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Legislative Filings Briefing Booklet

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BRIEFING BOOKLET

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AN ACT RELATIVE TO 3D PRINTED GUNS AND "GHOST GUNS"

H.2360 / S.1509

Lead Sponsors: Representative David Paul Linsky and
Senator James B. Eldridge

Impetus

A thirteen-year-old builds a dozen firearms in his home. A Cambridge resident with no gun license has thirty guns built from kits purchased online. A gun found at a crime scene is untraceable because it has no serial number. Massachusetts has long been known for its tenacious and effective approach to gun control, but recent technological developments have made possible the creation of untraceable "ghost guns" using 3D printers, as well as the assembly of a firearm from separately purchased component parts. In addition to the dangers to the public posed by unregistered and untraceable firearms, such weapons pose a particular risk to the user due to the fact that improper assembly or the use of plastic parts makes them likely to explode on use. In many cases, however, the assembly of a firearm from parts purchased online violates no state or federal law. Unless the Commonwealth can regulate the manufacture of 3D-printed weapons and ghost guns, and can appropriately punish the unlawful manufacture and distribution of these weapons, we risk being overrun by a wave of untraceable "do-it-yourself" firearms. Worse, we risk many of those guns being in the hands of people who might otherwise be ineligible, for good reason, to obtain firearms legally.

Need

The definitions set forth in G.L. c. 140, § 121, which defines the various categories of firearms, do not encompass 3D-printed or other untraceable ghost guns. Because gun parts

are not considered guns, a gun may be shipped to a buyer when it is 80% assembled without any need to notify law enforcement or possess a license; the buyer then completes the assembly at home. Therefore, such weapons risk escaping the regulations and prohibitions of chapter 140 because they simply do not qualify as regulated weapons under the statute. This legislation brings the statute into line with new technologies.

Legislative Fix

This Bill amends G.L. c. 140, § 121 to include definitions of "assembly," "manufacture" and "frame or receiver" and to clarify that the definition of firearms includes frames or receivers and other 3D printed or do-it-yourself assembled guns.

This Bill also adds § 122E to the same chapter, prohibiting the manufacture or assembly of firearms that do not bear serial numbers; unlicensed 3D printing of firearms or their component parts; distribution of computer code or instructions for 3D printing of firearms to unlicensed persons; and manufacture or assembly of firearms that are not detectable by metal detectors or other common security screening measures. It requires a persons who manufactures or assembles such a firearm to notify CJIS within 30 days and provide identifying information regarding the firearm and its owner.

HB2360 (HD352) / SB1509 (SD1469) – **AN ACT RELATIVE TO 3D PRINTED GUNS AND GHOST GUNS**

Filed January 12, 2023 / January 19, 2023

Presented by: Rep. David Paul Linsky, 5th Middlesex
Sen. James B. Eldridge, Middlesex & Worcester

Petition of: Rep. David Paul Linsky, 5th Middlesex
Rep. James Arena-DeRosa, 8th Middlesex
Rep. Jennifer Armini, 8th Essex
Rep. Christine Barber, 34th Middlesex
Rep. Michelle Ciccolo, 15th Middlesex
Rep. Manny Cruz, 7th Essex
Rep. Carol Doherty, 3rd Bristol
Rep. Mindy Domb, 3rd Hampshire
Rep. Michelle DuBois, 10th Plymouth
Rep. Rodney Elliott, 16th Middlesex
Rep. Tricia Farley-Bouvier, 3rd Berkshire
Rep. Brandy Fluker Oakley, 12th Suffolk
Rep. Carmine Gentile, 13th Middlesex
Rep. Carlos Gonzalez, 10th Hampden
Rep. Ryan Hamilton, 15th Essex
Rep. Kay Khan, 11th Middlesex
Rep. Meghan Kilcoyne, 12th Worcester
Rep. Jack Patrick Lewis, 7th Middlesex
Rep. Lindsay Sabadosa, 1st Hampshire
Rep. Marcus Vaughn, 9th Norfolk
Sen. James B. Eldridge, Middlesex & Worcester
Sen. Michael Barrett, 3rd Middlesex
Sen. Sal N. DiDomenico, Middlesex & Suffolk
Sen. Patricia D. Jehlen, 2nd Middlesex
Sen. John F. Keenan, Norfolk & Plymouth
Sen. Michael O. Moore, 2nd Worcester
Sen. Patrick O'Connor, Plymouth & Norfolk
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 121 of Chapter 140 of the General Laws, is hereby amended by inserting after the word "detectors" in line 77, "'frame", the part of a handgun, or variants thereof, that provides housing or a structure for the primary energized component designed to hold back the hammer, striker, bolt, or similar component prior to initiation of the firing sequence (i.e., sear or equivalent), even if pins or other attachments are required to connect such component to the housing or structure, including any such part (1) that is marketed or sold to the public to be used in an assembled, operable firearm or (2) that can be readily converted for use in an assembled, operable firearm.

SECTION 2. Section 121 of Chapter 140 of the General Laws is hereby amended by inserting after the word "detectors" in line 77, the following: a firearm shall include any firearm frame or receiver.

SECTION 3. Section 121 of Chapter 140 of the General Laws is hereby amended by inserting after the word "tense" in line 133, the following: "'receiver,' the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (i.e., bolt, breechblock, or equivalent), even if pins or other attachments are required to connect such component to the housing or structure, including any such part (1) that is marketed or sold to the public to be used in an assembled, operable firearm or (2) that can be readily converted for use in an assembled, operable firearm. The term shall not include a piece of material that has had its size or external shape altered to facilitate transportation or storage or has had its chemical composition altered."

SECTION 4. Section 121 of Chapter 140 of the General Laws is hereby amended by inserting after the word "lever" in line 165, the following: "'variant' and 'variants thereof' means a weapon utilizing a similar frame or receiver design irrespective of new or different model designations or configurations, characteristics, features, components, accessories, or attachments.

SECTION 5. Chapter 140 is hereby amended by inserting the following new Section after Section 122D.

