

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

May 11, 2011

To the Honorable Senate and House of Representatives:

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

This bill provides public safety officials with new criminal sanctions and investigative tools to go after guns and gangs. It includes three new gun-related crimes – assault and battery with a firearm, assault with a firearm, and a “felon in possession law” parallel to federal law – with serious criminal consequences. These crimes will give police and prosecutors additional tools to protect the community from those who possess and use guns in a crime. To facilitate the swift prosecution of gun crimes, I also propose amending the definition of “firearm” to make it parallel to the federal definition. In addition, I am proposing amendments to increase the punishment for *third* and *fourth* convictions for illegal possession of guns, and to tighten the law that currently prohibits possessing guns and other weapons on school grounds, and to give police the power they currently lack to arrest anyone who brings these dangerous weapons onto school grounds.

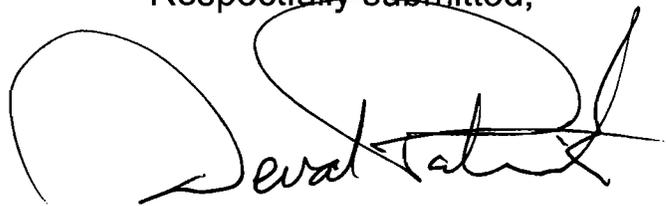
To increase law enforcement’s ability to target illegal activity perpetrated by traditional criminal enterprises, as well as non-

traditional organizations including street gangs and large-scale drug and human trafficking groups, I have included in this bill Attorney General Coakley's proposal, currently included as section 2 of House Bill No. 1379 and Senate Bill No. 629, to create a state "criminal enterprise" statute. In addition, as recently suggested by Justice Gants, concurring in *Commonwealth v. Tavares*, 459 Mass. 289 (2011), I am proposing a simple amendment to the state electronic surveillance laws to make this tool available for investigating and prosecuting street gangs.

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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval Patrick". The signature is written in a cursive, flowing style with a large, prominent loop at the beginning.



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND AND ELEVEN

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:

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

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

..... \$10,000,000

NOTE. — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.

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

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

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

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

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

(b) Any person convicted of violating subsection (a) after 1 or more prior convictions under subsection (a), section 15E, or a law of another jurisdiction that necessarily includes the elements of subsection (a) or section 15E shall be punished by imprisonment in the state prison for not less than 3 years nor more than 20 years. The sentence imposed shall not be reduced to less than a term of 3 years imprisonment, nor suspended, nor shall a person sentenced under this subsection be eligible for

probation, parole, work release or furlough, or receive any deduction from the sentence for good conduct, until having served 3 years of the sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution.

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

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

(b) Any person convicted of violating subsection (a) after 1 or more prior convictions under subsection (a), section 15D, or a law of another jurisdiction that necessarily includes the elements of subsection (a) or section 15D shall be punished by imprisonment in the state prison for not less than 2 years nor more than 15 years. The sentence imposed shall not be reduced to less than a term of 2 years imprisonment, nor suspended, nor shall a person sentenced under this subsection be eligible for probation, parole, work release or furlough, or receive any deduction from the sentence for good conduct, until having served 2 years of the sentence; provided, however, that the commissioner of

correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution.

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

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

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

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

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

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

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

Any officer in charge of a public or private elementary or secondary school, college or university or any faculty member or administrative officer of a public or private elementary or secondary school, college or university failing to report violations of this subsection shall be guilty of a misdemeanor and punished by a fine of not more than \$500.

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

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

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

CHAPTER 271A

ENTERPRISE CRIME.

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

“Enterprise”, any individual, sole proprietorship, partnership, corporation, trust or other legal entity, or any unchartered union, association or group of persons associated in fact although not a

legally recognized entity, including unlawful as well as lawful enterprises and governmental as well as other entities.

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

“Criminal enterprise activity”, the commission, attempted commission, conspiracy to commit or the solicitation, coercion, aiding, abetting or intimidation of another to commit any of the following criminal activity under the laws of the commonwealth or equivalent crimes under the laws of any other jurisdiction: a felony offense under chapter 271; trafficking, distributing, dispensing, manufacturing, or possessing with intent to distribute, dispense or manufacture a controlled substance in violation of chapter 94C; murder; rape; manslaughter; assault; assault and battery; assault and battery in order to collect a loan; assault with intent to rob or steal; assault with intent to murder, maim, or disfigure; murder; mayhem; robbery; extortion; stalking; criminal harassment; kidnapping; arson; burglary; malicious destruction of property; commission of a felony for hire; breaking and entering; child exploitation; assault and battery on a child; rape of a child; rape and abuse of a child; enticement of a child under 16; poisoning; human trafficking; violation of constitutional rights; usury; uttering; misuse or fraudulent use of credit cards; identity fraud; misappropriation of funds; gross fraud; insurance fraud; unlawful prize fighting or boxing matches; counterfeiting; perjury; subornation of perjury; obstruction of justice; money laundering; witness intimidation; bribery; electronic eavesdropping; deriving income from prostitution; receiving stolen property; larceny over \$250; larceny by false pretenses or embezzlement; forgery; prohibited financial interest; procurement fraud; false claims; tax evasion; filing false tax return; crimes involving violations of: gambling and lottery laws, gift laws, liquor laws, tobacco laws, firearms laws, securities laws, lobbying laws, ethics laws, conflict of interest

laws, child or elder abuse laws; or any conduct defined as racketeering activity under section 1961(1)(A), (B), or (D) of title 18 of the United States Code.

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

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

A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of criminal activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the

outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

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

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

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

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