

2C:43-6

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:43-6, 2C:43-6.1 (Mandatory prison terms for firearms offenses - reduces terms)

LAWS OF: 1982

CHAPTER: 119

Bill No: S1370

Sponsor(s): Graves

Date Introduced: May 10, 1982

Committee: Assembly: Judiciary, Law, Public Safety & Defense

Senate: Law, Public Safety & Defense

Amended during passage: Yes // Amendments during passage denoted by asterisks

Date of Passage: Assembly: July 22, 1982

Senate: June 7, 1982

Date of Approval: Aug. 31, 1982

Following statements are attached if available:

Sponsor statement:		Yes	//
Committee statement:	Assembly	Yes	//
	Senate	Yes	//
Fiscal Note:		///	No
Veto Message:		///	No
Message on Signing:		///	No
Following were printed:			
Reports:		Yes	//
Hearings:		///	No

974.90 N.J. Dept. of Law and Public Safety.  
C929 An institutional response to the  
1980a rising crime rate in N.J. Dec. 1, 1980.  
Trenton, 1980.  
(See especially pp.38-40)

Attached: Massachusetts law 269, §10  
See also: N.Y. Penal Law §70.02.2 et seq. (L.1980, c.233)

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8-31-82

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## SENATE, No. 1370

STATE OF NEW JERSEY

INTRODUCED MAY 10, 1982

By Senator GRAVES

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning mandatory minimum terms of imprisonment for commission of certain crimes with a firearm, amending N. J. S. 2C:43-6 and supplementing Title 2C of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. N. J. S. 2C:43-6 is amended to read as follows:

2 2C:43-6. Sentence of Imprisonment for Crime; Ordinary  
3 Terms; Mandatory Terms.

4 a. Except as otherwise provided, a person who has been convicted  
5 of a crime may be sentenced to imprisonment, as follows:

6 (1) In the case of a crime of the first degree, for a specific term  
7 of years which shall be fixed by the court and shall be between  
8 10 years and 20 years;

9 (2) In the case of a crime of the second degree, for a specific  
10 term of years which shall be fixed by the court and shall be between  
11 5 years and 10 years;

12 (3) In the case of a crime of the third degree, for a specific term  
13 of years which shall be fixed by the court and shall be between 3  
14 years and 5 years;

15 (4) In the case of a crime of the fourth degree, for a specific  
16 term which shall be fixed by the court and shall not exceed 18  
17 months.

18 b. As part of a sentence for any crime, where the court is clearly  
19 convinced that the aggravating factors substantially outweigh the  
20 mitigating factors, as set forth in subsections a. and b. of 2C:44-1,  
21 the court may fix a minimum term not to exceed one-half of the

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted May 24, 1982.

\*\*—Senate amendments adopted June 3, 1982.

\*\*\*—Assembly committee amendments adopted July 8, 1982.

22 term set pursuant to subsection a., or one-half of the term set pur-  
 23 suant to a maximum period of incarceration for a crime set forth  
 24 in any statute other than this code, during which the defendant shall  
 25 not be eligible for parole provided that no defendant shall be  
 26 eligible for parole at a date earlier than otherwise provided by the  
 27 law governing parole.

28 c. A person who has been convicted under 2C:39-4a. *\*of posses-*  
 29 *sion of a firearm with intent to use it against the person of an-*  
 29A *other,\** or of a crime under any of the following sections: 2C:11-3,  
 30 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1,  
 31 2C:18-2, 2C:29-5, who, while in the course of committing or at-  
 32 tempting to commit the crime, including the immediate flight there-  
 33 from, used or was in possession of a firearm as defined in 2C:39-1f.,  
 34 shall be sentenced to a term of imprisonment by the court. The term  
 35 if imprisonment shall include the imposition of a minimum term.  
 36 The minimum term shall be [fixed at, or between, one-third and  
 37 one-half of the sentence imposed by the court or 3 years whichever  
 38 is greater, or 18 months in the case of a fourth degree crime] \*\*[3  
 38A years]\*\* *\*\*fixed at, or between, one-third and one-half of the sen-*  
 38B *tence imposed by the court or 3 years, whichever is greater, or 18*  
 38C *months in the case of a fourth degree crime\*\**, during which the  
 39 defendant shall be ineligible for parole. *\*\*[If it can be shown at*  
 40 *the hearing held pursuant to subsection d. of this section, however,*  
 41 *that there was no \*reasonable\* possibility that the firearm used*  
 42 *or possessed by the defendant in the course of committing, attempt-*  
 43 *ing to commit, or fleeing from the crime could have harmed or*  
 44 *threatened to harm another person, the court shall impose a manda-*  
 45 *tory minimum term of imprisonment of 1 year, during which the*  
 46 *the defendant shall be ineligible for parole, and if both the prose-*  
 47 *cuting attorney and the sentencing court agree, that the imposition*  
 48 *of a mandatory minimum sentence of 1 year does not serve the*  
 49 *interests of justice, the 1 year mandatory minimum term of im-*  
 50 *prisonment shall not be imposed. Such agreement shall be in writing*  
 51 *and shall be entered on the record.]\*\**

52 The minimum terms established by this section shall not prevent  
 53 the court from imposing presumptive terms of imprisonment pur-  
 54 suant to 2C:44-1f. (1) except in cases of crimes of the fourth de-  
 55 gree\*\*[, nor shall the minimum terms established by this section  
 56 prevent the court from imposing a mandatory minimum term of  
 57 imprisonment pursuant to subsection b. of this section if the man-  
 58 datory minimum term of imprisonment imposed pursuant to sub-  
 59 section b. of this section is greater than 3 years]\*\*.

