HOUSE DOCKET, NO. 1400 FILED ON: 2/18/2011

HOUSE . . . . . No. 3559

The Commonwealth of Massachusetts

PRESENTED BY:

Carlo Basile

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

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

AN ACT CONCERNING MINIMUM MANDATORY SENTENCING WHEN A FIREARM IS USED IN COMMISSION OF A FELONY.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Carlo Basile	*1st Suffolk*
James R. Miceli	*19th Middlesex*
Russell E. Holmes	*6th Suffolk*
James J. O'Day	*14th Worcester*
James J. Dwyer	*30th Middlesex*
Aaron Michlewitz	*3rd Suffolk*
Anthony W. Petruccelli	
	☐ *[District]*
	☐

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HOUSE . . . . . No. 3559

By Mr. Basile of Boston, a petition (accompanied by bill, House, No. 3559) of Carlo Basile and others relative to the punishment for the use of firearms, explosive devices or chemical weapons while committing a felony. The Judiciary.

The Commonwealth of Massachusetts

AN ACT CONCERNING MINIMUM MANDATORY SENTENCING WHEN A FIREARM IS USED IN COMMISSION OF A FELONY.

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. Section 18B of chapter 265 of the General Laws, as appearing in the 2008 official edition, is hereby amended by striking the first and second paragraphs and inserting in place thereof the following five subsections:-

(a) As used in this section, the following words shall, unless the context requires, have the following meanings:-

"Destructive device", any bomb, grenade, mine, rocket, missile, pipe-bomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the laws of the United States and regulations lawfully promulgated by its Executive agencies; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. "Destructive device" does not include: a device which is not designed, redesigned, used, or intended for use as a weapon; a device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; a shotgun other than a sawed-off shotgun, as defined in section 121 of chapter 140 of the General Laws; or a rifle, as defined in section 121 of chapter 140 of the General Laws, generally recognized or particularly suitable for use for the hunting of big game.

23 “Firearm”, “rifle”, “shot-gun”, “machine gun”, “semiautomatic”, “assault rifle”, “large
24 capacity weapon” or “large capacity feeding device”, a weapon or device matching the
25 description of such a weapon or device as defined in section 121 of chapter 140.

26 “Possession”, knowingly carrying a device defined in this section on one’s person, or
27 knowingly having a device under one’s control or within immediate physical reach with the
28 intent to use that device during the commission or attempted commission of a felony under
29 subsection (b).

30 (b) This section shall be applicable where a person has possession, defined under
31 subsection (a), of any offending item under subsection (a) and commits any felony, defined
32 under section 1 of chapter 274, listed under chapter 265.

33 (c) A person who possesses, threatens to use, or attempts to use any offending device
34 listed in subsection (a), during the commission or attempted commission of any felony listed in
35 subsection (b), shall be punished by a term of imprisonment in the state prison of not less than 10
36 years for each felony for which a person is convicted.

37 If, during the commission or attempted commission of any felony under subsection (b), a
38 person discharges a device under subsection (a), that person shall be punished by a term of
39 imprisonment in the state prison of not less than 20 years.

40 If, during the commission or attempted commission of any felony under subsection (b), a
41 person discharges or otherwise uses a device under subsection (a), and, as the result of that
42 discharge, death or serious bodily injury is inflicted upon any person, that person shall be
43 punished by a term of imprisonment in the state prison of not less than 25 years.

44 This subsection shall not be construed to prevent a court from imposing a longer sentence
45 of incarceration as authorized by the General Laws in addition to the minimum mandatory
46 sentences provided for in this section.

47 If the minimum mandatory terms of imprisonment imposed pursuant to this subsection
48 exceed the maximum sentences otherwise provided for by the General Laws, the mandatory
49 minimum sentences provided in this section must be imposed. If the mandatory minimum terms
50 of imprisonment pursuant to this subsection are less than the sentences that could be imposed
51 pursuant to the General Laws, the court must impose a consecutive mandatory minimum term of
52 imprisonment in addition to any other term of imprisonment imposed.

53 (d) A sentence imposed under this section shall not be reduced or suspended; nor shall
54 any person convicted under this section be eligible for probation, parole, furlough, work-release,
55 or receive any deduction in sentence length for good conduct, until that person has served the
56 minimum term of any imposed additional sentence under this section.

57 The commissioner of corrections may, on the recommendation of the warden,
58 superintendent, or other person in charge of a correctional institution or county correctional
59 institution, grant to a person serving a mandatory sentence under this section a temporary release
60 in the custody of an officer of such institution for the following purposes only: (1) to attend the
61 funeral of a spouse or next of kin; (2) to visit critically ill close relatives or a spouse; or (3) to
62 obtain emergency medical services unavailable at such institution.

63 Prosecutions commenced under this section shall neither be continued without a finding
64 nor placed on file. The provisions of section 87 of chapter 276 relative to the power of the court
65 to place certain offenders on probation shall not apply to any person 17 years of age or over
66 charged with a violation of this section.

67 (e) In every case in which the district attorneys or a law enforcement agency of the
68 commonwealth base a criminal charge on facts demonstrating that an offending person met the
69 criteria set forth in this section, and in which the offending person did not receive a mandatory
70 sentence in compliance with this chapter, the attorney general or its designee; the prosecuting
71 district attorney; and the presiding judge who imposed sentencing, must place in the court file a
72 memorandum explaining why the minimum mandatory penalty was not imposed.