Section 122E.

(a) "assembly" or "assemble" means the fitting together of component parts of a firearm to construct a firearm; but shall not apply to the restoration of antique firearms nor the replacement of existing parts of a completed firearm so long as the parts are properly imprinted with a serial number issued by the Department of Criminal Justice Information Services.

(b) "manufacture" means the newly fabricate or construct a firearm.

(c) No individual shall sell, deliver, or transfer a firearm unless the firearm is required by law to be, and has been, imprinted with a serial number by a licensed importer, manufacturer, or dealer of firearms pursuant to 18 USC 923(i), or with a serial number issued by the by the Department of Criminal Justice Information Services as amended from time to time, and any regulation adopted thereunder within.

(d) No individual shall purchase, obtain, or possess any firearm that is undetectable. "Undetectable firearm" means a firearm that: (1) after removal of all parts other than major components, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or (2) includes a major component which, if the firearm were subjected to inspection by the types of detection devices commonly used at airports for security screening, would not generate an image that accurately depicts the shape of the component.

"Major component" means the barrel, the slide or cylinder, or the frame or receiver of a firearm.

"Security Exemplar" means the Security Exemplar fabricated in accordance with subparagraph (C) of paragraph (2) of subsection (p) of 18 U.S.C. § 922

(e) No person shall use a three-dimensional printer to manufacture any firearm, or any part or component that is intended to be used to assemble or manufacture a firearm, unless such person possesses a federal license to manufacture firearms and operates in compliance pursuant to 18 USC 923(i), as amended from time to time, and any regulation adopted thereunder within.

(f) No person shall distribute by any means, including the Internet, to a person in Massachusetts who is not registered or licensed as a manufacturer, digital instructions in the form of computer-aided design files or other code or instructions stored and displayed in electronic format as a digital model that may be used to program a three-dimensional printer to manufacture or produce a firearm, magazine, or firearm component if the distributer intends the instructions to be used in commission of an act against the laws of the Commonwealth or knows, or has reason to know, that the person receiving the instructions intends to use them in commission of an act against the laws of the Commonwealth. As used in this subsection: "three-dimensional printer" means a computer or computer-driven machine or device capable of producing a three-dimensional object from a digital model; and "distribute" means to sell, or to manufacture, give, provide, lend, trade, mail, deliver, publish, circulate, disseminate,

display, share, advertise, offer, or make available via the Internet or by any other means, whether for pecuniary gain or not, and includes an agreement or attempt to distribute.

(g) The department of criminal justice information services shall develop and maintain a system to distribute a unique serial number or other mark of identification to any individual requesting such serial number or mark pursuant to this section, in accordance with applicable federal laws and regulations. Upon an application made by a person for a serial number or mark for a firearm pursuant to this section, which shall include any information required by the department, the department shall confirm with the appropriate licensing authority that the applicant is authorized to possess such firearm and possess a valid license or firearm identification card as required under chapter 140. Upon issuance of a serial number or mark, the department shall maintain identifying information of the person requesting the number or mark and of the firearm for which each such number or mark is requested.

(h) Not later than ninety days after the effective date of this act, an individual who is in possession of a firearm that has not been imprinted with a serial number by the department of criminal justice information services, a licensed importer, manufacturer, or dealer of firearms pursuant to 18 USC 923(i) shall notify the commissioner of the department of criminal justice information services and provide any identifying information concerning the firearm and the owner of such firearm pursuant to Section 128B of Chapter 140, shall apply for a serial number or mark for a firearm pursuant to subsection (g), and within 30 days of receiving such serial number shall imprint or have it imprinted upon the firearm.

(i) No individual shall knowingly, facilitate, aid, or abet the manufacture or assembly of a firearm by an individual or for an individual who is otherwise prohibited by law from owning or possessing a firearm.

(j) The department of criminal justice information services shall promulgate regulations to carry out this section.

(k) The provisions of this section shall not apply to (1) the sale or transfer of a firearm to, or to purchasing, obtaining, or possessing of a firearm by, a federally licensed firearm manufacturer, importer, or dealer, or (2) delivery or transfer of a firearm to a law enforcement agency.

SECTION 6. Chapter 269 of the Massachusetts General Laws is hereby amended by inserting the following new Section after Section 10K

Section 10L.

(a) Any person who is found to have violated any provision of Chapter 140, Section 122E of the Massachusetts General Laws shall be punished by imprisonment in the state prison for a term of not more than ten years for each offense, or by not more than two and one half years in the House of Correction or by a fine of not more than ten thousand dollars for each offense or by both such imprisonment and fine.

(b) Section 26 of Chapter 218 of the General Laws shall be amended by inserting after the words, "knowing the same to be forged", the following words:

"a violation of Section 122E of Chapter 140 of the General Laws."

AN ACT PROHIBITING GUNFIRE DIRECTED AT DWELLING HOUSES

H.1681 / S.1015

Lead Sponsors: Representative Rady Mom and Senator Edward J. Kennedy

Impetus

There is no statute that specifically addresses discharging a firearm at a dwelling house. Over the last few years, there has been an alarming increase statewide in this dangerous activity directed at residential buildings, particularly in densely-populated urban communities. Shooting at dwellings, apartments, and homes creates a serious risk of injury or death to the occupants. There must be a crime that fits the act, and a punishment that fits the crime.

Current laws provide for several possible charges that do not appropriately characterize this offense. If the shooter causes damage to the dwelling or the property inside, the shooter may face a charge of willful and malicious destruction of property under G.L. c. 266, § 127. That offense requires proof that the shooter intended to do damage and acted with malice towards the occupants. If the damage is not intentional or done with malice, the shooter may be charged with a lesser offense.

If the shooter does not cause damage to the dwelling or the property inside, the shooter may be charged with minor offenses such as Disturbing the Peace or Disorderly Conduct (G.L. c. 272, § 53), or with Discharging a Firearm within 500 Feet of a Dwelling (G.L. c. 266, § 12E). A first offense Disturbing the Peace or Disorderly Conduct carries a fine only. Discharging a Firearm has a maximum penalty of 90 days in jail.

