SENATE DOCKET, NO. 283 FILED ON: 1/15/2013

SENATE . . . . . No. 1131

The Commonwealth of Massachusetts

PRESENTED BY:

Eileen M. Donoghue

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 adoption of the accompanying bill:

An Act increasing the penalties for the illegal possession of firearms.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eileen M. Donoghue	*First Middlesex*
Gerard T. Leone, Jr., Middlesex District Attorney	*15 Commonwealth Ave Woburn, MA 01801*
James J. Dwyer	*30th Middlesex*
David Paul Linsky	*5th Middlesex*
Kay Khan	*11th Middlesex*
Colleen M. Garry	*36th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Cory Atkins	*14th Middlesex*
Denise Andrews	*2nd Franklin*

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By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 1131) of Eileen M. Donoghue, Gerard T. Leone, Jr., Middlesex District Attorney , James J. Dwyer, David Paul Linsky and other members of the General Court for legislation to increase the penalties for the illegal possession of firearms. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1207* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act increasing the penalties for the illegal possession of firearms.

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 131M of chapter 140 is hereby amended by striking out section 131M in its entirety, as appearing in the 2008 Official Edition, and inserting in place thereof the following:-

Section 131M. No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of section 122 violates the provisions of this section shall be punished, for a first offense, by a mandatory minimum term of imprisonment in the state prison for not less than 2 years nor more than 20 years, and a fine of not less than $1000 nor more than $10,000, and for a second offense, by a mandatory minimum term of imprisonment in the state prison for not less than 5 years nor more than 20 years, and by a fine of not less than $5000 nor more than $15,000.

The sentence imposed on such person shall not be reduced to less than 2 years for first offense and 5 years for second offense, 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 2 years for a first offense and 5 years for second offense of such a sentence; provided, however, that the commissioner of

17 correction may on the recommendation of the warden, superintendent, or other person in charge
18 of a correctional institution, grant to an offender committed under this subsection a temporary
19 release in the custody of an officer of such institution for the following purposes only: to attend
20 the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or
21 psychiatric service unavailable at said institution. Prosecutions commenced under this section
22 shall not be continued without a finding nor placed on file.

23 The provisions of this section shall not apply to: (i) the possession by a law enforcement
24 officer for purposes of law enforcement; or (ii) the possession by an individual who is retired
25 from service with a law enforcement agency and is not otherwise prohibited from receiving such
26 a weapon or feeding device from such agency upon retirement.

27 SECTION 2. Section 131N of chapter 140 is hereby amended by striking out section
28 131N in its entirety, as appearing in the 2008 Official Edition, and inserting in place thereof the
29 following:-

30 Section 131N. No person shall sell, offer for sale, transfer or possess any weapon,
31 capable of discharging a bullet or shot, that is: (i) constructed in a shape that does not resemble a
32 handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert
33 weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not
34 detectable as a weapon or potential weapon by x-ray machines commonly used at airports or
35 walk-through metal detectors.

36 Whoever violates the provisions of this section shall be punished, for a first
37 offense, by a mandatory minimum term of imprisonment in the state prison for not less than 2
38 years nor more than 20 years, and a fine of not less than $1,000 nor more than $10,000, and for a
39 second offense, by a mandatory minimum term of imprisonment in the state prison for not less
40 than 5 years nor more than 20 years, and by a fine of not less than $5,000 nor more than $15,000.

41 The sentence imposed on such person shall not be reduced to less than 2 years for first
42 offense and 5 years for second offense, nor suspended, nor shall any person convicted under this
43 subsection be eligible for probation, parole, work release, or furlough or receive any deduction
44 from his sentence for good conduct until he shall have served 2 years for a first offense and 5
45 years for second offense of such a sentence; provided, however, that the commissioner of
46 correction may on the recommendation of the warden, superintendent, or other person in charge
47 of a correctional institution, grant to an offender committed under this subsection a temporary
48 release in the custody of an officer of such institution for the following purposes only: to attend
49 the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or
50 psychiatric service unavailable at said institution. Prosecutions commenced under this section
51 shall not be continued without a finding nor placed on file.

