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Secretary

April 5, 2018

Mr. Steven T. James  
House Clerk  
Office of the Clerk of the House  
State House, Room 145  
Boston, MA 02133

Mr. William F. Welch  
Senate Clerk  
Office of the Clerk of the Senate  
State House, Room 335  
Boston, MA 02133

Dear Mr. James and Mr. Welch:

Pursuant to Section 100 of Chapter 284 of the Acts of 2014, the final report of the *Task Force on the Safe Keeping of a Distressed Person's Firearms* is attached.

With the issuance of the report, the Task Force has concluded its official business and voted to adjourn, and as a result, the Task Force should now be considered dissolved. I thank the members for their work and thoughtful deliberations.

Please feel free to reach out to my office with any questions.

Sincerely,

A handwritten signature in black ink that reads "Daniel Bennett".

Daniel Bennett  
Secretary  
Executive Office of Public Safety and Security

# **A Report from the Task Force on the Safekeeping of a Distressed Person's Firearms**



April 5, 2018

## INTRODUCTION

The Task Force on the Safekeeping of a Distressed Person's Firearms was established under Section 100 of Chapter 284 of the Acts of 2014 - *An Act Relative to the Reduction of Gun Violence*.

### Membership:

David Solet (Chair)	Executive Office of Public Safety and Security (EOPSS) Designee
Alan Holmlund	Department of Public Health (DPH) Designee
Jim Wallace	Gun Owners' Action League (GOAL) Designee
Mark Larsen	Committee on Public Counsel Services (CPCS) Designee
June Binney	National Alliance on Mental Illness of MA (NAMI) Designee
Hon. Michael Morrissey	MA District Attorneys Association (MDA) Designee
Chief Vincent Alfano, Chief Craig Davis	MA Chiefs of Police Association (MCOPA) Designees

### Task Force Charge:

*St. 2014, c. 284, §100*

"The task force shall study and report on suitable and feasible options for the safekeeping of a distressed person's firearms in a location away from the household, by his or her relations or community nongovernmental organizations including, but not limited to, legal protections for:

- (1) private citizens acting as good samaritans, who are of direct relation to the distressed person by family or affection;
- (2) turn-in and temporary storage of a distressed person's firearm by a licensed gun store or gun club;
- (3) and turn-in and temporary storage of a distressed person's firearm by any other type of organization or facility under registration as a firearms safe harbor."

### Background:

During the course of their work, Task Force members offered input from their respective organizations as well as reported on their personal experiences relative to the pertinent issues. The Task Force also received statements and perspectives from individuals representing the American Foundation for Suicide Prevention, the Massachusetts Coalition against Gun Violence, and the Harvard School of Public Health.

With respect to its charge, the Task Force reviewed and considered data on a number of subjects, including but not limited to, how the Commonwealth's gun laws compared to other

states, new statutory mandates included in the Chapter 284 legislation, DPH suicide data involving firearms, police department incident reports, the Massachusetts Registry of Motor Vehicles process for responding to immediate threats, and the definition of a distressed person.

While Chapter 284 did not provide a definition for the term “distressed person,” members identified several conditions and circumstances in an individual’s life that could cause distress and temporarily, or permanently, render that person unsuitable for possession of a firearm. Those conditions and circumstances included dementia and other neurological conditions, mental illness, mental health crises, alcohol and substance use, intimate partner problems, employment and financial issues, and deterioration in physical health.

Research demonstrates that individuals under distress may eventually harm themselves and/or others. According to the DPH *Winter 2017 Bulletin on Suicides and Self Inflicted Injuries in Massachusetts*, 54% of suicide victims had a documented current mental health problem. The bulletin also noted that 38% of such victims were receiving treatment for a mental health or substance abuse problem, and 44% had a history of treatment for mental illness. In addition, 26% of suicide victims had an alcohol or substance use problem, and 21% experienced an intimate partner problem such as a divorce, break-up, or other conflict.

Research reviewed by the Task Force also noted that most distressed individuals overcome their crisis and go on to live full lives. For example, 90% of people who survive a suicide attempt ultimately die by a cause that is not self-inflicted. However, research also shows that suicide attempts made with firearms are more likely to be fatal. Firearm-related suicides continue to be a largely male issue (making up 24% of male attempts versus 11% of female attempts), and most firearm-related attempts are successful in the first instance.

In addition to concerns regarding suicide and self-inflicted injuries, the Task Force also considered the potential for distressed persons to harm others.