This Bill would create a new crime with a five-year maximum penalty punishing a shooter who intentionally shoots at a dwelling, a home, or an apartment. This Bill protects people

even if the shooter has the intent only to frighten those in their home, and has no intent to injure anyone in the targeted homes.

Need

There is no statute that specifically addresses discharging a firearm at a dwelling house. When a case arises, prosecutors are forced to charge a defendant with imperfect alternatives. Whether a shooting is directed at a house and the people therein to intimidate and cause fear, or with the intention to physically harm someone inside or believed to be inside, the penalty should reflect the gravity of that offense.

Legislative Fix

This Bill amends G.L. c. 269 by adding a new § 12G to:

- Establish an appropriate and precise charge for the act of intentionally discharging a firearm at a dwelling.
- Provide a range of sentencing options that are proportional to this level of crime.

HB1681 (HD2227) / SB 1015 (SD1257) – AN ACT PROHIBITING GUNFIRE DIRECTED AT DWELLING HOUSES

Filed January 19, 2023

Presented by: Rep. Rady Mom, 18th Middlesex
Sen. Edward Kennedy, 1st Middlesex

Petition of: Rep. Rady Mom, 18th Middlesex
Rep. Rodney Elliott, 16th Middlesex
Sen. Edward Kenney, 1st Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Chapter 269 of the General Laws, as so appearing, is hereby amended by inserting after section 12F the following section:-

Section 12G. Whoever discharges an assault weapon, firearm, large capacity weapon, machine gun, rifle, sawed-off shotgun, or shotgun, as defined in section one hundred twenty-one of chapter one hundred forty, with the intent to strike a dwelling, and as a result does strike a dwelling, shall be punished by imprisonment in the house of correction for not more than 2 ½ years, or in state prison for not more than 5 years, or by a fine of not more than $10,000, or both such imprisonment and fine.

AN ACT RELATIVE TO THE RECKLESS DISCHARGE OF FIREARM, LARGE CAPACITY WEAPON, RIFLE, SHOTGUN, SAWED-OFF SHOTGUN, OR MACHINE GUN WITHOUT REGARD FOR THE RISK OF HARM

H.2309

Lead Sponsor: Representative Marjorie C. Decker

Impetus

Gun violence creates grave risks not only to the intended targets but to innocent people who live, work, and travel in and near the scene of such violence. There is presently no ability to charge someone who fires a gun in such a situation with a crime that reflects the risk.

Need

Our criminal laws punish those who fire weapons with intent to kill or murder a specific target or who fire weapons to threaten or to compel another to comply with the shooter's demands. Our laws punish those who injure another by intentional use of these weapons. However, our laws fall short where one or more people fires a weapon without regard for the safety of those who are close by and who are put at risk by the reckless or highly dangerous use of deadly force.

Legislative Fix

This Bill provides for a new felony offense, similar to G.L. c. 265, § 13A(b), Assault and Battery Causing Serious Bodily Injury, and less punitive than G.L. c. 265, § 15A, Assault and Battery Causing Serious Bodily Injury by Means of a Dangerous Weapon. These existing

offenses require proof that the shooter intended to commit a battery, i.e., targeted a specific person. The Bill will create a new offense that does not require intent to commit a battery or to kill or assault by shooting. The Bill will punish a shooter who acts "without regard for the risk of serious bodily injury to another" but who shoots intentionally or recklessly and "thereby causes a substantial risk of serious bodily injury."

HB2309 (HD521) – **AN ACT RELATIVE TO THE RECKLESS DISCHARGE OF FIREARMS**

Filed January 13, 2023

Presented by: Rep. Marjorie Decker, 25th Middlesex

Petition of: Rep. Marjorie Decker, 25th Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Chapter 265 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following new section:

Section 15G. Whoever without regard for the risk of serious bodily injury to another intentionally or recklessly discharges a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, or machine gun and thereby causes a substantial risk of serious bodily injury to another shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 ½ years.

AN ACT FOR THE ESTABLISHMENT OF A VOUCHER PROGRAM FOR HOME WATER FILTRATION EQUIPMENT

H.853

Lead sponsor: Representative Jay D. Livingstone

Impetus

Per- and polyfluoroalkyl substances (PFAS) are a class of synthetic chemicals present in drinking water supplies across the country, including in the Commonwealth. These chemicals are characterized by highly stable carbon-fluorine (C-F) bonds, providing them with many industrially and commercially useful properties. PFAS remain stable when exposed to a wide range of temperatures, highly reactive chemicals, and acidic and oxidizing environments. When applied to materials, PFAS are capable of lowering surface tension and repelling oil and water, which has contributed to their widespread use in commercial and industrial applications that require long-lasting water or oil resistance. Commercially, PFAS are used as water-resistant or non-stick components of textiles, cosmetics, household products, food packaging, and other single-use plastics. Industrially, PFAS are present in surfactants, emulsifiers, paints, non-stick coatings, and various stages of commercial production.

Because PFAS are such durable and widely used molecules, they permeate our environment. This ubiquity is alarming due to their environmental and especially their health effects, especially among highly exposed populations. The Commonwealth's PFAS Interagency Task Force released its final report last year, laying out the prevalence of these chemicals and the health risks associated with them. Six PFAS chemicals are of particular concern: PFOS, PFOA, PFHxS, PFNA, PFHpA, and PFDA, collectively referred to as PFAS6. As part of a settlement agreement for a class-action lawsuit, DuPont Corporation, a major producer of

PFAS-treated products, provided funding to monitor over 69,000 residents in six water districts near the DuPont Washington Works facility in West Virginia. The study identified six diseases associated with exposure to PFOA: kidney and testicular cancer, ulcerative colitis, thyroid disease, high cholesterol, and pregnancy -induced hypertension.

