

**HOUSE . . . . . No. 3559**

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**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 adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Carlo Basile</i>	<i>1st Suffolk</i>	<i>1/20/2011</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>6/23/2011</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>6/23/2011</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>6/23/2011</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>6/23/2011</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>6/23/2011</i>
<i>Anthony W. Petruccelli</i>		<i>6/23/2011</i>

**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**

**In the Year Two Thousand Eleven**

**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:*

1 SECTION 1. Section 18B of chapter 265 of the General Laws, as appearing in the 2008  
2 official edition, is hereby amended by striking the first and second paragraphs and inserting in  
3 place thereof the following five subsections:-

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

6 “Destructive device”, any bomb, grenade, mine, rocket, missile, pipe-bomb, or similar  
7 device containing an explosive, incendiary, or poison gas and includes any frangible container  
8 filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so  
9 constructed as to explode by such filler and is capable of causing bodily harm or property  
10 damage; any combination of parts either designed or intended for use in converting any device  
11 into a destructive device and from which a destructive device may be readily assembled; any  
12 device declared a destructive device by the laws of the United States and regulations lawfully

13 promulgated by its Executive agencies; any type of weapon which will, is designed to, or may  
14 readily be converted to expel a projectile by the action of any explosive and which has a barrel  
15 with a bore of one-half inch or more in diameter; and ammunition for such destructive devices,  
16 but not including shotgun shells or any other ammunition designed for use in a firearm other than  
17 a destructive device. “Destructive device” does not include: a device which is not designed,  
18 redesigned, used, or intended for use as a weapon; a device, although originally designed as a  
19 weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or  
20 similar device; a shotgun other than a sawed-off shotgun, as defined in section 121 of chapter  
21 140 of the General Laws; or a rifle, as defined in section 121 of chapter 140 of the General Laws,  
22 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.