issued to a person who” and inserting in place thereof the following words:- if it appears that the applicant is not a prohibited person and is not determined unsuitable to be issued a license as set forth in section 131.

**SECTION 20.** The first paragraph of said section 131F of said chapter 140, as so appearing, is hereby amended by striking out clauses (i) to (x), inclusive.

**SECTION 21.** Said section 131F of said chapter 140, as so appearing, is hereby further amended by striking out, in line 55, the words “, if in his discretion,” and inserting in place thereof the following word:- if.

**SECTION 22.** Said section 131F of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 57 to 58, inclusive, the words “The colonel may also issue such license, subject to such terms and conditions as he deems proper,” and inserting in place thereof the following words:- The colonel shall issue such license in accordance with the provisions of section 131.



**SECTION 55.**

Sections 3, 3A and 23 to 50, inclusive, shall take effect 90 days after the effective date of this act.

**History**

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Signed, in part, by Governor. Chapter No. 175 of 2022. August 10, 2022

Effective date: August 10, 2022

**Sponsor**

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Ways and Means

MASSACHUSETTS ADVANCE LEGISLATIVE SERVICE  
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End of Document

# HOUSE . . . . . No. 5076

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## The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court  
(2021-2022)

SENATE, July 30, 2022.

The committee on Senate Ways and Means, to whom was referred the House Bill to improve and modernize the information technology systems and capacities of the judiciary (on the residue of House, No. 5076, insomuch as relates to sections 1, 2, 2A, 2B, 3, 3A, 4 through 28 inclusive, 29 through 35 inclusive, 36 through 62 inclusive, 64 and 66),- reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 3087.

For the committee,  
Michael J. Rodrigues

# HOUSE . . . . . No. 5076

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House bill No. 5046, as amended and passed to be engrossed by the House. July 21, 2022.

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## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act to improve and modernize the information technology systems and capacities of the judiciary.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to improve and modernize the information technology systems and capacities of the judiciary, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

1           SECTION 1. To provide for a program to improve and modernize the information  
2   technology infrastructure of the supreme judicial court, appeals court, trial court and departments  
3   of the trial court of the commonwealth, the sums set forth in this act, for the several purposes and  
4   subject to the conditions specified in this act, are hereby made available, subject to the laws  
5   regulating the disbursement of public funds; provided, however, that the amounts specified in an  
6   item or for a particular project may be adjusted in order to facilitate projects authorized in this  
7   act. The sums made available in this act shall be in addition to any amounts previously made  
8   available for these purposes.

9           SECTION 2.

10          JUDICIARY

567 notwithstanding any general or special law to the contrary, be general obligations of the  
568 commonwealth.

569         SECTION 34. To meet the expenditures necessary in carrying out section 2B, the state  
570 treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth, in an  
571 amount to be specified by the governor, but not exceeding in the aggregate \$35,000,000. All  
572 such bonds issued by the commonwealth shall be designated on their face, Judiciary Information  
573 Technology and Innovation Act of 2022, and shall be issued for a maximum term of years, not  
574 exceeding 5 years, as the governor may recommend to the general court pursuant to section 3 of  
575 Article LXII of the Amendments to the Constitution. The bonds shall be payable not later than  
576 June 30, 2032. All interest and payments on account of principal on these obligations shall be  
577 payable from the General Fund. Bonds and interest thereon issued pursuant to this section shall,  
578 notwithstanding any general or special law to the contrary, be general obligations of the  
579 commonwealth.

580         SECTION 35. Sections 3 to 31, inclusive, shall take effect 90 days after the effective date  
581 of this act.

582         SECTION 35A. Sections 27, 28 and 29 of chapter 222 of the General Laws, as inserted  
583 by section 28M of this act, shall take effect on March 31, 2023.

584         SECTION 36. Section 131 of chapter 140 of the General Laws, as appearing in the 2020  
585 Official Edition, is hereby amended by striking out, in lines 6 to 8, inclusive, the words “, subject  
586 to such restrictions relative to the possession, use or carrying of firearms as the licensing  
587 authority considers proper”.

SECTION 37. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 10 to 17, inclusive, the words “; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as it considers proper. A violation of a restriction imposed by the licensing authority under this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that section 10 of chapter 269 shall not apply to a violation of this paragraph.”

SECTION 38. Said section 131 of said chapter 140, as so appearing, is hereby further amended by inserting after the word “of”, in lines 55, 256 and 364, in each instance, the following words: - the department of.

SECTION 39. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 73, the word “may” and inserting in place thereof the following words: - shall, following a personal interview,.

SECTION 40. Subsection (d) of said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out the first paragraph and inserting in place thereof the following paragraph: -

A person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police an application for a license to carry firearms, or renewal of the same, which the licensing authority or the colonel shall issue if it appears that

610 the applicant is not a prohibited person or determined to be unsuitable to be issued a license as  
611 set forth in this section.

612 SECTION 41. Said subsection (d) of said section 131 of said chapter 140, as so  
613 appearing, is hereby further amended by striking out clauses (vii) through (x), inclusive, and  
614 inserting in place thereof the following clauses: -

615 (vii) poses a risk of danger to their self or others by having in their control, ownership or  
616 possession a weapon, feeding device or ammunition;

617 (viii) is currently the subject of an outstanding arrest warrant in any state or federal  
618 jurisdiction;

619 (ix) has been discharged from the armed forces of the United States under dishonorable  
620 conditions;

621 (x) is a fugitive from justice; or

622 (xi) having been a citizen of the United States, has renounced that citizenship.

623 SECTION 42. Said section 131 of said chapter 140, as so appearing, is hereby further  
624 amended by striking out, in line 137, the words “or (C)” and inserting in place thereof the  
625 following words: - (C) a permanent or temporary harassment prevention order issued pursuant to  
626 chapter 258E or a similar order issued by another jurisdiction; or (D).

627 SECTION 43. Said section 131 of said chapter 140, as so appearing, is hereby further  
628 amended by striking out, in line 147, the word “may” and inserting in place thereof the following  
629 word: - shall.

SECTION 44. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 149 to 150, inclusive, the words “, in a reasonable exercise of discretion, the licensing authority determines that”.

SECTION 45. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 152 to 157, inclusive, the words “: (i) reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety” and inserting in place thereof the following words: - reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others.

SECTION 46. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 225, the word “may” and inserting in place thereof the following word: - shall.

SECTION 47. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 239 to 240, inclusive, the words “, suspension or restriction placed on a license” and inserting in place thereof the following word: - or suspension of a license.

SECTION 48. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 244 to 246, inclusive, the words “or, in the case of a restriction, any time after a restriction is placed on the license pursuant to this section”.

SECTION 49. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 250, the words “, revoking or restricting” and inserting in place thereof the following words: - or revoking.

SECTION 50. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 253 to 254, inclusive, the words “or may order the licensing authority to remove certain restrictions placed on the license”.

SECTION 51. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 266 to 267, inclusive, 348, 360 to 361, inclusive, 409 to 410, inclusive, and 424, each time they appear, the words “executive director of the criminal history systems board” and inserting in place thereof the following words: - commissioner of the department of criminal justice information services.

SECTION 52. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 277 to 280, inclusive, the words “6 years from the date of issue and shall expire on the anniversary of the licensee’s date of birth occurring not less than 5 years nor more than 6 years from the date of issue” and inserting in place the following words: - 3 years from the date of issuance.