In addition to these health effects, PFOA is associated with suppressed immune responses to vaccines and lower birth weight. A recent study of COVID-19 disease severity found a correlation between higher serum levels of PFBA in patients and more severe COVID-19 disease incidence. PFOS, PFOA, and PFHxS may lead to decreased immune response from vaccines in children, particularly for tetanus and diphtheria. In 2017, the International Agency for Research on Cancer classified PFOA as a possible human carcinogen. Other PFAS, including PFOS, PFNA, and PFHxS, are associated with changes to the liver, endocrine disruption, and developmental effects. Additional research is needed to understand the cumulative effects of exposure to multiple PFAS.[1]

Need

As a result of the maximum contaminant level (MCL) that MassDEP established for PFAS6, the state now requires treatment of drinking water supplies in instances where these specific PFAS exceed the MCL of 20 parts per trillion (ppt). While PFAS remediation is increasingly in the public view, several communities are—and will be for the foreseeable future—supplied with water that does not meet MassDEP standards. The Task Force report describes 127 different public water systems with PFAS levels exceeding the MCL. Of these, 77 are community water systems, which serve at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents.[2]

No- or low-cost access to remediation equipment while these water systems are brought up to standard is a priority for the health of residents, who deserve to be able to rely on their municipal water systems for the needs of daily life. These systems are largely underground, so work may involve lengthy excavation projects. For example, remediation of the water supply in Flint, MI alone took almost 5 years from when water-quality issues were first reported and cost well over $400 million.[3] In the interim, the Commonwealth must do what it can to provide citizens with healthy, drinkable water.

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[1] Adelina Huo & Disha Trivedi, PFAS INTERAGENCY TASK FORCE, *PFAS in the Commonwealth of Massachusetts*, 192nd General Court (MA 2022)
[2] *Ibidem* at 32.
[3] Derek Robertson, *Flint Has Clean Water Now. Why Won't People Drink It?*, POLITICO (December 23, 2020) at https://www.politico.com/news/magazine/2020/12/23/flint-water-crisis-2020-post-coronavirus-america-445459.

Legislative Fix

This Bill amends G. L. c. 21A to add a new § 8G in order to establish a program by which residents of communities whose water supply contains levels of PFAS higher than the MCL can receive filtration equipment free of cost via a voucher program administered by MassDEP and funded by state and federal water quality grants.

HB853 (HD3249) – AN ACT FOR THE ESTABLISHMENT OF A VOUCHER PROGRAM FOR HOME WATER FILTRATION EQUIPMENT

Filed on: January 20, 2023

Presented by: Rep. Jay D. Livingstone, 8th Suffolk

Petition of: Rep. Jay D. Livingstone, 8th Suffolk
Marian T. Ryan, Middlesex District Attorney

Chapter 21A as appearing in the Official 2020 edition of the General Laws is amended by adding section (8G), as follows:

(a) The Department of Environmental Protection (DEP) shall establish and administer a program in which the DEP shall issue vouchers for Per- and Polyfluoroalkyl Substances (PFAS) filtration equipment in accordance with the following requirements.

(1) The DEP shall maintain a list of municipalities (affected municipalities) in which PFAS level exceed the maximum contamination levels (MCL) set by the DEP.

(2) The DEP shall maintain a registry of addresses that have received vouchers in the past.

(3) For purposes of this section, an "address" shall mean a single-family house or a numbered unit in a multi-unit dwelling of any kind.

(4) For purposes of this section, "PFAS filtration equipment" shall mean point-of-use filtration devices installed into a water line and replacement filters for such devices. National Sanitation Foundation (NSF) certification of PFAS filtration equipment is required for it to be eligible for a voucher.

(b) A resident or property owner living in an affected municipality may request vouchers for filtration equipment, i.e., a point-of-use filtration device or a replacement filter, from the DEP.

(1) The applicant must provide proof of address in an affected municipality.

(2) The applicant address may receive no more than two vouchers for point-of-use filtration devices in a five-year period.

(3) The applicant address may receive no more than two vouchers for replacement filters in a six-month period.

(c) A voucher recipient may redeem a voucher at any retail establishment selling filtration equipment.

(1) The retail establishment shall accept a voucher marked alternatively for a filtration device or for a replacement filter in lieu of payment for such equipment.

(2) The retail establishment shall receive reimbursement from the DEP upon providing the voucher and the record of sale.

(d) Funds for the redemption of vouchers shall come from state and federal water quality grants to the DEP.

AN ACT TO AMEND THE DEFINITION OF HATE CRIME

H.1392 / S.924

Lead Sponsors: Rep. Christine Barber and Sen. Cynthia Stone Creem

Impetus

General Laws c. 265, § 39(a), also known as the "hate crime" statute, punishes "[w]hoever commits an assault or a battery upon a person or damages the real or personal property of a person with the intent to intimidate such person because of such person's race, color, religion, national origin, sexual orientation, gender identity, or disability…."

Therefore, under current law, a person can be charged under the statute for damaging property only if the victim whom they intended to intimidate owns that property. If the victim rents or leases the property (or has no rights of any kind to the property), the suspect cannot be charged under the statute. For example, in a situation where a Black family rents a house, on which the suspect spray-paints racial slurs with specific intent to intimidate the family, the suspect cannot be charged under G.L. c. 265, § 39(a), because the victims do not own the house. Similarly, a suspect who draws a swastika on the fence of a public school with the specific intent to intimidate a Jewish family who live across the street—and would see the offensive symbol every time they walk out of the front door—cannot be charged under the statute, because the family does not own the fence.

There must be a crime that fits the act and a punishment that fits the crime. The current statute precludes a person from being held accountable for certain behaviors that are carried out with the intent to intimidate a victim based on their race, ethnicity, religion, or other characteristics. This prevents many offenses that should be prosecuted as hate crimes from being charged as such.

The Bill addresses the gap in the law that has allowed this by decoupling the victim of a hate crime from the property that was damaged to commit the offense. In doing so, the Bill takes

the same approach adopted by the Legislature in drafting the malicious destruction of property statute, G.L. c. 266, § 127, by criminalizing damaging the property "of another" (and not of the victim) with intent to intimidate. The bill also ensures that if restitution is paid for damaged property to its owner, it is used to rectify the damage so that it no longer intimidates the intended victim(s).