60 A person who has been convicted of an offense enumerated by  
61 this subsection and who used or possessed a firearm during its com-  
62 mission, attempted commission or flight therefrom and who has  
63 been previously convicted of an offense involving the use or  
64 possession of a firearm as defined in 2C:44-3d., shall be sentenced  
65 by the court to an extended term as authorized by 2C:43-7c., not-  
66 withstanding that extended terms are ordinarily discretionary  
67 with the court.

68 d. The court shall not impose a mandatory sentence pursuant to  
69 subsection c. of this section 2C:43-7c. or 2C:44-3d., unless the  
70 ground therefor has been established at a hearing. At the hearing,  
71 which may occur at the time of sentencing, the prosecutor shall  
72 establish by a preponderance of the evidence that the weapon used  
73 or possessed was a firearm. In making its finding, the court shall  
74 take judicial notice of any evidence, testimony or information ad-  
75 duced at the trial, plea hearing, or other court proceedings and shall  
76 also consider the presentence report and any other relevant infor-  
77 mation.

1 2. (New section) Any person who, on the effective date of this  
2 amendatory and supplementary act, is **\*\*\*[under]\*\*\*** **\*\*\*serv-**  
3 **ing\*\*\*** a minimum mandatory sentence **\*\*\*[of three years' impris-**  
4 **onment during which he is ineligible for parole for commission of**  
5 **any of the offenses specified in]\*\*\*** **\*\*\*as provided for by\*\*\***  
6 N. J. S. 2C:43-6c. **\*\*\*[with a firearm]\*\*\*** **\*\*\*solely as a result of**  
7 **his conviction under subsection a. of N. J. S. 2C:39-4 for the pos-**  
8 **session of a firearm with intent to use it against the property of**  
9 **another\*\*\***, and has not had his sentence suspended or been  
10 paroled or discharged, may move to have his sentence reviewed by  
11 the sentencing court. **\*\*\*[The court may impose a new sentence,**  
12 **for]\*\*\*** **\*\*\*For\*\*\*** good cause shown, **\*\*\*[as though the person**  
13 **had been sentenced under this amendatory and supplementary**  
14 **act]\*\*\*** **\*\*\*the court may impose any sentence which would have**  
15 **otherwise been available for such person\*\*\*.**

1 3. This act shall take effect immediately.

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SENATE, No. 1370

STATE OF NEW JERSEY

INTRODUCED MAY 10, 1982

By Senator GRAVES

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning mandatory minimum terms of imprisonment for commission of certain crimes with a firearm, amending N. J. S. 2C:43-6 and supplementing Title 2C of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. N. J. S. 2C:43-6 is amended to read as follows:

2 2C:43-6. Sentence of Imprisonment for Crime; Ordinary  
3 Terms; Mandatory Terms.

4 a. Except as otherwise provided, a person who has been convicted  
5 of a crime may be sentenced to imprisonment, as follows:

6 (1) In the case of a crime of the first degree, for a specific term  
7 of years which shall be fixed by the court and shall be between  
8 10 years and 20 years;

9 (2) In the case of a crime of the second degree, for a specific  
10 term of years which shall be fixed by the court and shall be between  
11 5 years and 10 years;

12 (3) In the case of a crime of the third degree, for a specific term  
13 of years which shall be fixed by the court and shall be between 3  
14 years and 5 years;

15 (4) In the case of a crime of the fourth degree, for a specific  
16 term which shall be fixed by the court and shall not exceed 18  
17 months.

18 b. As part of a sentence for any crime, where the court is clearly  
19 convinced that the aggravating factors substantially outweigh the  
20 mitigating factors, as set forth in subsections a. and b. of 2C:44-1,  
21 the court may fix a minimum term not to exceed one-half of the

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter printed in italics thus is new matter.**

22 term set pursuant to subsection a., or one-half of the term set pur-  
 23 suant to a maximum period of incarceration for a crime set forth  
 24 in any statute other than this code, during which the defendant shall  
 25 not be eligible for parole provided that no defendant shall be  
 26 eligible for parole at a date earlier than otherwise provided by the  
 27 law governing parole.