SECTION 53. Said section 131 of said chapter 140, as so appearing, is hereby further amended by inserting after the words “revoked.”, in line 321, the following words: - For the purposes of this section, a previously issued, valid license to carry or possess firearms shall expire pursuant to its original term.

SECTION 54. Subsection (i) of said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out the third sentence.



674           SECTION 55. Said section 131 of said chapter 140, as so appearing, is hereby further  
675 amended by striking out, in line 325, the words “Class A or Class B”.

676           SECTION 56. Section 131F of said chapter 140, as so appearing, is hereby amended by  
677 inserting after the word “firearms”, in line 1, the following words: - , rifles or shotguns.

678           SECTION 57. Said section 131F of said chapter 140, as so appearing, is hereby further  
679 amended by striking out, in line 2, the word “may” and inserting in place thereof the following  
680 word: - shall.

681           SECTION 58. Said section 131F of said chapter 140, as so appearing, is hereby further  
682 amended by striking out, in lines 6 to 8, inclusive, the words “and subject to such terms and  
683 conditions as said colonel may deem proper; provided, however, that no license shall be issued to  
684 a person who:” and inserting in place thereof the following words:- in accordance with the  
685 provisions of section 131 if it appears that the applicant is not a prohibited person or is not  
686 determined unsuitable to be issued a license as set forth in that said section 131.

687           SECTION 59. Said section 131F of said chapter 140, as so appearing, is hereby further  
688 amended by striking out paragraphs (i) through (x).

689           SECTION 60. Said section 131F of said chapter 140, as so appearing, is hereby further  
690 amended by striking out, in line 55, the words “, if in his discretion,” and inserting in place  
691 thereof the following word: - if.

692           SECTION 61. Said section 131F of said chapter 140, as so appearing, is hereby further  
693 amended by striking out, in lines 57 to 58, inclusive, the words “The colonel may issue such  
694 license, subject to such terms and conditions as he deems proper,” and inserting in place thereof

695 the following words: - The colonel shall issue such license in accordance with the provisions of  
696 section 131.

697 SECTION 62. Said section 131F of said chapter 140, as so appearing, is hereby further  
698 amended by striking out, in line 65, the word “may” and inserting in place thereof the following  
699 word: - shall.

700 SECTION 63. Chapter 6 of the General Laws, as amended by chapter 253 of the acts of  
701 2020, is hereby amended by striking section 220 and inserting in place thereof the following  
702 section: -

703 Section 220. (a) As used in this section, the following words shall, unless the context  
704 clearly requires otherwise, have the following meanings:

705 “Biometric surveillance technology”, any computer software that performs facial  
706 recognition or other remote biometric recognition.

707 “Facial recognition”, an automated or semi-automated process that assists in identifying  
708 or verifying an individual or analyzing or capturing information about an individual based on the  
709 physical characteristics of an individual’s face, head or body, or that uses characteristics of an  
710 individual’s face, head or body to derive information about the associations, activities or location  
711 of an individual; provided, however, that “facial recognition” shall not include the use of search  
712 terms to sort images in a database.

713 “Facial recognition search”, the use of facial recognition to analyze an image.

714 “Law enforcement agency”, as defined in section 1 of chapter 6E.

715 “Law enforcement officer” or “officer”, as defined in section 1 of chapter 6E.

# SENATE . . . . . No. 3089

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Senate, July 30, 2022 -- Text of the Senate amendment to on the residue of the House Bill to improve and modernize the information technology systems and capacities of the judiciary (being the text of Senate, No. 3087, printed as amended)

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## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

1           SECTION 1. To provide for a program to improve and modernize the information  
2   technology infrastructure of the supreme judicial court, appeals court, trial court and departments  
3   of the trial court of the commonwealth, the sums set forth in this act, for the several purposes and  
4   subject to the conditions specified in this act, are hereby made available, subject to the laws  
5   regulating the disbursement of public funds; provided, however, that the amounts specified in an  
6   item or for a particular project may be adjusted in order to facilitate projects authorized in this  
7   act. The sums made available in this act shall be in addition to any amounts previously made  
8   available for these purposes.

9           SECTION 2.

10          JUDICIARY

11          0330-6000   For costs associated with establishing digital courthouses and courtrooms;  
12   provided, that projects funded in this item shall include an access to justice portal to enable  
13   electronic file storage and electronic access to case information by court users; provided further,  
14   that projects funded in this item shall include a remote video interpreting system; provided  
15   further, that projects funded in this item shall include a content management system to manage

SECTION 4. Section 131 of chapter 140 of the General Laws, as so appearing, is hereby amended by striking out, in lines 6 to 8, inclusive, the words “, subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority considers proper”.

SECTION 5. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 10 to 17, inclusive, the words “; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as it considers proper. A violation of a restriction imposed by the licensing authority under this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that section 10 of chapter 269 shall not apply to a violation of this paragraph.”

SECTION 6. Said section 131 of said chapter 140, as so appearing, is hereby further amended by inserting after the word “of”, in lines 55, 256 and 364, in each instance, the following words: - the department of.

SECTION 7. Subsection (d) of said section 131 of said chapter 140, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph: -

A person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police an application for a license to carry firearms,

or renewal of the same, which the licensing authority or the colonel shall issue if it appears that the applicant is neither a prohibited person nor determined to be unsuitable to be issued a license as set forth in this section.

SECTION 8. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 137, the words “or (C)” and inserting in place thereof the following words: - (C) a permanent or temporary harassment prevention order issued pursuant to chapter 258E or a similar order issued by another jurisdiction; or (D).

SECTION 9. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in line 147, the word “may” and inserting in place thereof the following word:- shall.

SECTION 10. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 149 and 150 the words “, in a reasonable exercise of discretion, the licensing authority determines that”.

SECTION 11. Said section 131 of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 152 to 157, inclusive, the words “: (i) reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety” and inserting in place thereof the following words: - reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others.

104           SECTION 12. Said section 131 of said chapter 140, as so appearing, is hereby further  
105 amended by striking out, in line 225, the word “may” and inserting in place thereof the following  
106 word:- shall.

107           SECTION 13. Said section 131 of said chapter 140, as so appearing, is hereby further  
108 amended by striking out, in lines 239 and 240 the words “, suspension or restriction placed on”  
109 and inserting in place thereof the following words:- or suspension of.

110           SECTION 14. Said section 131 of said chapter 140, as so appearing, is hereby further  
111 amended by striking out, in lines 244 to 246, inclusive, the words “or, in the case of a restriction,  
112 any time after a restriction is placed on the license pursuant to this section”.

113           SECTION 15. Said section 131 of said chapter 140, as so appearing, is hereby further  
114 amended by striking out, in line 250, the words “, revoking or restricting” and inserting in place  
115 thereof the following words:- or revoking.

116           SECTION 16. Said section 131 of said chapter 140, as so appearing, is hereby further  
117 amended by striking out, in lines 253 and 254 the words “or may order the licensing authority to  
118 remove certain restrictions placed on the license”.

119           SECTION 17. Said section 131 of said chapter 140, as so appearing, is hereby further  
120 amended by striking out, in lines 266 and 267, 348, 360 and 361, 409 and 410, and 424, each  
121 time they appear, the words “executive director of the criminal history systems board” and  
122 inserting in place thereof the following words:- commissioner of the department of criminal  
123 justice information services.