Need

Individuals should be protected against hate crimes regardless of whether they own the property which was damaged expressly to intimidate them. If any restitution is paid for the damage to the property done with intent to intimidate, that restitution must be used to restore the damage.

Significantly, according to the Executive Office of Public Safety and Security and the FBI, over the last several years, the Commonwealth has seen an alarming increase in hate crimes. See, e.g., BOSTON.COM, FBI: Massachusetts Had a Near 10% Rise in Hate Crimes Last Year (November 17, 2020) (stating that "[h]ate crimes in Massachusetts rose by nearly 10% in 2019, according to new data released by the FBI…. The [C]ommonwealth reported 388 hate crimes last year, up from 352 in 2018. Massachusetts had 427 hate crimes in 2017, the highest in 15 years"). See also WBUR NEWS, Hate Crime Reports in Massachusetts Hit 10-Year High (December 13, 2018) (stating that according to the Executive Office of Public Safety and Security, "[t]he number of hate crimes reported to the state increased by almost 10 percent to a 10-year high in 2017").

Legislative Fix

This Bill amends G.L. c. 265, § 39(a) to:

- Refine the definition of a hate crime.
- Adopt an approach similar to that adopted by the Legislature in drafting the Malicious Destruction of Property statute, G.L. c. 266, § 127, by decoupling the victim of the hate crime from the person who owns the property damaged with intent to intimidate the victim.
- Add a provision obligating the owner of the property to use any restitution paid to compensate for the property damage to restore the property so that the damage no longer intimidates the victim(s).

HB1392 (HD861) / SB924 (SD335) – AN ACT TO AMEND THE DEFINITION OF HATE CRIME

Filed January 17, 2023 / January 13, 2023

Presented by: Rep. Christine Barber, 34th Middlesex
Sen. Cynthia Stone Creem, 1st Middlesex and Norfolk

Petition of: Rep. Christine Barber, 34th Middlesex
Sen. Cynthia Stone Creem, 1st Middlesex and Norfolk
Sen. Michael Barrett, 3rd Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 39(a) of Chapter 265 of the General Laws, as appearing in the 2016 official edition, is hereby amended by replacing the words "of a person" in Line 2 with the words "of another" and replacing the words "such person" in Line 3 with the words "a person."

SECTION 2. Section 39(a) of Chapter 265 of the General Laws, as appearing in the 2016 official edition, is hereby amended by adding the following paragraph after paragraph one of the said section: "If restitution is ordered under the provisions of this section for purposes of repairing the damage done to the real or personal property with intent to intimidate a person because of such person's race, color, religion, national origin, sexual orientation, gender identity, or disability, such restitution shall be used to repair the damage done to the property."

AN ACT REGULARIZING SENTENCING FOR HATE CRIMES

H.1766

Lead Sponsor: Representative Priscila Sousa

Impetus

Although most people could likely agree on a definition, there is no one criminal charge for a "hate crime" under existing law. Two statutes cover most bigotry-driven criminal behavior: General Laws c. 265, §§ 37 and 39. Section 39 mandates a diversity awareness program as a condition of probation, but only imposes this common-sense requirement following a conviction. Section 37, which does not specifically require that a violation of a victim's rights be motivated by a defendant's bigotry, does not mandate any similar program.

Need

The omission of the program requirement following a continuance without a finding (CWOF) under § 39 appears to be an oversight, which this bill would correct.

In practice, the overwhelming majority of § 37 charges do involve bigotry against some group of people. Rather than a one-size-fits-all approach, however, the proposed sentencing scheme would give a judge with knowledge of the case's facts the ability to decide whether a diversity awareness program is appropriate in each case. This discretion is paralleled in sentencing violations of abuse prevention orders, which often involve intimate partners but may involve family or roommates and require an intimate partner abuse prevention program on probation or written findings as to why it is not necessary.

Legislative fix

This Bill amends G. L. 269, §§ 37 and 39 to:

- Require all those who admit to the facts of Assault or Assault and Battery with Intent to Intimidate to undergo a diversity awareness program, not only those who receive a conviction.
- Require all those who admit to the facts of Violation of Constitutional Rights to undergo such a program, unless the facts of their specific case do not so warrant.
- Regularize sentencing across these closely related statutes.

HB1766 (HD3694) – AN ACT REGULARIZING SENTENCING FOR HATE CRIMES

Filed January 20, 2023

Presented by: Rep. Priscila Sousa, 6th Middlesex

Petition of: Rep. Priscila Sousa, 6th Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1: Section 37 of chapter 265 of the General Laws, as appearing in the 2021 official edition, is hereby amended by inserting after the words "or both" in line 7 the following:

"A person convicted or receiving a continuance without a finding under the provisions of this section shall complete a diversity awareness program designed by the secretary of the executive office of public safety in consultation with the Massachusetts commission against discrimination and approved by the chief justice of the trial court, unless, upon good cause shown, the court issues specific written findings describing the reason that such program should not be ordered. If the court finds that the defendant was motivated by race, color, religion, national origin, sexual orientation, gender identity, or disability, the court shall order such program. A person so convicted or granted a continuance without a finding shall complete such program prior to release from incarceration or prior to completion of the terms of probation, whichever is applicable."

SECTION 2: Subsection (b) of section 39 of chapter 265 of the General Laws, as appearing in the 2021 official edition, is hereby amended by striking the second paragraph.

