

**HOUSE . . . . . No. 3441**

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

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
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An Act to provide law enforcement with tools to prevent youth violence.

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

1           May 11, 2011

2           To the Honorable Senate and House of Representatives:

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

10           This bill provides public safety officials with new criminal sanctions and investigative  
11 tools to go after guns and gangs. It includes three new gun-related crimes – assault and battery  
12 with a firearm, assault with a firearm, and a “felon in possession law” parallel to federal law –  
13 with serious criminal consequences. These crimes will give police and prosecutors additional

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

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

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

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

35 Respectfully submitted,

36 DEVAL PATRICK

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

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

45 SECTION 2. For youth violence prevention program grants administered by the  
46 executive office of health and human services; provided, that the programs shall be targeted at  
47 reducing youth violence among young persons at highest risk for being perpetrators or victims of  
48 gun violence; and provided further, that these funds shall be available to those municipalities  
49 with the highest number of youth homicides and serious assaults as determined by the executive  
50 office of health and human services .....  
51 ..... \$10,000,000

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

56

57 SECTION 4. Section 26 of chapter 218 of the General Laws, as so appearing, is hereby  
58 amended by inserting after the words “fifteen A”, in line 17, the following words:- , 15D(a),  
59 15E(a)

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

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

64

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

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

79 committed under this subsection a temporary release in the custody of an officer of such  
80 institution for the following purposes only: to attend the funeral of a relative; to visit a critically  
81 ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution.

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

86

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

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

101 committed under this subsection a temporary release in the custody of an officer of such  
102 institution for the following purposes only: to attend the funeral of a relative; to visit a critically  
103 ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution.

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

108

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

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

119 (j) Whoever, not being a law enforcement officer, and notwithstanding any license  
120 obtained under chapter 140, knowingly has in possession or knowingly has under control in a  
121 vehicle a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun, assault  
122 weapon or ammunition as defined in section 121 of chapter 140, in any building or on the

123 grounds of a public or private elementary or secondary school, college or university without the  
124 prior written authorization of the board or officer in charge of such elementary or secondary  
125 school, college or university shall be punished by a fine of not more than \$1,000 or by  
126 imprisonment in the house of correction for not more than 2 years, or both, and may be arrested  
127 without a warrant.

128           Whoever, not being a law enforcement officer, knowingly possesses or knowingly has  
129 under control in a vehicle a dangerous weapon, or an air gun, so-called BB gun, paintball gun, air  
130 rifle or air pistol or other smoothbore arm capable of discharging a shot or pellet by whatever  
131 means or replica of a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine  
132 gun, assault weapon in any building or on the grounds of a public or private elementary or  
133 secondary school, college or university without the prior written authorization of the board or  
134 officer in charge of such elementary or secondary school, college or university shall be punished  
135 by a fine of not more than \$500 or by imprisonment in the house of correction for not more than  
136 1 year, or both, and may be arrested without a warrant.

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

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

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

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

148 (p) Whoever, having been previously convicted in any court of this or another state or the  
149 United States or a military, territorial or Indian tribal authority, of a crime punishable by  
150 imprisonment for a term exceeding 1 year, knowingly possesses or knowingly has under control  
151 in a vehicle, a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun,  
152 assault weapon or ammunition as defined in section 121 of chapter 140 shall be punished by  
153 imprisonment in the state prison for not more than 10 years or by imprisonment in the house of  
154 correction for not more than 2½ years. Prosecutions commenced under this subsection shall not  
155 be suspended, continued without a finding or placed on file. A sentence imposed under this  
156 subsection shall begin from and after the expiration of any sentence imposed under section 10(a),  
157 10(c), 10(d), 10(h), 10(m), 10(n) or 10E arising out of the same incident.

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

160 CHAPTER 271A

161 ENTERPRISE CRIME.

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



164 “Enterprise”, any individual, sole proprietorship, partnership, corporation, trust or other  
165 legal entity, or any unchartered union, association or group of persons associated in fact although  
166 not a legally recognized entity, including unlawful as well as lawful enterprises and  
167 governmental as well as other entities.

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

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

187 income from prostitution; receiving stolen property; larceny over \$250; larceny by false  
188 pretenses or embezzlement; forgery; prohibited financial interest; procurement fraud; false  
189 claims; tax evasion; filing false tax return; crimes involving violations of: gambling and lottery  
190 laws, gift laws, liquor laws, tobacco laws, firearms laws, securities laws, lobbying laws, ethics  
191 laws, conflict of interest laws, child or elder abuse laws; or any conduct defined as racketeering  
192 activity under section 1961(1)(A), (B), or (D) of title 18 of the United States Code.

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

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

208           A purchase of securities on the open market for purposes of investment, and without the  
209 intention of controlling or participating in the control of the issuer, or of assisting another to do  
210 so, shall not be unlawful under this section if the securities of the issuer held by the purchaser,  
211 the members of his immediate family, and his or their accomplices in any pattern of criminal  
212 activity or the collection of an unlawful debt after such purchase do not amount in the aggregate  
213 to one percent of the outstanding securities of any one class and do not confer, either in law or in  
214 fact, the power to elect one or more directors of the issuer.

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

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

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

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