52 SECTION 3. Section 10 of chapter 269 is hereby further amended by striking out, in line
53 96, the clause “shall be punished in the state prison for life, or for any term of years provided that

54 any sentence imposed under the provisions of this paragraph shall be subject to the minimum
55 requirements of paragraph (a)" and inserting in place thereof the following:-

56 shall be punished by a imprisonment in the state prison for life, or for any term of years,
57 but in no event less than the mandatory minimum term of imprisonment in the state prison for
58 not less than 5 years and up to any term of years. The sentence imposed on such person shall not
59 be reduced to less than 5 years, nor suspended, nor shall any person convicted under this
60 subsection be eligible for probation, parole, work release, or furlough or receive any deduction
61 from his sentence for good conduct until he shall have served 5 years of such a sentence;
62 provided, however, that the commissioner of correction may on the recommendation of the
63 warden, superintendent, or other person in charge of a correctional institution, grant to an
64 offender committed under this subsection a temporary release in the custody of an officer of such
65 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
66 ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution.
67 Prosecutions commenced under this section shall not be continued without a finding nor placed
68 on file.

69 SECTION 4. Said section 10 is hereby further amended by striking out paragraph (d) in
70 its entirety, as appearing in the 2008 Official Edition, and inserting in place thereof the following
71 paragraph:-

72 (d) Whoever, after having been convicted of any of the offenses set forth in paragraph
73 (a), (b), (c), (h) or (m) of section 10, or sections 131M or 131N of chapter 140 commits a like
74 offense or any other of the said offenses, shall be punished by imprisonment in the state prison
75 for not less than 5 years nor more than 20 years; for a third such offense, by imprisonment in the
76 state prison for not less than 7 years nor more than 20 years; and for a fourth such offense, by
77 imprisonment in the state prison for not less than 10 years nor more than 20 years. The sentence
78 imposed upon a person, who after a conviction of an offense under paragraph (a), (b), (c), (h) or
79 (m) of section 10, or sections 131M or 131N of chapter 140 commits the same or a like offense,
80 shall not be suspended, nor shall any person so sentenced be eligible for probation or receive any
81 deduction from his sentence for good conduct.

82 SECTION 5. Said section 10 is hereby further amended by striking out paragraph (h)(1)
83 in its entirety, as appearing in the 2008 Official Edition, and inserting in place thereof the
84 following paragraph:-

85 (h)(1) Whoever owns, possesses or transfers a firearm, rifle, shotgun or ammunition
86 without complying with the provisions of section 129c of chapter 140 shall be punished by
87 imprisonment in the state prison for not more than 5 years or in a jail or house of correction for
88 not more than 2 ½ years. In addition, a fine of not more $1000 may be imposed. The sentence
89 imposed on such person shall not be continued without a finding or placed on file. Any officer

90 authorized to make arrests may arrest without a warrant any person whom the officer has
91 probable cause to believe has violated this paragraph.

92 SECTION 6. Section 10G of chapter 269 is hereby amended by striking paragraphs (a),
93 (b), and (c) and inserting the following paragraphs:-

94 (a) Whoever, having been previously convicted of a violent crime or of a serious drug
95 offense, both as defined herein, violates the provisions of paragraph (a), (c), (h) or (m) of section
96 10, or sections 131M or 131N of chapter 140, shall be punished by imprisonment in the state
97 prison for not less than three years nor more than 15 years.

98 (b) Whoever, having been previously convicted of two violent crimes, or two serious
99 drug offenses or one violent crime and one serious drug offense, arising from separate
100 incidences, violates the provisions of paragraph (a), (c), (h) or (m) of section 10, or sections
101 131M or 131N of chapter 140, shall be punished by imprisonment in the state prison for not less
102 than ten years nor more than 15 years.

103 (c) Whoever, having been previously convicted of three violent crimes or three serious
104 drug offenses, or any combination thereof totaling three, arising from separate incidences,
105 violates the provisions of paragraph (a), (c), (h) or (m) of section 10, or sections 131M or 131N
106 of chapter 140, shall be punished by imprisonment in the state prison for not less than 15 years
107 nor more than 20 years.