Subsection (b) of section 39 of chapter 265 of the General Laws, as so appearing, is hereby further amended by inserting after the words "A person convicted" the following:

"or receiving a continuance without a finding"

Subsection (b) of section 39 of chapter 265 of the General Laws, as so appearing, is hereby further amended by inserting after the words "A person so convicted" the following:

"or granted a continuance without a finding"

AN ACT RELATIVE TO OPERATING AFTER SUSPENDED LICENSE OFFENSES, ALLOWING FOR PARTIAL PAYMENT OF FEES

H.3377 / S.2229

Lead Sponsors: Representative Joseph W McGonagle, Jr. and Senator Sal N. DiDomenico

Impetus

Under existing law, defendants who have difficulty paying fees to the Registry of Motor Vehicles associated with driver's license suspension, revocation or reinstatement cannot make partial payments for license reinstatement. Fees associated with operating after suspension of a license and similar offenses can be substantial. A defendant's inability to obtain a valid license may affect any pending criminal case relating to a license suspension and may require additional court appearances or penalties for failure to appear in court. Such penalties may be financial, creating an inescapable loop of fines and criminal charges that interferes as well with a defendant's ability to find a job that will allow payment of their reinstatement fees.

Need

The current system exposes indigent defendants to greater criminal liability due to their inability to pay. A partial payment system is a fair solution allowing indigent defendants a method to pay fines incrementally and eventually reinstate their license. For a person with the means to pay a fine, a conviction for Operating after Suspension (OAS) could be a relatively minor inconvenience involving a fine. For an indigent person, an OAS conviction with an unpaid fine can lead to additional court appearances to pay that fine or warrants for failure to appear, all of which hinder the license reinstatement necessary to break this cycle.

Legislative Fix

This Bill gives those with suspended licenses the option, upon request, of entering into a payment plan with the Registry of Motor Vehicles whereby they agree to pay an amount of at least $25.00 per month toward the total amount owed.

HB3377 (HD1397) / SB2229 (SD1055) – AN ACT ALLOWING FOR PARTIAL PAYMENT OF FINES RELATING TO DRIVER'S LICENSE SUSPENSION OR REVOCATION

Filed January 18, 2023

Presented by: Rep. Joseph W. McGonagle, Jr., 28th Middlesex
Sen. Sal N. DiDomenico, Middlesex & Suffolk

Petition of: Rep. Joseph W. McGonagle, Jr., 28th Middlesex
Sen. Sal N. DiDomenico, Middlesex & Suffolk
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 33 of chapter 90 of the General Laws is hereby amended by striking out the thirty-seventh paragraph and inserting in place thereof the following paragraphs:

(37) The registrar shall permit any person owing fees related to multiple suspensions or revocations of any license or right to operate a motor vehicle - to enter into a monthly payment plan with the registrar to pay any fees related to the reinstatement of said license or right to operate a motor vehicle; provided, however, that the minimum monthly payment due shall be $25.00. The registrar may accept automatic monthly payments by credit or debit card on file with the registrar or payments made by check or money order received by mail or in person. Upon receipt of the first payment due on a monthly payment plan established pursuant to this paragraph the registrar may issue a conditional reinstatement of said license or right to operate a motor vehicle if the person is otherwise qualified to be granted said license or right to operate a motor vehicle. The registrar shall revoke a conditional reinstatement of a license or right to operate a motor vehicle if a required monthly payment is more than 30 days in arrears or for any other violation of any general or special law. Upon payment in full of the fees owed the registrar shall fully reinstate the license or right to operate a motor vehicle if the person is otherwise qualified to be granted said license or right to operate a motor vehicle.

(38) For the registration of every street rod, replica vehicle, specially constructed vehicle or custom vehicle, as defined in section 2H consistent with the vehicle's intended use and the requirements of 540 CMR 2.05.

AN ACT TO MANDATE DOMESTIC VIOLENCE AND SEXUAL ASSAULT AWARENESS EDUCATION FOR AESTHETICIANS, BARBERS, COSMETOLOGISTS, ELECTROLOGISTS, HAIRDRESSERS, MANICURISTS, AND MASSAGE THERAPISTS

H.249 / S.146

Lead Sponsors: Representative Christine P. Barber and Senator Cynthia Stone Creem

Impetus

While victims of domestic violence or sexual assault may be reluctant to report abuse to law enforcement, they may confide in their hairdresser, barber, manicurist, or massage therapist, especially when they have had a long-term relationship with those providers. Similarly, personal service providers who are in close physical proximity to their clients may observe injuries or a change in a client's appearance resulting from such abuse.

Providing these service professionals with education on domestic violence and sexual assault to increase their awareness about recognizing symptoms of abuse would help them to assist clients who confide in them.

Need

Hairdressers, aestheticians, barbers, cosmetologists, electrologists, manicurists, massage therapists, and massage practitioners may be uniquely situated to assist clients who confide in them about abuse. Education and training about available local resources would allow these professionals to safely refer a client who was interested in obtaining help.

Legislative Fix

This Bill amends G. L. c. 112 to:

- Require completion of one hour of domestic violence and sexual assault awareness education in order to obtain a license, or to receive a license renewal, as an Aesthetician, Barber, Cosmetologist, Electrologist, Hairdresser, Manicurist, Massage Therapist, or Massage Practitioner, or to be an Instructor, Assistant Instructor, or Junior Instructor thereof as applicable.
- Mandate that post-secondary institutions and massage therapy schools offer this training in order to obtain and maintain a license.
- Provide immunity for service providers to ensure that they will not be held civilly or criminally liable for acting in good faith or for not acting on information obtained in the course of their employment concerning potential domestic violence or sexual assault.

HB249 (HD858) / SB146 (SD336) – AN ACT TO MANDATE DOMESTIC VIOLENCE AND SEXUAL ASSAULT AWARENESS EDUCATION FOR AESTHETICIANS, BARBERS, COSMETOLOGISTS, ELECTROLOGISTS, HAIRDRESSERS, MANICURISTS, AND MASSAGE THERAPISTS

Filed January 17, 2023 / January 13, 2023

Presented by: Rep. Christine Barber, 34th Middlesex
Sen. Cynthia Stone Creem, 1st Middlesex & Norfolk

Petition of: Rep. Christine Barber, 34th Middlesex
Rep. Natalie Blais, 1st Franklin
Rep. Paul J. Donato, 35th Middlesex
Rep. Michelle DuBois, 10th Plymouth
Rep. Sean Garballey, 23rd Middlesex
Rep. Colleen M. Garry, 36th Middlesex
Rep. Natalie Higgins, 4th Worcester
Rep. Vanna Howard, 17th Middlesex
Rep. David LeBoeuf, 17th Worcester
Rep. Frank A. Moran, 17th Essex
Rep. Priscila Sousa, 6th Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Chapter 112 is hereby amended by inserting at the end of the first paragraph of Section 87BB the following:

No license will be issued to or renewed for any school unless it offers training of at least one hour in domestic violence and sexual assault awareness and requires its students to either attend a training in person or review a training online.