28 c. A person who has been convicted under 2C:39-4a. or of a  
 29 crime under any of the following sections: 2C:11-3, 2C:11-4,  
 30 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2,  
 31 2C:29-5, who, while in the course of committing or attempting to  
 32 commit the crime, including the immediate flight therefrom, used or  
 33 was in possession of a firearm as defined in 2C:39-1f., shall be sen-  
 34 tenced to a term of imprisonment by the court. The term of impris-  
 35 onment shall include the imposition of a minimum term. The mini-  
 36 mum term shall be [fixed at, or between, one-third and one-half of  
 37 the sentence imposed by the court or 3 years, whichever is greater,  
 38 or 18 months in the case of a fourth degree crime] *3 years*, during  
 39 which the defendant shall be ineligible for parole. *If it can be*  
 40 *shown at the hearing held pursuant to subsection d. of this section,*  
 41 *however, that there was no possibility that the firearm used or*  
 42 *possessed by the defendant in the course of committing, attempting*  
 43 *to commit, or fleeing from the crime could have harmed or threat-*  
 44 *ened to harm another person, the court shall impose a mandatory*  
 45 *minimum term of imprisonment of 1 year, during which the*  
 46 *defendant shall be ineligible for parole, and if both the prosecuting*  
 47 *attorney and the sentencing court agree, that the imposition of a*  
 48 *mandatory minimum sentence of 1 year does not serve the interests*  
 49 *of justice, the 1 year mandatory minimum term of imprisonment*  
 50 *shall not be imposed. Such agreement shall be in writing and shall*  
 51 *be entered on the record.*

52 The minimum terms established by this section shall not prevent  
 53 the court from imposing presumptive terms of imprisonment pur-  
 54 suant to 2C:44-1f. (1) except in cases of crimes of the fourth degree,  
 55 *nor shall the minimum terms established by this section prevent*  
 56 *the court from imposing a mandatory minimum term of imprison-*  
 57 *ment pursuant to subsection b. of this section if the mandatory*  
 58 *minimum term of imprisonment imposed pursuant to subsection b.*  
 59 *of this section is greater than 3 years.*

60 A person who has been convicted of an offense enumerated by  
 61 this subsection and who used or possessed a firearm during its com-  
 62 mission, attempted commission or flight therefrom and who has  
 63 been previously convicted of an offense involving the use or  
 64 possession of a firearm as defined in 2C:44-3d., shall be sentenced

65 by the court to an extended term as authorized by 2C:43-7c., not-  
 66 withstanding that extended terms are ordinarily discretionary  
 67 with the court.

68 d. The court shall not impose a mandatory sentence pursuant to  
 69 subsection c. of this section 2C:43-7c. or 2C:44-3d., unless the  
 70 ground therefor has been established at a hearing. At the hearing,  
 71 which may occur at the time of sentencing, the prosecutor shall  
 72 establish by a preponderance of the evidence that the weapon used  
 73 or possessed was a firearm. In making its finding, the court shall  
 74 take judicial notice of any evidence, testimony or information ad-  
 75 duced at the trial, plea hearing, or other court proceedings and shall  
 76 also consider the presentence report and any other relevant infor-  
 77 mation.

1 2. (New section) Any person who, on the effective date of this  
 2 amendatory and supplementary act, is under a minimum mandatory  
 3 sentence of 3 years' imprisonment during which he is ineligible  
 4 for parole for commission of any of the offenses specified in N. J. S.  
 5 2C:43-6c. with a firearm, and has not had his sentence suspended or  
 6 been paroled or discharged, may move to have his sentence reviewed  
 7 by the sentencing court. The court may impose a new sentence, for  
 8 good cause shown, as though the person had been sentenced under  
 9 this amendatory and supplementary act.

1 3. This act shall take effect immediately.

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#### STATEMENT

At the present time, a person convicted of committing certain offenses such as murder, kidnapping, and robbery while in possession of a firearm is subject to a mandatory sentence of at least 3 years in prison without eligibility for parole.

This mandatory sentence can lead to injustice in certain situations. Recently, for instance, a man who shot at a junked van was sentenced to the mandatory 3-year term.

The purpose of this bill is to amend N. J. S. 2C:43-6c. to reduce the mandatory minimum term to 1 year in prison if there was no possibility that the firearm possessed by the defendant could have been used to harm or threaten another person in the course of the crime. If both the prosecuting attorney and the sentencing judge agree that even a 1-year sentence without eligibility for parole does not serve the interests of justice, the sentence can be waived.

This bill will eliminate injustices inadvertently created by the mandatory sentencing law without diminishing the State's efforts to impose severe punishment on persons who use firearms to commit crimes.

A sentencing court still has the discretion to require a mandatory term of up to one-half the sentence imposed, during which the defendant is ineligible for parole, as long as the mandatory sentence imposed is at least 3 years.

Section 2 of the bill would permit anyone currently under the minimum 3-year sentence for committing one of the specified crimes with a firearm to move to have his sentence reviewed by the sentencing court. The court may impose a new sentence as though the person had been sentenced under this act.

