

HOUSE No. 3441

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

The Commonwealth of Massachusetts

—————
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.