SECTION 2. Chapter 112 is hereby amended by adding Section 87CC ½:

To obtain a license issued by the Board as an Aesthetician, Barber, Cosmetologist, Electrologist, Hairdresser or Manicurist, or as an Instructor, Assistant Instructor, or Junior Assistant Instructor thereof as applicable, and for any license renewal, the applicant is required to complete, either in person or online, one hour of a free standardized domestic violence and sexual assault awareness training approved by the Board of Cosmetology.

A licensed Aesthetician, Barber, Cosmetologist, Electrologist, Hairdresser or Manicurist, or Instructor, Assistant Instructor, or Junior Assistant Instructor thereof who completes the domestic violence and sexual assault awareness education, or his or her employer, shall not be civilly or criminally liable for acting in good faith or failing to act on information obtained during the course of employment concerning potential domestic violence or sexual assault.

SECTION 3. Chapter 112 is hereby amended by inserting at the end of the second paragraph of Section 87JJ the following:

No license will be issued to or renewed for any post-secondary institution unless it offers training of at least one hour in domestic violence and sexual assault awareness and requires its students to either attend a training in person or review a training online.

SECTION 4. Chapter 112 is hereby amended by adding the following subsection to Section 229:

(d) To obtain a license issued by the Board as a Massage Therapist or Massage Practitioner, and for any license renewal, the applicant is required to complete, either in person or online, one hour of a free standardized domestic violence and sexual assault awareness training approved by the board of cosmetology.

A licensed Massage Therapist or Massage Practitioner who completes the domestic violence and sexual assault awareness education, or his or her employer, shall not be civilly or criminally liable for acting in good faith or failing to act on information obtained during the course of employment concerning potential domestic violence or sexual assault.

SECTION 5. Chapter 112, Section 233, is hereby amended by inserting after the sentence: "No school or entity may teach massage therapy unless licensed by the Board." and prior to the sentence: "No person may instruct in a massage school unless he is licensed by the board." the following:

No license will be issued to or renewed for any school teaching massage therapy unless it offers training of at least one hour in domestic violence and sexual assault awareness and requires its students to either attend a training in person or review a training online.

AN ACT RELATIVE TO THE COSTS OF APPEALS BY THE COMMONWEALTH

H.1626 / S.935

Lead Sponsors: Representative David Paul Linsky and Senator Cynthia Stone Creem

Impetus

Massachusetts is one of a handful of states that awards attorneys' fees to defendants following appeals taken by the prosecution. In a case where a jury found a defendant guilty of assault with intent to rape and a trial judge thereafter reduced the conviction to indecent assault and battery, the Commonwealth appealed. Even though the appeal was successful and the original conviction was reinstated, the District Attorney's office was still responsible for paying more than $28,000 in fees to the defendant's privately retained attorney.

Need

Taxpayers in Massachusetts currently reimburse privately retained defense attorneys in cases where the Commonwealth appeals, regardless of whether the Commonwealth prevails. In cases where a judge of a lower court has ruled in error, taxpayers should not have to pay privately retained attorneys to have that erroneous decision reversed by a higher court.

Reimbursing the fees incurred by a privately retained defense attorney can be a substantial expense for a District Attorney's office, especially when compared to the annual starting salary of an assistant district attorney. For these offices, with finite resources and strapped budgets, this significant cost is a formidable barrier and must be considered when determining whether to pursue an appeal.

Legislative Fix

This Bill amends G. L. c. 278, § 28E to establish that a defendant's right to reimbursement of fees for a privately retained attorney is limited only to those instances where the Commonwealth initiates an appeal and loses that appeal.

HB1626 (HD2169) / SB935 (SD913) - AN ACT FOR LEGISLATION RELATIVE TO COSTS OF APPEALS BY THE COMMONWEALTH

Filed January 19, 2023 / January 18, 2023

Presented by: Rep. David Paul Linsky, 5th Middlesex
Sen. Cynthia Stone Creem, 1st Middlesex & Norfolk

Petition of: Rep. David Paul Linsky, 5th Middlesex
Sen. Cynthia Stone Creem, 1st Middlesex & Norfolk
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 28E of Chapter 278 of the General Laws is hereby amended by adding, after the third paragraph thereof, the following paragraph:-

A defendant who is not indigent, as defined by Chapter 211D of the General Laws, and is therefore not entitled to public representation, is responsible for their own costs on appeal, unless the Commonwealth loses the appeal or the Commonwealth's application thereof is denied. In such cases, a defendant is entitled to be reimbursed for the costs incurred as a result of the appeal, including reasonable attorney's fees, subject to approval of the court.

AN ACT REGARDING DISTRICT COURT JURISDICTION OF THREATS TO USE DEADLY WEAPONS, EXPLOSIVES, CHEMICAL OR BIOLOGICAL AGENTS, OR OTHER DEVICES OR SUBSTANCES CAPABLE OF CAUSING DEATH, SERIOUS BODILY INJURY OR SUBSTANTIAL PROPERTY DAMAGE

H.1412

Lead Sponsor: Representative Simon Cataldo

Impetus

Currently, G.L. c. 269, §§ 14(b) and 14(c) provide for sentences to a house of correction or to the state prison for whoever threatens to use deadly weapons or explosives or other agents at a location, or causes the evacuation or disruption of a school or other place of assembly. However, the charge must be indicted, as the District Court does not have jurisdiction over it.