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ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO  
**SENATE, No. 1370**

**STATE OF NEW JERSEY**

DATED: JULY 8, 1982

The purpose of this bill, as amended, is to eliminate potential injustices inadvertently created by the law establishing mandatory, minimum sentences for commission of certain crimes while in possession of a firearm.

Under N. J. S. 2C:43-6c. as it now exists, a person who uses or is in possession of a firearm while committing, attempting to commit, or fleeing from committing one of the following crimes is subject to the mandatory minimum sentence: possession of a weapon for unlawful purposes (2C:39-4a), murder (2C:11-3), manslaughter (2C:11-4), aggravated assault (2C:12-1b), kidnapping (2C:13-1), aggravated sexual assault (2C:14-2a), aggravated criminal sexual contact (2C:14-3a), robbery (2C:15-1), burglary (2C:18-2), or escape (2C:29-5). This bill provides, however, that a person convicted of possession (2C:39-4a) would be subject to the mandatory, minimum sentence only if he had possessed the firearm with intent to use it against the person of another.

Deleted from the bill in the Senate was the reduction of the mandatory, minimum term to one year in prison if the firearm possessed by the defendant could not have been reasonably used to harm or threaten another person in the course of the crime.

Section 2 of the bill would permit anyone currently under the mandatory minimum for possession of a firearm with the intent to use it against the property of another to move to have his sentence reviewed by the sentencing court. The court may impose a new sentence as would have otherwise been available but for the mandatory minimum term.

SENATE LAW, PUBLIC SAFETY AND DEFENSE  
COMMITTEE

STATEMENT TO

**SENATE, No. 1370**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 24, 1982

The purpose of this bill, as amended, is to eliminate injustices inadvertently created by the law establishing mandatory, minimum sentences for commission of certain crimes while in possession of a firearm.

The bill reduces the mandatory, minimum term to 1 year in prison if the firearm possessed by the defendant could not have been used to harm or threaten another person in the course of the crime. The committee amended the bill so that the mandatory, minimum sentence would be reduced to 1 year if there was no *reasonable* possibility that the firearm could have been used to harm or threaten another person. If both the prosecuting attorney and the sentencing judge agree that even a 1-year sentence without parole eligibility did not serve the interest of justice, the sentence could be waived.

Under N. J. S. 2C:43-6c. as it now exists, a person who uses or is in possession of a firearm while committing, attempting to commit, or fleeing from committing one of the following crimes is subject to the mandatory minimum sentence: possession of a weapon for unlawful purposes (2C:39-4a), murder (2C:11-3), manslaughter (2C:11-4), aggravated assault (2C:12-1b), kidnapping (2C:13-1), aggravated sexual assault (2C:14-2a), aggravated criminal sexual contact (2C:14-3a), robbery (2C:15-1), burglary (2C:18-2), or escape (2C:29-5). The committee amended the bill so that a person convicted of 2C:39-4a. would be subject to the mandatory, minimum sentence only if he had possessed the firearm with intent to use it against the person of another.

The bill establishes a mandatory minimum sentence of 3 years for any person convicted of committing one of the enumerated offenses, even if the offense is a crime of the fourth degree.

According to the bill, a sentencing court still has the discretion to require a mandatory term of up to one-half the sentence imposed, during

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which the defendant is ineligible for parole, as long as the mandatory sentence imposed is at least 3 years.

Section 2 of the bill would permit anyone currently under the minimum 3-year sentence for committing one of the specified crimes with a firearm to move to have his sentence reviewed by the sentencing court. The court may impose a new sentence as though the person had been sentenced under this act.

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1 38 Omit "3 years" insert "fixed at, or between, one-third and one-half of the sentence imposed by the court or 3 years, whichever is greater, or 18 months in the case of a fourth degree crime,"

2 1 39-51 Omit "If it can be" on line 39, and ~~all of~~ lines 40 through 51

2 1 54- After "degree" omit ", " ~~insert~~ on line 54;  
59. lines 55 through 58 and omit "of this section"

2 1 55-59 Omit ~~in entirety~~ "greater than 3 years" on line 59

STATEMENT

The purpose of these amendments is to eliminate from the bill language that would lower from 3 years to 1 year the mandatory minimum sentence for persons convicted of committing certain crimes while in possession of a firearm if there was no reasonable possibility that the firearm could have been used to harm or threaten to harm another person.

The purpose of the language being eliminated by the amendment was to remove from the scope of the mandatory sentencing law those persons who had not committed crimes of violence against persons. It appears, however, that this purpose can be accomplished more clearly and simply by limiting application of the law in cases of violation of ~~2C:39-4~~ to violations involving possession of a firearm with the intention of using it against another person.

The amendments also provide that the mandatory minimum sentence shall be 3 years or shall be fixed or between one-third and one-half of the sentence imposed by the court, whichever is greater, or 18 months in the case of a fourth degree crime. This provision is not in the law, but was taken out by the bill as originally drafted. The provision is being replaced by these amendments in order to permit mandatory minimum sentences greater than 3 years for conviction of certain crimes of the first degree committed with a firearm.