124           SECTION 18. Said section 131F of said chapter 140, as so appearing, is hereby further  
125 amended by striking out, in line 2, the word “may” and inserting in place thereof the following  
126 word:- shall.

127           SECTION 19. Said section 131F of said chapter 140, as so appearing, is hereby further  
128 amended by striking out, in lines 6 to 8, inclusive, the words “and subject to such terms and  
129 conditions as said colonel may deem proper; provided, however, that no license shall be issued to  
130 a person who” and inserting in place thereof the following words:- if it appears that the applicant  
131 is not a prohibited person and is not determined unsuitable to be issued a license as set forth in  
132 section 131.

133           SECTION 20. The first paragraph of said section 131F of said chapter 140, as so  
134 appearing, is hereby amended by striking out clauses (i) to (x), inclusive.

135           SECTION 21. Said section 131F of said chapter 140, as so appearing, is hereby further  
136 amended by striking out, in line 55, the words “, if in his discretion,” and inserting in place  
137 thereof the following word: - if.

138           SECTION 22. Said section 131F of said chapter 140, as so appearing, is hereby further  
139 amended by striking out, in lines 57 and 58 the words “, subject to such terms and conditions as  
140 he deems proper,” and inserting in place thereof the following words: - in accordance with the  
141 provisions of section 131.

142           SECTION 23. Section 7 of chapter 185 of the General Laws, as so appearing, is hereby  
143 amended by inserting after the word “court”, in line 7, the following words:- , or may be  
144 electronically maintained by the recorder’s office.

268 exceeding 5 years, as the governor may recommend to the general court pursuant to section 3 of  
269 Article LXII of the Amendments to the Constitution. The bonds shall be payable not later than  
270 June 30, 2032. All interest and payments on account of principal on these obligations shall be  
271 payable from the General Fund. Notwithstanding any general or special law to the contrary,  
272 bonds and interest thereon issued pursuant to this section shall be general obligations of the  
273 commonwealth.

274 SECTION 54. Sections 3 and 23 to 50, inclusive, shall take effect 90 days after the  
275 effective date of this act.



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LOWELL DISTRICT COURT  
NO. 2211CR2835

COMMONWEALTH )

VS. )

DEAN F. DONNELL )  
\_\_\_\_\_ )

MEMORANDUM OF DECISION ON DEFENDANT'S MOTION TO DISMISS

The defendant Dean Donnell is charged in the Lowell District Court with carrying a firearm without a license under *G.L. 269 §10(a)*<sup>1</sup>. The defendant has filed a motion to dismiss the charge in the complaint claiming that:

1. *G.L. 269 §10(a)* is unconstitutional on its face.
2. *G.L. 269 §10(a)* is unconstitutional as applied to the defendant, and
3. *G.L. 269 §10(a)* violated the defendant's right to be free from cruel and unusual punishment.<sup>2</sup>

The defendant in his memorandum in support advances arguments that; 1. *G.L. 269 §10(a)* impermissibly infringes on the Second Amendment of the U.S. Constitution; 2.

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1 The defendant is also charged in a separate complaint #2111CR4759 with possession of a firearm, possession of ammunition and operating under the influence of alcohol.

2 The Court finds that pursuant to *Commonwealth v. Jackson* 369 Mass. 904 (1976) GL 269, sec 10(a) does not constitute cruel and unusual punishment and nothing in the Bruen decision changes that holding.

*G.L. 296 §10(a)* impermissibly shifts the burden of proof onto the defendant to prove he was in fact licensed; 3. Requiring non-residents to obtain licenses to carry firearms violates the Second Amendment because there is no historical analogue burdening the right to interstate travel; 4. The holding of *Commonwealth v Harris* 481 Mass. 767 (2019) does not survive Constitutional muster and is inapplicable to the defendant's case; and 5. The defendant's right to equal protection and the right to travel has been violated.

The facts leading up the issuance of the complaint are not in dispute and for the purposes of this motion, the Court accepts them. Those facts are contained in both the Commonwealth's Memorandum in Opposition to the Motion to Dismiss as well as the Defendant's Memorandum in Support of Addendum to the Motion to Dismiss.

There is no question that the holding of the U.S. Supreme Court in *New York State Rifle and Pistol Association, Inc. v. Bruen*, 141 S. Ct. 2111 (2022), has changed the legal landscape on how the second amendment of the Constitution is interpreted, particularly how it affects existing firearm statutes and challenges to their constitutionality. In fact, the Supreme Judicial Court in *Commonwealth v. Guardado*, 491 Mass. 666 (2023) recognized for the first time that the Second Amendment to the U.S. Constitution guarantees an individual's right to possess and carry a firearm outside of his home. *Id. at 690*. Prior to *Guardado*, Massachusetts treated the possession or carrying a firearm outside of one's home as a "privilege" that was conferred on a person by the state. *Harris supra at 767*. It was against the *Bruen* backdrop that the SJC reversed the longstanding law in Massachusetts that licensure to possess a firearm was not an essential element of the felony of unlawful possession of a firearm outside of the home. Massachusetts had previously

required that holding a valid license to carry a firearm was an exception to the otherwise prohibition of carrying a firearm and that requiring a defendant to produce a license at trial did not infringe on Constitutionally protected conduct.

Because the SJC has already addressed the burden shifting claim made by the defendant, the five remaining arguments of the defendant can be summarized as follows;

What affect does the Bruen decision have on the status of an ordinary, law-abiding resident of the state of New Hampshire who exercises his Constitutional right under the Second Amendment while traveling in Massachusetts.

*Bruen* articulated a two-step analysis in determining whether a law or regulation of constitutionally protected conduct is unconstitutional. First, courts must determine whether "the Second Amendment's plain text covers an individual's conduct[.]" *Bruen supra at 2129-30*. If so, then the "Constitution presumptively protects that conduct," and the Government "must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id. at 2130*. To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." *Id.* "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.*

The conduct of the defendant in the instant case clearly is covered by the Second Amendment. Therefore, the burden falls on the Commonwealth to justify the law showing that it is consistent with the Country's tradition of firearm regulation.

As the defendant in the instant case is not a resident of Massachusetts and was in

compliance with his home states laws on the possession of the firearm, the Commonwealth needed to show some historical analogue relating to disparate treatment of nonresidents and must point to some "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." Bruen Id. at 2131-32.

The Commonwealth argues that under the holding in Commonwealth v. Harris, supra, Massachusetts is not obligated to recognize an out of state resident right to carry a firearm under the Full Faith and Credit clause of the Constitution. They claim that the Commonwealth is not required to substitute its statutes for those of New Hampshire. See Harris supra at 776 and Bruen does not affect the ability of states to require a license as long as the license criteria are objective.

This argument is not persuasive because at the time of the Harris decision, carrying a firearm outside of the home was a privilege, and the Harris Court held that Massachusetts didn't have to give Full Faith and Credit to New Hampshire laws conferring that same privilege. Harris, supra. The Commonwealth is correct that a concurring opinion<sup>3</sup> in Bruen did state that the ability of States to require a license is not affected, but the holding in Bruen basically took away all subjective criteria for the issuance of such a license. The Commonwealth points to no historical precedent limiting the reach of one's exercise to a federal constitutional right to only within that resident's states borders.