Overall, the data and evidence presented to the Task Force led to general agreement that distressed individuals can pose a temporary or permanent threat to themselves and others, and that these individuals and their family members or close associates should have available options for firearm storage during such times of crisis.

Currently, state law provides a mechanism for family members or close associates to legally remove firearms from a distressed person’s possession. They can alert their local chief of police about any concerns, and the chief (who issue firearms licenses) can then make a suitability determination. If the chief determines that the licensee is currently unsuitable to possess firearms, the chief may suspend or revoke the firearms license and order the distressed person to surrender any firearms. Gun owners can appeal the chief’s decision to the District Court.

While this mechanism exists under current law, members of the Task Force reviewed police department incident reports and concluded that this mechanism is not used frequently. Family members or close associates of distressed individuals and loved ones are either unaware of the

current law or may fear that having a police cruiser arrive at their home could exacerbate a potentially dangerous situation. Instead, the Task Force's research demonstrated that family members or close associates are unlawfully taking possession of firearms for weeks and months before notifying police (if ever). These actions pose a significant threat to public safety, as unlicensed individuals are removing lawfully owned firearms and then improperly storing and/or transporting the weapons without police knowledge. Such behavior by a family member or close associates is technically in violation of the law and likely to create a dangerous situation.

In reviewing the data, evidence, and information presented to them, the Task Force agreed that Good Samaritan protections may be beneficial in these instances to provide legal protection for the family members or close associates acting in good faith to keep their loved ones from harming themselves or others with firearms. Members made several attempts at drafting legislation to that end (See Appendix A). However, despite multiple iterations, the Task Force could not ultimately reach consensus on what form such statutory protections might take.

The following recommendations reflect the Task Force's deliberations, legislative efforts, and careful considerations of the data, evidence, and information provided by Members and guests.

## RECOMMENDATIONS

### **Recommendation with respect to legal protections for "(1) private citizens acting as good samaritans, who are of direct relation to the distressed person by family or affection":**

In considering legal protections and feasible options in protecting citizens acting as Good Samaritans, the Task Force faced a difficult task in balancing civil liberties, constitutional rights, and public safety.

While the Task Force agrees that there are many instances in which family members or close associates have legitimate concerns about the emotional or physical suitability of gun owners to continue to possess weapons, and that legal precedent exists for protecting individuals acting as Good Samaritans, the members of the Task Force could not reach consensus on establishing statutory protection for family members or close associates who may want to involuntarily remove lawfully-possessed firearms from distressed individuals.

Members made several attempts at drafting language that would amend Chapter 140 of the Massachusetts General Laws to create such Good Samaritan protections. However, as mentioned above, the Task Force could not agree on key definitions, procedures, and protections that effectively balanced its public safety and civil liberty concerns.

Initial disagreement arose over the definition of the term, "distressed person" (as the Chapter 284 legislation did not provide one), and who was qualified to make such a determination beyond the local chief of police (under current law). Members had significant concerns over the

ability of everyday citizens, who lack sufficient knowledge and medical training, to make such determinations resulting in the potentially involuntary seizure of a licensed individual's firearms.

Beyond members' concerns over the suitability determination, the Task Force also disagreed on what form(s) the Good Samaritan protections might take and what procedures such a statute might utilize. There was disagreement over the level of police involvement and the timelines for police notification (if any) and final suitability determinations in the event a license is suspended but not revoked.

The Task Force also could not agree on sufficient protections for the lawful gun owner against individuals acting out of spite, or overprotective family members removing firearms out of an overabundance of caution. Members had significant concerns regarding the impact that determinations made under potential Good Samaritan protections might have on the gun owner's future license renewals.

Finally, the Task Force could not reach a consensus on where to store any firearms seized under such Good Samaritan laws, or on an explicit process for returning the lawfully-possessed firearms to the owner. Many members believed that bonded warehouses and other potential storage locations would create a financial burden, as would the costs of petitioning authorities for the return of the firearms. Others felt that the proper avenues for reporting suitability concerns and for gun owners to appeal determinations already exist through local police departments and the court system.

*With no consensus having been reached, and multiple unsuccessful attempts made at drafting legislation, the Task Force recommends this matter for further study.*

**Recommendations with respect to the “(2) turn-in and temporary storage of a distressed person’s firearm by a licensed gun store or gun club” and the “(3) turn-in and temporary storage of a distressed person’s firearm by any other type of organization or facility under registration as a firearms safe harbor”:**

The Task Force found that both of these proposed options created major legal and financial liabilities for the businesses, clubs, or organizations that might take possession of firearms as a safe harbor and posed a significant risk to public safety without proper police involvement.