Senate amendments to  
S 1370 adopted 6-3-82

N.J.S.

269 § 8  
Note 3

CRIMES AGAINST PUBLIC PEACE

CRIMES AGAINST PUBLIC PEACE

269 § 10

least one person of reasonable firmness and courage were properly refused in action to hold city liable in tort for the alleged riot damage. *Abraham v. City of Woburn* (1981) 421 N.E.2d 1206, 1981 Mass.Adv.Sh. 1327.

4. Evidence

Absent objection, hearsay evidence of executive head of police department that damage to plaintiff's bowling alley had been caused by a "riotous act or a cyclone," and that a "riotous act" included damage to property by a large group of people and testimony of newspaper editor that damage was caused by "the riotous gangs that hang around and hung around that section and other sections of the City," was properly admitted in action to hold city liable for damage to bowling alley and jurors were entitled to give it such probative effect as they deemed appropriate. *Abraham v. City of Woburn* (1981) 421 N.E.2d 1206, 1981 Mass.Adv.Sh. 1327.

Although circumstantial, evidence was sufficient to hold city liable for damage to bowling alley, with liability predicated on theory that damage was caused by five or more persons riotously or tumultuously assembled, especially given testimony that damage was caused by a riotous act and considering history of roving gangs in the city and near-total destruction of the bowling alley. *Id.*

To hold a municipality liable in tort for damage caused by five or more persons riotously or tumultuously assembled it is not required that the damage had to have been caused by a riot of which municipality had, or should have had knowledge, or that the municipality could have prevented the damage by exercise of reasonable diligence. *Id.*

In action brought by owner of bowling alley against city to recover under this section which imposes tort liability upon municipalities for damage to property by persons "who are riotously or tumultuously assembled," testimony labeling the event which resulted in damage to plaintiffs' property as a "riot" was excludable upon objection, but in absence of objection, such otherwise incompetent evidence took on probative force. *Abraham v. City of Woburn* (1980) 408 N.E.2d 664, 1980 Mass.App.Adv.Sh. 1603, appeal decided 421 N.E.2d 1206.

For purposes of this section imposing tort liability upon municipalities for damage to property by persons "who are riotously or tumultuously assembled," a riotous and tumultuous assembly requires that the activity be open and have been witnessed and that there be a showing of concerted intent by members of the assembly to resist those who might oppose them; in absence of evidence of such assembly, property owner could not recover from city for damage caused by vandalism. *Id.*

(4) having complied as to carrying, with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns;

(5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B of chapter two hundred and sixty-nine;

shall be punished by imprisonment in the state prison for not less than two and one-half nor more than five years, or for not less than one year nor more than two and one-half years in a jail or house of correction. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection (a) be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served one year of such 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, or the administrator of a county correctional institution, grant to an offender committed under this subsection or 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 services unavailable at said institution. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

The provisions of section eighty-seven of chapter two hundred and seventy-six, shall not apply to any person seventeen years of age or over, charged with a violation of this subsection, or to any child between age fourteen and seventeen, so charged, if the court is of the opinion that the interests of the public require that he should be tried for such offense instead of being dealt with as a child.

(b) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stiletto, dagger, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed star-like object intended to injure a person when thrown, or a manrikigusari or similar length of chain having weighted ends; or whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned and those mentioned in paragraph (a), shall be punished by imprisonment for not less than two and one-half years nor more than five years in the state prison, or for not less than six months nor more than two and one-half years in a jail or house of correction, except that, if the court finds that the defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment for not more than two and one-half years in a jail or house of correction.

(c) Whoever, except as provided by law, possesses a shotgun with a barrel less than eighteen inches in length, or possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred and forty, without permission under section one hundred and thirty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life or for any term of years provided that any sentence imposed under the provisions of this clause shall be subject to the minimum requirements of clause (a) of this section; provided, however, that the commissioner of

§ 10. Carrying dangerous weapons; possession of machine gun or sawed-off shotgun; confiscation; return of firearm; colleges and universities; punishment

(a) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

(1) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(3) complying with the provisions of section one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or

(4) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B of chapter two hundred and sixty-nine;

and whoever carries on his person, or carries on his person or under his control in a vehicle a rifle or shotgun, loaded or unloaded, without either:

(1) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(3) having in effect a firearm identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or

correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subsection or 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 services unavailable at said institution.

(d) Whoever, after having been convicted of any of the offenses set forth in paragraph (a), (b) or (c) commits a like offense or any other of the said offenses, shall be punished by imprisonment in the state prison for not less than five years nor more than 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. The sentence imposed upon a person, who after a conviction of an offense under paragraph (a), (b) or (c) commits the same or a like offense, shall not be suspended, nor shall any person so sentenced be eligible for probation or receive any deduction from his sentence for good conduct.