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3 Thomas B. Bennett et al., Divide & Concur: Separate Opinions & Legal Change, 103 CORNELL L. REV. 817, 839 (2018) ("[L]ower courts should follow the majority opinion . . . . [They] must follow binding precedent and ignore concurring opinions . . . ."). Justices Alito, Kavanaugh (joined by Chief Justice Roberts), and Barrett filed concurring opinions. Because they all joined the majority opinion, however, these "vanilla concurrences" have "no impact" and "count[] for nothing" legally. Id. at 847.

Moving on to the defendant's claim that *GL 269, sec. 10(a)* violates the defendant's right to travel and equal protection, the Commonwealth also asserts that it does not violate the right to travel and equal protection clause because the Commonwealth's license requirements do not prohibit him from traveling in Massachusetts; they only prohibit him from carrying a firearm while traveling in Massachusetts. The Commonwealth further argues that the licensing requirements don't treat non-residents differently than residents because they can apply for a temporary nonresident license to carry, or they can travel through the state while complying with statutory exemptions of unloading the firearm and storing it secured in a locked compartment and the travel is for a specific purpose such as training or competition. *See G.L.C. 140 § 131, 131F, 129 and 18 USC § 926A.*

The Commonwealth points to the Massachusetts firearm licensing scheme to argue that a nonresident can travel in Massachusetts with a firearm without a license if they are in compliance with the exceptions as listed. However, the exceptions miss the point of the Second Amendment. The Second Amendment and the right to possess firearms is for personal protection, self-defense. The exceptions strip away the right by disarming the individual while he is traveling within the state. The Commonwealth does not point to any historical precedent for this.

The Commonwealth's argument against the defendant's claim that *GL 269, sec. 10(a)* violates his rights under the equal protection clause because he can obtain a temporary nonresident license to carry is also unpersuasive. As stated above, prior to the *Bruen* decision, Massachusetts treated the carrying of a firearm as a privilege. While it allowed nonresidents to apply to obtain a license for that privilege, nonresidents were not

treated the same as residents. Residents of Massachusetts obtaining a license were granted the license for five years. A temporary non resident license was only valid for one year.

The Commonwealth next argues that the Massachusetts licensing scheme imposes a permissible burden because of the substantial state interest in preventing certain people from possessing firearms. However, under federal law, certain people are prohibited from obtaining/possessing firearms. 18 U.S.C. § 922(g), makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms or ammunition, to include any person:

- *convicted in any court of a crime punishable by imprisonment for a term exceeding one year;*
- *who is a fugitive from justice;*
- *who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, codified at 21 U.S.C. § 802);*
- *who has been adjudicated as a mental defective or has been committed to any mental institution;*
- *who is an illegal alien;*
- *who has been discharged from the Armed Forces under dishonorable conditions;*
- *who has renounced his or her United States citizenship;*
- *who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; 4 or*
- *who has been convicted of a misdemeanor crime of domestic violence.*

Nothing in the Bruen decision is contrary to the argument raised by the

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<sup>4</sup> The United States Supreme Court has agreed to hear the government's appeal of a decision from the 5<sup>th</sup> circuit United States v. Rahimi, 59 F.4th 163 (2023) holding that this provision of section 922 (g) does not survive post Bruen.

Commonwealth that there is a substantial interest in making it unlawful for certain individual to possess firearms. In fact, throughout the Bruen decision, reference is made to "ordinary, law-abiding" citizens when speaking of the rights under the second amendment. The logical conclusion to the Commonwealth's argument is that an "ordinary law abiding" resident of the state of New Hampshire can become a felon merely by traveling into the state of Massachusetts. Given that there is already a federal law applying to the entire country as to who is prohibited from possessing firearms, the Court is not persuaded by that argument.

### CONCLUSION

A law-abiding resident of New Hampshire who is exercising his Constitutional right should not become a felon by exercising that right while he is traveling thorough Massachusetts merely because he has not obtained a Massachusetts license to carry, which now, under the holding of Bruen, has to be issued to an applicant unless the applicant is otherwise disqualified. The standard for who is a disqualified individual must be the same. Otherwise, a state may decide to impose different requirements on the exercise of any Constitutional right. For example, some states could impose different age limits on voting in elections.<sup>5</sup>

This Court can think of no other constitutional right which a person loses simply by traveling beyond his home state's border into another state continuing to exercise that

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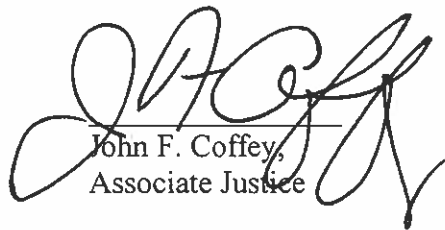
<sup>5</sup> While the Twenty Sixth Amendment to the US Constitution directly forbids this, the Court points this out to contrast this amendment with the Second Amendment's prohibition of the right to keep and bear arms are not to be infringed.

right and instantaneously becomes a felon subject to mandatory minimum sentence of incarceration. Anecdotally, a law abiding New Hampshire resident exercising his constitutional right to carry while shopping at the Pheasant Tree Mall in Nashua, New Hampshire would become a felon when he shops in a section of a store at that Mall, which happens to be in Tyngsborough, Massachusetts

An individual only loses a constitutional right if he commits an offense or is or has been engaged in certain behavior that is covered by *18 USC section 922*. He doesn't lose that right simply by traveling into an adjoining state whose statute mandate that *residents of that state* obtain a license prior to exercising their constitutional right. To hold otherwise would inexplicably treat Second Amendment rights differently than other individually held rights.

Therefore, the Court finds that GL. 269, sec. 10(a) is unconstitutional as applied to this particularly situated defendant and Allows the motion to dismiss on that ground.

SO ORDERED.

  
John F. Coffey,  
Associate Justice

Dated: 8-3-23



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LOWELL DISTRICT COURT  
NO. 2211CR3931

COMMONWEALTH )

VS. )

PHILLIP MARQUIS )  
\_\_\_\_\_ )

MEMORANDUM OF DECISION ON DEFENDANT'S MOTION TO DISMISS

The defendant Phillip Marquis is charged in the Lowell District Court with carrying a firearm without a license under *G.L. 269 §10(a)*. The defendant has filed a motion to dismiss the charge in the complaint claiming that:

1. *G.L. 269 §10(a)* impermissibly infringes on his right to keep and bear arms.
2. *G.L. 140* and laws proscribing the possession of firearms under *G.L. 269 §10(a)* impermissibly violate the rights of nonresidents to keep and bear arms, and
3. *G.L. 269 §10(a)* violated the defendant's right to be free from cruel and unusual punishment.

The facts leading up the issuance of the complaint are not in dispute and for the purposes of this motion, the Court accepts them. Those facts are contained in both the Commonwealth's Memorandum in Opposition to the Motion to Dismiss as well as the Defendant's Memorandum in Support of the Motion to Dismiss.

This Court addressed similar arguments and opposition in its findings in the case of

Commonwealth v. Donnell, #2211CR2835 and adopts those finding in this related case as well. The parties have asked the Court to make findings on the defendant's claim that *G.L. 140 section 131F* (nonresidents or aliens temporary license to carry firearms) restricts nonresidents to only carry while participating in shooting competition (or hunting or attending exhibitions) and not for self-defense. The Commonwealth argues that that specific restriction only applies to aliens.