Instead, members strongly encourage concerned family members or close associates to contact their local police department.

*The Task Force does not recommend temporary, safe-harbor storage at a gun store, gun club, or other organization.*

## AVAILABLE RESOURCES

While the Task Force failed to reach agreement on the processes and procedures for potential Good Samaritan protections in removing firearms from the possession of distressed individuals, members do understand the threat that such individuals can pose to themselves and others.

Task Force members made several attempts at drafting legislation that would create such Good Samaritan protections. Unfortunately, the group could not find a compromise solution that sufficiently alleviated members' concerns over possible civil liberty and constitutional rights violations, or that satisfactorily mitigated the proposal's inherent public safety risks.

One recommendation that members did agree on, however, was the need to promote awareness of available resources. Accordingly, the Task force recommends that EOPSS and DPH, in consultation with NAMI, the American Foundation for Suicide Prevention, and the Massachusetts Coalition against Gun Violence, create a series of public service announcements highlighting available resources for individuals in distress along with options for family members or close associates to safely and responsibly voice their concerns to their local police department.

Distressed individuals and their family or close associates can also reach out to the following organizations for help:

- MA Coalition for Suicide Prevention at (617) 297 - 8774
- 24 hour help lines
  - SAMARITANS
    - Call or text (877) 870 - HOPE (4673)
  - NATIONAL LIFELINE
    - (800) 273 - TALK (8255)
    - TTY: (800) 799 - 4TTY (4889)

## APPENDIX A

### CHAPTER 140

Section 129E Temporary seizure of firearms, ammunition and other dangerous items from distressed persons.

#### Section 129E

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

“Distressed Person,” an individual, whether or not he or she is the holder of a License to Carry or Firearms Identification Card, who by virtue of mental or emotional instability, dementia or other neurological condition, or use of drugs, alcohol or other psychoactive substances, reasonably appears to lack the capacity to safely keep and possess a weapon or ammunition, such that the safety of that individual or others is threatened.

- b) Any person who, in good faith, conceals or carries away a firearm, rifle, shotgun, machine gun, assault weapon, large capacity weapon, large capacity feeding device, or ammunition, all as defined by G.L. c. 140, § 121; a covert weapon, as defined by G.L. c. 140, § 131N; any weapon the possession of which is prohibited by the terms of G.L. c. 269, § 10(b); or any other item which is inherently dangerous; in order to prevent the availability of such an item to a party he or she reasonably believes to be a distressed person, shall not be prosecuted for the larceny of such item or the criminal possession or carrying of such item, or the improper storage of such item, and shall not be civilly liable for such acts; provided that, as soon as is safely practicable, and in any case within 24 hours, the party taking possession of the aforementioned item notifies the Massachusetts State Police or a municipal police department, arranges for law enforcement to take physical custody of the weapon, and provides a sworn written statement regarding the taking or concealment of the item, the identity and location of the prior possessor, and the nature and circumstances which led to the party's conclusion that the prior possessor was a distressed person.
- c) The making of a false statement in regard to this section shall be punished by not more than 2 ½ years in the House of Correction, independent of any other penalty that may result from the criminal taking or possession of the weapons or ammunition at issue.
- d) Any licensing authority shall make available to the public, in paper and electronic form, an Immediate Threat Notification form by which members of the public may communicate facts and circumstances which suggest that the possessor of a weapon



may be a distressed person. These concerns may be submitted to any licensing authority, and it shall be the responsibility of the recipient authority to identify, if possible, the particular licensing authority that may have granted a license to the suspected distressed person and convey the relevant information to that licensing authority. The Executive Office of Public Safety and Security shall have authority to promulgate regulations relative to the form of the Immediate Threat Notification.

- e) Upon receiving notification, either in person, by telephone, or through the submission of an Immediate Threat Notification form, that the holder of a license to carry or firearms identification card may be a distressed person, the licensing authority shall have authority to immediately suspend such license pending the investigation of the license holder's continuing suitability.
- f) If a licensing authority takes possession of a lawfully owned weapon pursuant to this section, it shall immediately, upon receipt, send notice to the last known address of the owner indicating that the weapon is in the custody of the licensing authority. Within 30 days of receipt of information that the owner of the weapon may be a distressed person, a licensing authority must either make a determination that there is sufficient basis to revoke the license, or must make a determination that there is sufficient basis to suspend the license of the owner pending further investigation. In the absence of such determination, the licensing authority must make an otherwise lawfully possessed weapon available for return to its owner.