(e) Upon conviction of a violation of this section, the firearm or other article shall, unless otherwise ordered by the court, be confiscated by the commonwealth. The firearm or article so confiscated shall, by the authority of the written order of the court be forwarded by common carrier to the commissioner of public safety, who, upon receipt of the same, shall notify said court or justice thereof. Said commissioner may sell or destroy the same, except that any firearm which may not be lawfully sold in the commonwealth shall be destroyed, and in the case of a sale, after paying the cost of forwarding the article, shall pay over the net proceeds to the commonwealth.

(f) The court shall, if the firearm or other article was lost by or stolen from the person lawfully in possession of it, order its return to such person.

(g) Whoever, within this commonwealth, produces for sale, delivers or causes to be delivered, orders for delivery, sells or offers for sale, or fails to keep records regarding, any rifle or shotgun without complying with the requirement of a serial number, as provided in section one hundred and twenty-nine B of chapter one hundred and forty, shall for the first offense be punished by confinement in a jail or house of correction for not more than two and one-half years, or by a fine of not more than five hundred dollars.

(h) Whoever owns, possesses, or transfers possession of a firearm, rifle, shotgun or ammunition without complying with the requirements relating to the firearm identification card provided for in section one hundred and twenty-nine C of chapter one hundred and forty shall be punished by imprisonment in a jail or house of correction for not more than one year or by a fine of not more than five hundred dollars. A second violation of this paragraph shall be punished by imprisonment in a jail or house of correction for not more than two years or by a fine of not more than one thousand dollars or both.

(i) Whoever knowingly fails to deliver or surrender a revoked or suspended license to carry firearms issued under the provisions of section one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty, or firearm identification card, or receipt for the fee for such card, or a firearm, rifle or shotgun, as provided in section one hundred and twenty-nine D of chapter one hundred and forty, unless an appeal is pending, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars.

(j) Whoever, not being a law enforcement officer, and notwithstanding any license obtained by him under the provisions of chapter one hundred and forty, carries on his person a firearm as hereinafter defined, loaded or unloaded, in any building or on the grounds of any college or university without the written authorization of the board or

officer in charge of said college or university shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year or both. For the purpose of this paragraph "firearm" shall mean any pistol, revolver, rifle or smoothbore arm from which a shot, bullet or pellet can be discharged by whatever means.

(k) For the purpose of this section "sawed-off shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than twenty-six inches.

(l) The provisions of this section shall be fully applicable to any person proceeded against under section seventy-five of chapter one hundred and nineteen and convicted under section eighty-three of chapter one hundred and nineteen, provided, however, that nothing contained in this section shall impair, impede, or affect the power granted any court by chapter one hundred and nineteen to adjudicate a person a delinquent child, including the power so granted under section eighty-three of said chapter one hundred and nineteen.

Amended by St.1971, c. 456, §§ 5, 6; St.1972, c. 312, § 5; St.1973, c. 588; St.1974, c. 649, § 2; St.1975, c. 113, §§ 2, 3; St.1975, c. 585, § 1; St.1978, c. 175, §§ 1, 2.

**1971 Amendment.** St.1971, c. 456, § 5, approved June 29, 1971, in the fifth paragraph as then appearing, inserted "license to carry firearms issued under the provisions of sections one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty, or". Section 6 added the concluding paragraph defining "sawed-off shotgun". See the text as appearing in the 1973 note.

**1972 Amendment.** St.1972, c. 312, § 5, approved May 25, 1972, deleted "therefor" following the word "ammunition" in the first sentence of the fourth paragraph as then appearing. See the text as appearing in the 1973 note.

**1973 Amendment.** St.1973, c. 588, approved Aug. 6, 1973, in the first paragraph as then appearing, deleted "or a sawed-off shotgun" following the words "metallic knuckles" where secondly appearing in the first sentence, and inserted "possesses a shotgun with a barrel less than eighteen inches in length, or" in the third sentence.

As so amended in 1973, this section read:

"Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, a firearm as defined in section one hundred and twenty-one of chapter one hundred and forty, loaded or unloaded, without permission under sections one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty; or whoever so carries any stiletto, dagger, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one half inches, or a slung shot, black jack, metallic knuck-

les or knuckles of any substance which could be put to the same use and with the same or similar effect as metallic knuckles; or whoever, when arrested upon a warrant for an alleged crime or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned, shall be punished by imprisonment for not less than two and one half years nor more than five years in the state prison, or for not less than six months nor more than two and one half years in a jail or house of correction, except that, if the court finds the defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment for not more than two and one half years in a jail or house of correction; or whoever, after having been convicted of any of the aforesaid offenses commits the like offense or any other of the aforesaid offenses, shall be punished by imprisonment in the state prison for not less than five years, for a third such offense, by imprisonment in the state prison for not less than seven years, and for a fourth such offense, by imprisonment in the state prison for not less than ten years. The sentence imposed upon a person who, after a conviction of an offense under this paragraph, commits the same or a like offense, shall not be suspended nor shall any person so sentenced be eligible for parole or receive any deduction from his sentence for good conduct. Whoever, except as provided by law, possesses a shotgun with a barrel less than eighteen inches in length, or possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred

correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subsection or 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 services unavailable at said institution.