The Court did address this issue in the Donnell decision. But to clarify its finding, *G.L. 140 section 131F*, as written, groups nonresidents or persons not falling within the jurisdiction of a local licensing authority or aliens that reside outside the Commonwealth, to obtaining licenses for purposes of firearms competitions. While the Commonwealth is correct that since June 23, 2022, EOPS will consider all nonresident license to be unrestricted, that is not how the statute reads.

Furthermore, as stated in the Court's Donnell decision, *New York State Rifle and Pistol Association, Inc. v. Bruen*, 141 S. Ct. 2111 (2022) articulated a two-step analysis in determining whether a law or regulation of constitutionally protected conduct is unconstitutional. First, courts must determine whether "the Second Amendment's plain text covers an individual's conduct[.]'" *Bruen supra* at 2129-30. If so, then the "Constitution presumptively protects that conduct," and the Government "must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." *Id.* "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.*

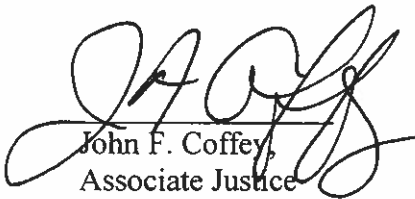
The constitutionality of *140 section 131F* rises or falls on the Commonwealth meeting its burden as articulated by the United States Supreme Court in *Bruen, Id.* The Commonwealth cannot

simply point to a case decided pre Bruen or a statute (however that statute may be read or what it meant to say) and meet its burden when the conduct it seeks to criminalize is constitutionally protected under the Second Amendment. [T]he Government "must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Id. at 2130. To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." Id. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." Id.

The Commonwealth has not met its burden on this issue.

Therefore, the Court finds that GL. 269, sec. 10(a) is unconstitutional as applied to this particularly situated defendant and Allows the motion to dismiss on that ground.

**SO ORDERED.**

  
John F. Coffey,  
Associate Justice

Dated: 8-21-23



## **Joint Advisory Regarding the Massachusetts Firearms Licensing System After the Supreme Court's Decision in *New York State Rifle & Pistol Association v. Bruen***

The Attorney General's Office and the Executive Office of Public Safety and Security issue this joint advisory to provide guidance to licensing authorities and law enforcement officials on how the Supreme Court's decision in *Bruen* affects Massachusetts's firearms licensing laws. We are proud to continue to partner with you in implementing and vigorously enforcing Massachusetts's gun safety laws. These laws help keep our state a safe place to live, raise families, work, and visit.

On June 23, 2022, the United States Supreme Court issued its decision in *New York State Rifle & Pistol Association v. Bruen*. The case involved New York's requirement that applicants demonstrate "proper cause" in order to obtain a permit to carry a concealed weapon in most public places. The Court held that New York's proper cause requirement violates the Second and Fourteenth Amendments. Although *Bruen* concerned a New York law, the Court specifically identified the "good reason" provision of a Massachusetts law, G.L. c. 140, § 131(d), as an analogue to New York's proper cause requirement. *Bruen*, slip op. 4-6; *see also id.* at 6 n.2.

### **Executive Summary**

- ***It remains unlawful to carry a firearm in Massachusetts without a license.*** The Supreme Court's decision in *Bruen* did not affect, but instead expressly stated that it was constitutional, for states to require a license to carry a firearm in public.
- ***Licensing authorities should continue to enforce the "prohibited person" and "suitability" provisions of the license-to-carry statute.*** These aspects of the statute are unaffected by *Bruen*.
- ***Licensing authorities should cease enforcement of the "good reason" provision of the license-to-carry statute in response to Bruen.*** Authorities should no longer deny, or impose restrictions on, a license to carry because the applicant lacks a sufficiently good reason to carry a firearm. An applicant who is neither a "prohibited person" or "unsuitable" must be issued an unrestricted license to carry.
- ***Licensing authorities may continue to inquire about the reasons why the applicant wants a license, but may only use that information to assess the prohibited person and suitability requirements of the statute.*** They may not use that information to deny or restrict a license for lack of a sufficiently good reason to carry a firearm.

- ***The FID Card Process Is Unaffected by Bruen.*** Because there is no “good reason” provision for issuance of an FID card, licensing authorities should continue to process and issue FID cards exactly as they did prior to *Bruen*.

### Massachusetts License to Carry Eligibility Requirements

In Massachusetts, a person must have a license to carry firearms in order to carry firearms in public. G.L. c. 269, § 10. Massachusetts’s statute governing the issuance of licenses to carry, G.L. c. 140, § 131, contains three central provisions that are discussed below. Only one of them—our “good reason” provision of G.L. c. 140, § 131(d)—is impacted by *Bruen*.

*First*, when an applicant applies for a license to carry, the licensing authority must determine whether the applicant is a “prohibited person” such as a convicted felon or a person who falls into one of the other categorical exclusions that are specifically listed out in the statute. G.L. c. 140, § 131(d)(i)-(x). If the applicant falls into one of these categories, they must not be issued a license to carry.

*Second*, if the applicant is not a prohibited person, the licensing authority may deny (or revoke or suspend) a license to carry if the applicant is “unsuitable.” The statute instructs that a “determination of unsuitability shall be based on: (i) reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety.”

*Third*, if the applicant is not a prohibited person, and is not unsuitable, the licensing authority may issue a license to carry if it appears that “the applicant has good reason to fear injury to the applicant or the applicant’s property or for any other reason, including the carrying of firearms for use in sport or target practice only, subject to the restrictions expressed or authorized under this section.” Under this third element, if the applicant lacks good reason to fear injury to their person or property, the licensing authority may impose restrictions on the license, limiting the licensee to carrying a firearm for hunting, target shooting, employment, or the like. *Id.*; *see also id.* § 131(a).

### Enforcement of License to Carry Eligibility Provisions After Bruen

Massachusetts’s strong gun safety laws have consistently led us to have among the lowest rates of gun violence and gun-related death in the country. Our license-to-carry statute is a critical component of our gun safety laws.

The Supreme Court made clear in *Bruen* that States may, consistent with the Second Amendment, require licenses to carry firearms in public. *Bruen*, slip op. 4-6 & 6 n.2; *id.* (Kavanaugh, J., concurring) (“the Court’s decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense”).

Thus, after *Bruen*, **it remains unlawful to carry a firearm in Massachusetts without a license to carry**. Licensing authorities also **can and should continue to enforce the “prohibited person” and the “suitability” elements of the license-to-carry statute** (the first and second elements outlined above). These provisions, which are not affected by *Bruen*, ensure that individuals who are entrusted to carry a firearm, including in a concealed manner in public, do not pose a risk to public safety.

But in light of *Bruen*’s holding that New York’s “proper cause” requirement violates the Second and Fourteenth Amendments, licensing authorities **should no longer enforce the third element above, i.e., the “good reason” aspect of the license-to-carry statute**, under which the applicant must identify a reasons or reasons for obtaining a license, and the licensing authority may restrict the license upon determining that the applicant lacks a sufficiently good reason to fear injury to person or property.<sup>1</sup>

This does not mean that a licensing authority is foreclosed from inquiring of the applicant about their reasons for seeking a license to carry.<sup>2</sup> An answer to any such question may bear on whether an applicant is a prohibited person or is unsuitable under the definition set forth in the statute.<sup>3</sup> But an applicant’s answer to such a question may not be used to deny the application because the applicant lacks a sufficiently good reason to request the license, or to restrict the permissible uses of the license based on an appearance that the applicant lacks a sufficiently good reason to fear injury to person or property. Going forward, if an applicant is not a prohibited person and is not unsuitable, the applicant must be issued an unrestricted license to carry.

*Bruen* also **does not impact the Firearms Identification (“FID”) card application process**. The statute governing eligibility for FID cards, G.L. c. 140, § 129B, does not contain a good reason provision. Licensing authorities should therefore continue to process FID card applications and issue FID cards in the same manner as prior to *Bruen*.

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<sup>1</sup> For the same reasons, the Colonel of the Massachusetts State Police will continue issuing temporary licenses to carry under G.L. c. 140, § 131F, but those licenses will no longer be issued with “terms and restrictions.”

<sup>2</sup> The standard-form LTC application asks about the applicant’s reason for seeking a license. *See* Massachusetts Resident LTC/FID/Machine Gun Application, at p. 3, <https://www.mass.gov/how-to/apply-for-or-renew-a-firearms-license>. This question, by itself, is not problematic under *Bruen*, and licensing authorities may continue to ask it, provided the answer is used only to determine whether the applicant is a prohibited person or is unsuitable, and is not used to deny or impose restrictions on the license for lack of a sufficiently good “reason” to receive a license.

<sup>3</sup> As a reminder, any denial of a license based on unsuitability or otherwise must be conveyed with a written notice to the applicant or licensee that explains the specific reasons for the denial. G.L. c. 140, § 131(d), (e).

## **CERTIFICATE OF SERVICE**

I, Kathryn Hayne Barnwell, certify that on July 26, 2024, I served by the Odyssey E-Filing System, one copy of the foregoing Brief, to:

ADA Ryan Rall  
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/s/ Kathryn Hayne Barnwell  
Kathryn Hayne Barnwell

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that the brief in this matter complies with the rules of court that pertain to the filing of briefs, including but not limited to: Mass. R. App. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. App. P. 16(e) (references to the record); Mass. R. App. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. App. P. 16(h) (length of briefs and word limitations in briefs); Mass. R. App. P. 18 (appendix to the briefs); and Mass. R. App. P. 20 (form of briefs, appendices and other papers). The Brief was produced, using Microsoft Word for Mac Version 16.86, in proportional font and the non-excluded sections consist of 10,852 words (or less than the maximum of 11,000 words).

/s/ Kathryn Hayne Barnwell  
Kathryn Hayne Barnwell

**UNITED STATES CONSTITUTION,  
AMENDMENT II**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**UNITED STATES CONSTITUTION,  
AMENDMENT XIV, § 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**MASS. GEN. LAWS, CHAPTER 140 § 131**

**§ 131. Firearms – Possession – License to Carry.**

The issuance and possession of a license to carry firearms shall be subject to the following conditions and restrictions:

**(a)** A license shall entitle a holder thereof of a license to purchase, rent, lease, borrow, possess and carry: (i) firearms, including large capacity firearms, and feeding devices and ammunition therefor, for all lawful purposes; and (ii) rifles and shotguns, including large capacity weapons, and feeding devices and ammunition therefor, for all lawful purposes.

**(b)** The colonel of state police may, after an investigation, grant a license to a club or facility with an on-site shooting range or gallery, which club is incorporated under the laws of the commonwealth for the possession, storage and use of large capacity weapons, ammunition therefor and large capacity feeding devices for use with such weapons on the premises of the club; provided, however, that not less than 1 shareholder of the club shall be qualified and suitable to be issued a license; and provided further, that such large capacity weapons and ammunition feeding devices may be used under the club license only by a member that possesses a valid firearm identification card issued pursuant to section 129B or a valid license to carry firearms, or by such other person that the club permits while under the direct supervision of a certified firearms safety instructor or club member



who, in the case of a large capacity firearm, possesses a valid license to carry firearms or, in the case of a large capacity rifle or shotgun, possesses a valid license to carry firearms. The club shall not permit shooting at targets that depict human figures, human effigies, human silhouettes or any human images thereof, except by public safety personnel performing in line with their official duties.

No large capacity weapon or large capacity feeding device shall be removed from the premises except to: (i) transfer the firearm or feeding device to a licensed dealer; (ii) transport the firearm or feeding device to a licensed gunsmith for repair; (iii) target, trap or skeet shoot on the premises of another club incorporated under the laws of the commonwealth and to transport thereto; (iv) attend an exhibition or educational project or event that is sponsored by, conducted under the supervision of or approved by a public law enforcement agency or a nationally or state recognized entity that promotes proficiency in or education about semiautomatic weapons and to transport thereto and therefrom; (v) hunt pursuant to chapter 131; or (vi) surrender the firearm or feeding device pursuant to section 129D. Any large capacity weapon or large capacity feeding device kept on the premises of a lawfully incorporated shooting club shall, when not in use, be secured in a locked container and shall be unloaded during any lawful transport. The clerk or other corporate officer of the club shall annually file a report with the colonel of state police and the commissioner of the department of criminal justice information services listing all large capacity weapons and large capacity feeding devices owned or possessed under the license. The colonel or a designee may inspect all firearms owned or possessed by the club upon request during regular business hours and the colonel may revoke or suspend a club license for a violation of this chapter or chapter 269 relative to the ownership, use or possession of large capacity weapons or large capacity feeding devices.

**(c)** A license to carry firearms shall be valid to own, possess, purchase and transfer non-large capacity rifles and shotguns, consistent with the entitlements conferred by a firearm identification card issued under section 129B.

**(d)** A person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police an application for a license to carry firearms, or renewal of the same, which the licensing authority or the colonel shall issue if it appears that the applicant is neither a prohibited person nor determined to be unsuitable to be issued a license

as set forth in this section, provided that upon an initial application for a license to carry firearms, the licensing authority shall conduct a personal interview with the applicant.

A prohibited person shall be a person who:

**(i)** has, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in section 52 of chapter 119, for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in section 1 of chapter 94C including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33);

**(ii)** has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale of a controlled substance as defined in said section 1 of said chapter 94C including, but not limited to, a violation of said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33);

**(iii)** is or has been (A) committed to a hospital or institution for mental illness, alcohol or substance abuse, except a commitment pursuant to sections 35 or 36C of chapter 123, unless after 5 years from the date of the confinement, the applicant submits with the application an affidavit of a licensed physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that in the physician's or psychologist's opinion, the applicant is not disabled by a mental illness, alcohol or substance abuse in a manner that shall prevent the applicant from possessing a firearm, rifle or shotgun; (B) committed by a court order to a hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court order pursuant

to said section 36C of said chapter 123 and submits a copy of the court order with the application; (C) subject to an order of the probate court appointing a guardian or conservator for a incapacitated person on the grounds that the applicant lacks the mental capacity to contract or manage the applicant's affairs, unless the applicant was granted a petition for relief of the order of the probate court pursuant to section 56C of chapter 215 and submits a copy of the order of the probate court with the application; or (D) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said section 35 of said chapter 123, unless the applicant was granted a petition for relief of the court order pursuant to said section 35 and submits a copy of the court order with the application;