(d) Whoever, after having been convicted of any of the offenses set forth in paragraph (a), (b) or (c) commits a like offense or any other of the said offenses, shall be punished by imprisonment in the state prison for not less than five years nor more than 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. The sentence imposed upon a person, who after a conviction of an offense under paragraph (a), (b) or (c) commits the same or a like offense, shall not be suspended, nor shall any person so sentenced be eligible for probation or receive any deduction from his sentence for good conduct.

(e) Upon conviction of a violation of this section, the firearm or other article shall, unless otherwise ordered by the court, be confiscated by the commonwealth. The firearm or article so confiscated shall, by the authority of the written order of the court be forwarded by common carrier to the commissioner of public safety, who, upon receipt of the same, shall notify said court or justice thereof. Said commissioner may sell or destroy the same, except that any firearm which may not be lawfully sold in the commonwealth shall be destroyed, and in the case of a sale, after paying the cost of forwarding the article, shall pay over the net proceeds to the commonwealth.

(f) The court shall, if the firearm or other article was lost by or stolen from the person lawfully in possession of it, order its return to such person.

(g) Whoever, within this commonwealth, produces for sale, delivers or causes to be delivered, orders for delivery, sells or offers for sale, or fails to keep records regarding, any rifle or shotgun without complying with the requirement of a serial number, as provided in section one hundred and twenty-nine B of chapter one hundred and forty, shall for the first offense be punished by confinement in a jail or house of correction for not more than two and one-half years, or by a fine of not more than five hundred dollars.

(h) Whoever owns, possesses, or transfers possession of a firearm, rifle, shotgun or ammunition without complying with the requirements relating to the firearm identification card provided for in section one hundred and twenty-nine C of chapter one hundred and forty shall be punished by imprisonment in a jail or house of correction for not more than one year or by a fine of not more than five hundred dollars. A second violation of this paragraph shall be punished by imprisonment in a jail or house of correction for not more than two years or by a fine of not more than one thousand dollars or both.

(i) Whoever knowingly fails to deliver or surrender a revoked or suspended license to carry firearms issued under the provisions of section one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty, or firearm identification card, or receipt for the fee for such card, or a firearm, rifle or shotgun, as provided in section one hundred and twenty-nine D of chapter one hundred and forty, unless an appeal is pending, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars.

(j) Whoever, not being a law enforcement officer, and notwithstanding any license obtained by him under the provisions of chapter one hundred and forty, carries on his person a firearm as hereinafter defined, loaded or unloaded, in any building or on the grounds of any college or university without the written authorization of the board or

officer in charge of said college or university shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year or both. For the purpose of this paragraph "firearm" shall mean any pistol, revolver, rifle or smoothbore arm from which a shot, bullet or pellet can be discharged by whatever means.

(k) For the purpose of this section "sawed-off shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than twenty-six inches.

(l) The provisions of this section shall be fully applicable to any person proceeded against under section seventy-five of chapter one hundred and nineteen and convicted under section eighty-three of chapter one hundred and nineteen, provided, however, that nothing contained in this section shall impair, impede, or affect the power granted any court by chapter one hundred and nineteen to adjudicate a person a delinquent child, including the power so granted under section eighty-three of said chapter one hundred and nineteen.

Amended by St.1971, c. 456, §§ 5, 6; St.1972, c. 312, § 5; St.1973, c. 588; St.1974, c. 649, § 2; St.1975, c. 118, §§ 2, 3; St.1976, c. 585, § 1; St.1978, c. 175, §§ 1, 2.

**1971 Amendment.** St.1971, c. 456, § 5, approved June 29, 1971, in the fifth paragraph as then appearing, inserted "license to carry firearms issued under the provisions of sections one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty, or". Section 6 added the concluding paragraph defining "sawed-off shotgun". See the text as appearing in the 1973 note.

**1972 Amendment.** St.1972, c. 312, § 5, approved May 25, 1972, deleted "therefor" following the word "ammunition" in the first sentence of the fourth paragraph as then appearing. See the text as appearing in the 1973 note.

**1973 Amendment.** St.1973, c. 588, approved Aug. 6, 1973, in the first paragraph as then appearing, deleted "or a sawed-off shotgun" following the words "metallic knuckles" where secondly appearing in the first sentence, and inserted "possesses a shotgun with a barrel less than eighteen inches in length, or" in the third sentence.