**(iv)** is younger than 21 years of age at the time of the application;

**(v)** is an alien who does not maintain lawful permanent residency;

**(vi)** is currently subject to: (A) an order for suspension or surrender issued pursuant to sections 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; (B) a permanent or temporary protection order issued pursuant to said chapter 209A or a similar order issued by another jurisdiction, including any order described in 18 U.S.C. 922(g)(8); (C) a permanent or temporary harassment prevention order issued pursuant to chapter 258E or a similar order issued by another jurisdiction; or (D) an extreme risk protection order issued pursuant to sections 131R to 131X, inclusive, or a similar order issued by another jurisdiction;

**(vii)** is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction;

**(viii)** has been discharged from the armed forces of the United States under dishonorable conditions;

**(ix)** is a fugitive from justice; or

**(x)** having been a citizen of the United States, has renounced that citizenship.

The licensing authority shall deny the application or renewal of a license to carry, or suspend or revoke a license issued under this section if the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on reliable, articulable and credible information that the

applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others. Upon denial of an application or renewal of a license based on a determination of unsuitability, the licensing authority shall notify the applicant in writing setting forth the specific reasons for the determination in accordance with paragraph (e). Upon revoking or suspending a license based on a determination of unsuitability, the licensing authority shall notify the holder of a license in writing setting forth the specific reasons for the determination in accordance with paragraph (f). The determination of unsuitability shall be subject to judicial review under said paragraph (f).

**(e)** Within seven days of the receipt of a completed application for a license to carry or possess firearms, or renewal of same, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a license to carry or possess firearms. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. The colonel shall inquire of the commissioner of the department of mental health relative to whether the applicant is disqualified from being so licensed. If the information available to the colonel does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within said 30 day period.

The licensing authority may also make inquiries concerning the applicant to: (i) the commissioner of the department of criminal justice information services relative to any disqualifying condition and records of purchases, sales, rentals, leases and transfers of weapons or ammunition concerning the applicant; (ii) the commissioner of probation relative to any record contained within the department of probation or the statewide domestic violence record keeping system concerning the applicant; and (iii) the commissioner of the department of mental health relative to whether the applicant is a suitable person to possess firearms or is not a suitable person to possess firearms. The director or commissioner to whom the licensing authority makes such inquiry shall provide prompt and full cooperation for that purpose in any investigation of the applicant.

The licensing authority shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such license shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law.

The licensing authority shall provide to the applicant a receipt indicating that it received the application. The receipt shall be provided to the applicant within 7 days by mail if the application was received by mail or immediately if the application was made in person; provided, however, that the receipt shall include the applicant's name and address; current license number and license expiration date, if any; the date the licensing authority received the application; the name, address and telephone number of the licensing authority; the agent of the licensing authority that received the application; the type of application; and whether the application is for a new license or a renewal of an existing license. The licensing authority shall keep a copy of the receipt for not less than 1 year and shall furnish a copy to the applicant if requested by the applicant.

**(f)** A license issued under this section shall be revoked or suspended by the licensing authority, or his designee, upon the occurrence of any event that would have disqualified the holder from being issued such license or from having such license renewed. A license shall be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such license and the person whose license is so revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended license may be reinstated only upon the termination of all disqualifying conditions, if any.

Any applicant or holder aggrieved by a denial, revocation or suspension of a license, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receiving notice of the denial, revocation or suspension or within 90 days after the expiration of the time limit during which the licensing authority shall respond to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in the city or town in which the applicant filed the application or in which the license was

issued. If after a hearing a justice of the court finds that there was no reasonable ground for denying, suspending or revoking the license and that the petitioner is not prohibited by law from possessing a license, the justice may order a license to be issued or reinstated to the petitioner.

**(g)** A license shall be in a standard form provided by the commissioner of the department of criminal justice information services in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain a license number which shall clearly indicate the name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the licensee. The license shall be clearly marked "License to Carry Firearms". The license shall provide in a legible font size and style the phone numbers for the National Suicide Prevention Lifeline and the Samaritans Statewide Helpline. The application for such license shall be made in a standard form provided by the commissioner of the department of criminal justice information services, which form shall require the applicant to affirmatively state under the pains and penalties of perjury that such applicant is not disqualified on any of the grounds enumerated above from being issued such license.

**(h)** Any person who knowingly files an application containing false information shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

**(i)** A license to carry or possess firearms shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue and shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of issue; provided, however, that, if the licensee applied for renewal before the license expired, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. If a licensee is on active duty with the armed forces of the United States on the expiration date of the license, the license shall remain valid until the licensee is released from active duty and for a period not less than 180 days following the release; provided, however, that, if the licensee applied for renewal prior to the end of that period, the license shall remain valid after its expiration date for all lawful purposes until the application for renewal is approved or denied. Any renewal thereof shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years but not more than 6 years from the effective date of such license. Any license issued to an applicant born on February 29 shall expire on March 1. The fee for the application shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the

fee shall be deposited into the general fund of the commonwealth and not less than \$50,000 of the funds deposited into the General Fund shall be allocated to the Firearm Licensing Review Board, established in section 130B, for its operations and that any funds not expended by said board for its operations shall revert back to the General Fund; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. For active and retired law enforcement officials, or local, state, or federal government entities acting on their behalf, the fee for the application shall be set at \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$12.50 of the fee, and \$12.50 of the fee shall be deposited into the general fund of the commonwealth. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit such portion of the license application fee into the Firearms Record Keeping Fund quarterly, not later than January 1, April 1, July 1 and October 1 of each year. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly such portion of the license application fee as is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. For the purposes of section 10 of chapter 269, an expired license to carry firearms shall be deemed to be valid for a period not to exceed 90 days beyond the stated date of expiration, unless such license to carry firearms has been revoked.

Any person over the age of 70 and any law enforcement officer applying for a license to carry firearms through his employing agency shall be exempt from the requirement of paying a renewal fee for a license to carry.

(j)

- (1) No license shall be required for the carrying or possession of a firearm known as a detonator and commonly used on vehicles as a signaling and marking device, when carried or possessed for such signaling or marking purposes.
- (2) No license to carry shall be required for the possession of an unloaded large capacity rifle or shotgun or an unloaded feeding device therefor by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service, or by the members of any such organization when on official parade duty or during ceremonial occasions. For purposes of this subparagraph, an "unloaded large capacity rifle or shotgun" and an "unloaded feeding device therefor" shall include any large capacity rifle, shotgun or feeding device therefor loaded with a blank cartridge or blank cartridges, so-called, which contain no projectile within such blank or blanks or within the bore or chamber of such large capacity rifle or shotgun.

**(k)** Whoever knowingly issues a license in violation of this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a jail or house of correction, or by both such fine and imprisonment.

**(l)** The commissioner of the department of criminal justice information services shall send electronically or by first class mail to the holder of each such license to carry firearms, a notice of the expiration of such license not less than 90 days prior to such expiration and shall enclose therein a form for the renewal of such license. The form for renewal shall include an affidavit in which the applicant shall verify that the applicant has not lost any firearms or had any firearms stolen from the applicant since the date of the applicant's last renewal or issuance. The taking of fingerprints shall not be required in issuing the renewal of a license if the renewal applicant's fingerprints are on file with the department of the state police. Any licensee shall notify, in writing, the licensing authority who issued said license, the chief of police into whose jurisdiction the licensee moves and the commissioner of the department of criminal justice information services of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of said license. The commissioner of the department of criminal justice information services shall provide electronic notice of expiration only upon the request of a cardholder. A request for electronic notice of expiration shall be forwarded to the department on a form furnished by the commissioner. Any electronic address maintained by the department for the purpose of providing electronic notice of expiration shall be considered a firearms record and shall not be disclosed except as provided in section 10 of chapter 66.

**(m)** Notwithstanding the provisions of section 10 of chapter 269, any person in possession of a firearm, rifle or shotgun whose license issued under this section is invalid for the sole reason that it has expired, not including licenses that remain valid under paragraph (i) because the licensee applied for renewal before the license expired, but who shall not be disqualified from renewal upon application therefor pursuant to this section, shall be subject to a civil fine of not less than \$100 nor more than \$5,000 and the provisions of section 10 of chapter 269 shall not apply; provided, however, that the exemption from the provisions of said section 10 of said chapter 269 provided herein shall not apply if: (i) such license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such license has been denied. Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or



shotgun after such person's license has expired, meaning after 90 days beyond the stated expiration date on the license, has been revoked or suspended, solely for failure to give notice of a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended license then in possession and such officer, shall forward such license to the licensing authority by whom it was issued as soon as practicable. The officer shall, at the time of confiscation, provide to the person whose firearm, rifle or shotgun has been confiscated, a written inventory and receipt for all firearms, rifles or shotguns confiscated and the officer and his employer shall exercise due care in the handling, holding and storage of these items. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended license within one year of such confiscation or may be otherwise disposed of in accordance with the provisions of section 129D. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131F.

**(n)** Upon issuance of a license to carry or possess firearms under this section, the licensing authority shall forward a copy of such approved application and license to the commissioner of the department of criminal justice information services, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a license under this section.

**(o)** No person shall be issued a license to carry or possess a machine gun in the commonwealth, except that a licensing authority or the colonel of state police may issue a machine gun license to:

**(i)** a firearm instructor certified by the municipal police training committee for the sole purpose of firearm instruction to police personnel;

**(ii)** a bona fide collector of firearms upon application or upon application for renewal of such license. Clauses (i) and (ii) of this paragraph shall not apply to bump stocks and trigger cranks.

**(p)** The commissioner of the department of criminal justice information services shall promulgate regulations in accordance with chapter 30A to establish criteria for persons who shall be classified as bona fide collectors of firearms.

**(q)** Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

**(r)** The secretary of the executive office of public safety or his designee may promulgate regulations to carry out the purposes of this section.

## History

1906, 172, § 1; 1911, 548, § 1; 1919, 207, § 1; 1922, 485, § 9; 1925, 284, § 4; 1927, 326, § 3; 1936, 302; 1951, 201; 1953, 319, § 20; 1953, 454; 1957, 688, § 15; 1959, 296, § 6; 1960, 293; 1969, 799, § 11; 1972, 415; 1973, 138; 1973, 892, § 7; 1974, 312; 1974, 649, § 1; 1975, 4, § 1; 1975, 113, § 1; 1984, 420, § 2; 1986, 481, § 2; 1987, 465, § 33; 1994, 24, § 3; 1996, 151, §§ 325-329; 1996, 200, § 28; 1998, 180, § 41; 1998, 358, §§ 6-9; 2002, 196, § 22; 2002, 513, § 2; 2003, 26, § 429; 2003, 46, § 103; 2004, 150, §§ 10-16; 2008, 224; 2010, 256, § 97; 2010, 466, § 3; 2011, 9, §§ 16, 17; 2014, 284, §§ 46-57; 2017, 110, § 21, effective February 1, 2018; 2018, 123, §§ 11, 12, effective August 17, 2018; 2022, 175, §§ 4-17A, effective August 10, 2022.

## MASS. GEN. LAWS, CHAPTER 140 § 131F

### § 131F. Firearms – Possession – Temporary License to Carry.

A temporary license to carry firearms, rifles or shotguns or feeding devices or ammunition therefor, within the commonwealth, shall be issued by the colonel of state police, or persons authorized by him, to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition if it appears that the applicant is not a prohibited person and is not determined unsuitable to be issued a license as set forth in section 131.

Such license shall be valid for a period of one year but the colonel may renew such license if such renewal is necessary.

The colonel shall issue such license in accordance with the provisions of section 131 to any resident of the commonwealth for the purposes of sports competition.

A temporary license issued pursuant to this section shall be clearly marked “Temporary License to Carry Firearms” and shall not be used to purchase firearms in the commonwealth as provided in section 131E. A large capacity firearm and a large capacity feeding device therefor may be carried if the person has been issued a license. The colonel may permit a licensee to possess a large capacity rifle or shotgun or both; provided, however, that this entitlement shall be clearly indicated on the license. The fee for an application for the license shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. A license issued under the provisions of this section to a nonresident who is in the employ of a bank, public utility corporation, or

a firm engaged in the business of transferring monies, or business of similar nature, or a firm licensed as a private detective under the provisions of chapter one hundred and forty-seven, and whose application is endorsed by his employer, or who is a member of the armed services and is stationed within the territorial boundaries of the commonwealth and has the written consent of his commanding officer, may be issued for any term not to exceed two years, and said licenses shall expire in accordance with the provisions of section one hundred and thirty-one.

A license, otherwise in accordance with provisions of this section, may be issued to a nonresident employee, whose application is endorsed by his employer, of a federally licensed Massachusetts manufacturer of machine guns to possess within the commonwealth a machine gun for the purpose of transporting or testing relative to the manufacture of machine guns, and the license shall be marked “temporary license to possess a machine gun” and may be issued for any term not to exceed two years and shall expire in accordance with the provisions of section one hundred and thirtyone.

### **History**

1957, 688, § 20; 1959, 296, § 8; 1969, 799, § 12A; 1978, 551, § 2; 1980, 572, § 254; 1984, 189, § 102; 1984, 420, § 3; 1996, 151, §§ 333, 334; 1996, 200, § 29; 1998, 180, § 46; 2003, 26, § 431; 2014, 284, §§ 60-63; 2022, 175, §§ 17B-22, effective August 10, 2022.

## **MASS. GEN. LAWS, CHAPTER 269 § 10**

### **§ 10. Weapons – Dangerous Weapons – Unlawfully Carrying.**

**(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 2½ 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.

**(k)** [None.]

**(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 2 ½ 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.

## **History**

1935, 290; 1936, 227, § 1; 1937, 250, § 1; 1955, 160; 1956, 172; 1957, 688, § 23; 1968, 737, §§ 11-14; 1969, 441; 1969, 799, §§ 14-16; 1971, 456, §§ 5, 6; 1972, 312, § 5; 1973, 588; 1974, 649, § 2; 1975, 113, §§ 2, 3; 1975, 585, § 1; 1978, 175, §§ 1, 2; 1982, 254; 1983, 516, §§ 2, 3; 1985, 349; 1986, 481, § 3; 1986, 581, § 1; 1987, 150, §§ 1, 2; 1989, 648; 1990, 511, §§ 2, 3; 1996, 20; 1996, 151, §§ 487, 488; 1998, 180, §§ 68-70; 2006, 48, §§ 5-7; 2014, 284, §§ 89, 92, effective August 13, 2014; 2014, 284, § 90, effective January 1, 2015; 2014, 284, § 91, effective January 1, 2021.