As so amended in 1973, this section read:

"Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, a firearm as defined in section one hundred and twenty-one of chapter one hundred and forty, loaded or unloaded, without permission under sections one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty; or whoever so carries any stiletto, dagger, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one half inches, or a slung shot, black jack, metallic knuck-

les or knuckles of any substance which could be put to the same use and with the same or similar effect as metallic knuckles; or whoever, when arrested upon a warrant for an alleged crime or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned, shall be punished by imprisonment for not less than two and one half years nor more than five years in the state prison, or for not less than six months nor more than two and one half years in a jail or house of correction, except that, if the court finds the defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment for not more than two and one half years in a jail or house of correction; or whoever, after having been convicted of any of the aforesaid offenses commits the like offense or any other of the aforesaid offenses, shall be punished by imprisonment in the state prison for not less than five years, for a third such offense, by imprisonment in the state prison for not less than seven years, and for a fourth such offense, by imprisonment in the state prison for not less than ten years. The sentence imposed upon a person who, after a conviction of an offense under this paragraph, commits the same or a like offense, shall not be suspended nor shall any person so sentenced be eligible for parole or receive any deduction from his sentence for good conduct. Whoever, except as provided by law, possesses a shotgun with a barrel less than eighteen inches in length, or possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred

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least one person of reasonable firmness and courage were properly refused in action to hold city liable in tort for the alleged riot damage. *Abraham v. City of Woburn* (1981) 421 N.E.2d 1206, 1981 Mass.Adv.Sh. 1327.

4. Evidence

Absent objection, hearsay evidence of executive head of police department that damage to plaintiff's bowling alley had been caused by a "riotous act or a cyclone," and that a "riotous act" included damage to property by a large group of people and testimony of newspaper editor that damage was caused by "the riotous gangs that hang around and hung around that section and other sections of the City," was properly admitted in action to hold city liable for damage to bowling alley and jurors were entitled to give it such probative effect as they deemed appropriate. *Abraham v. City of Woburn* (1981) 421 N.E.2d 1206, 1981 Mass.Adv.Sh. 1327.

Although circumstantial, evidence was sufficient to hold city liable for damage to bowling alley, with liability predicated on theory that damage was caused by five or more persons riotously or tumultuously assembled, especially given testimony that damage was caused by a riotous act and considering history of roving gangs in the city and near-total destruction of the bowling alley. Id.

To hold a municipality liable in tort for damage caused by five or more persons riotously or tumultuously assembled it is not required that the damage had to have been caused by a riot of which municipality had, or should have had knowledge, or that the municipality could have prevented the damage by exercise of reasonable diligence. Id.

In action brought by owner of bowling alley against city to recover under this section which imposes tort liability upon municipalities for damage to property by persons "who are riotously or tumultuously assembled," testimony labeling the event which resulted in damage to plaintiffs' property as a "riot" was excludable upon objection, but in absence of objection, such otherwise incompetent evidence took on probative force. *Abraham v. City of Woburn* (1980) 408 N.E.2d 664, 1980 Mass.App.Adv.Sh. 1603; appeal decided 421 N.E.2d 1206.

For purposes of this section imposing tort liability upon municipalities for damage to property by persons "who are riotously or tumultuously assembled," a riotous and tumultuous assembly requires that the activity be open and have been witnessed and that there be a showing of concerted intent by members of the assembly to resist those who might oppose them; in absence of evidence of such assembly, property owner could not recover from city for damage caused by vandalism. Id.

§ 10. Carrying dangerous weapons; possession of machine gun or sawed-off shotgun; confiscation; return of firearm; colleges and universities; punishment

(a) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

(1) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(3) complying with the provisions of section one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or

(4) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B of chapter two hundred and sixty-nine;

and whoever carries on his person, or carries on his person or under his control in a vehicle a rifle or shotgun, loaded or unloaded, without either:

(1) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(3) having in effect a firearm identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or

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(4) having complied as to carrying, with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns;

(5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B of chapter two hundred and sixty-nine;

shall be punished by imprisonment in the state prison for not less than two and one-half nor more than five years, or for not less than one year nor more than two and one-half years in a jail or house of correction. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection (a) be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served one year of such 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, or the administrator of a county correctional institution, grant to an offender committed under this subsection or 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 services unavailable at said institution. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

The provisions of section eighty-seven of chapter two hundred and seventy-six, shall not apply to any person seventeen years of age or over, charged with a violation of this subsection, or to any child between age fourteen and seventeen, so charged, if the court is of the opinion that the interests of the public require that he should be tried for such offense instead of being dealt with as a child.

(b) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stiletto, dagger, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed star-like object intended to injure a person when thrown, or a manrikigusari or similar length of chain having weighted ends; or whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned and those mentioned in paragraph (a), shall be punished by imprisonment for not less than two and one-half years nor more than five years in the state prison, or for not less than six months nor more than two and one-half years in a jail or house of correction, except that, if the court finds that the defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment for not more than two and one-half years in a jail or house of correction.

(c) Whoever, except as provided by law, possesses a shotgun with a barrel less than eighteen inches in length, or possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred and forty, without permission under section one hundred and thirty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life or for any term of years provided that any sentence imposed under the provisions of this clause shall be subject to the minimum requirements of clause (a) of this section; provided, however, that the commissioner of