This Bill reflects the need for prosecutors to have a range of options in bringing charges that reflect criminal acts. The amendment recognizes that some cases, such as those in which the person who makes the threat proves to have no access to deadly weapons or explosives and knows that no weapons or explosives have actually been placed at the threatened location, should be treated differently than those in which a person makes a threat and has access to deadly weapons or explosives, or knows that weapons or explosives have actually been placed at the threatened location. The range of factual scenarios warrants an option to prosecute some threats in District Court, where the maximum sentence is two and a half years in the House of Corrections.

Need

Experience has shown that some violations involve circumstances that may be addressed more effectively before the District Court, but the possibility of a sentence of up to 20 years in state prison bars District Court jurisdiction over this offense.

Legislative Fix

This Bill amends G.L. c. 218, § 26 to bring this offense within the concurrent jurisdiction of the District Court.

HB1412 (HD1694) – AN ACT REGARDING DISTRICT COURT JURISDICTION OF THREATS TO USE DEADLY WEAPONS, EXPLOSIVES, CHEMICAL OR BIOLOGICAL AGENTS, OR OTHER DEVICES OR SUBSTANCES CAPABLE OF CAUSING DEATH, SERIOUS BODILY INJURY OR SUBSTANTIAL PROPERTY DAMAGE

Filed January 18, 2023

Presented by: Rep. Simon Cataldo, 14th Middlesex

Petition of: Rep. Simon Cataldo, 14th Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 26 of Chapter 218 of the General Laws, as amended by St.2018, c. 69, §109, is hereby amended by inserting after the words "of chapter two hundred and sixty-six," the following language: "subsections (b) and (c) of section fourteen of chapter two hundred and sixty-nine".

AN ACT BRINGING THE CRIME OF LEAVING THE SCENE OF PERSONAL INJURY CAUSING DEATH WITHIN THE JURISDICTION OF THE DISTRICT COURT

H.1637

Lead Sponsor: Representative Kate Lipper-Garabedian

Impetus

When the mandatory felony motor vehicle homicide statute was originally enacted, an unforeseen consequence was the creation of an incentive to drivers who were under the influence to flee the scene and avoid being subject to the severe mandatory sentence for Motor Vehicle Homicide while under the Influence, as evidence of their intoxication would be gone by the time police identified them. They would then only be exposed to the lesser charges of Negligent Motor Vehicle Homicide and Leaving the Scene of Personal Injury. This charge, which may be prosecuted only in Superior Court and has a mandatory minimum one-year sentence, was created to remove that incentive and appropriately punish those who fled the scene.

However, experience since its enactment has shown that many drivers who flee the scene of a fatal collision are not under the influence, but merely panicking. Such cases are sadly not uncommon, especially as the number of drivers distracted by cell phone usage continues to rise. Panic is no excuse for fleeing the scene, but such cases are more appropriately prosecuted in the District Court, especially as they often receive the one-year mandatory minimum nonetheless. The time and energy of the Grand Jury is better reserved for cases where the Commonwealth seeks a prison sentence.

Need

The Commonwealth should have the option of prosecuting those who flee the scene of a fatal collision via a charge that accurately reflects their conduct without being obligated, in every case, to spend the resources of the justice system on an indictment that will lead only to a House of Correction sentence.

Legislative Fix

This Bill amends G.L. c. 218, § 26 to bring the charge of Leaving the Scene of Personal Injury Causing Death within the concurrent jurisdiction of the District Court.

HB1637 (HD3707) – AN ACT BRINGING THE CRIME OF LEAVING THE SCENE OF PERSONAL INJURY CAUSING DEATH WITHIN THE JURISDICTION OF THE DISTRICT COURT

Filed January 20, 2023

Presented by: Rep. Kate Lipper-Garabedian, 32nd Middlesex

Petition of: Rep. Kate Lipper-Garabedian, 32nd Middlesex
Marian T. Ryan, Middlesex District Attorney

Section 26 of chapter 218 of the General Laws, as appearing in the 2020 official edition, is hereby amended by inserting, after the words "subparagraph (1) of paragraph (a) of subdivision (1) of section twenty-four," in lines 11-12, the following words:- subparagraph (2) of paragraph (a½) of subdivision (2) of section twenty-four,

AN ACT TO ENHANCE THE AVAILABILITY OF IMMUNITY TO WITNESSES IN THE COURTS OF THE COMMONWEALTH

H.1645

Lead Sponsor: Representative Jay D. Livingstone

Impetus

When making a determination whether to prosecute a case and what the evidence will be at trial, the Commonwealth must first assess the availability of necessary witnesses. In some cases, that assessment will depend, in part or entirely, on whether the court has the ability to offer immunity to a witness in exchange for their testimony. Currently, the Massachusetts immunity statute expressly limits the authority to grant immunity to justices of the Superior Court, the Appeals Court, and the Supreme Judicial Court. In the District Court and the Juvenile Court, where justices do not have this authority, cases are impacted when important witnesses may not be called to testify without that grant of immunity. In those cases, juries are denied the ability to consider probative evidence and in some instances the Commonwealth must forego prosecution altogether.

Need

It is not uncommon in cases prosecuted in the District Court and the Juvenile Court, including in cases of domestic violence and narcotics distribution, for victims or witnesses to refuse to testify out of fear for their own criminal exposure. It is important to ensure that witnesses testifying in our District and Juvenile courts are protected by the same rules of law that apply to witnesses who testify in other courts in Massachusetts.

Legislative Fix

This Bill amends G. L. c. 233 to authorize District Court and Juvenile Court judges to grant immunity to witnesses.

HB1645 (HD2297) - AN ACT TO ENHANCE THE AVAILABILITY OF IMMUNITY TO WITNESSES IN THE COURTS OF THE COMMONWEALTH

Filed January 19, 2023

Presented by: Rep. Jay D. Livingstone, 8th Suffolk

Petition of: Rep. Jay D. Livingstone, 8th Suffolk
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 20D of chapter 233 of the General Laws, as appearing in the 2015 Official Edition, is hereby amended by striking the existing section and replacing it with the following paragraph:

A witness who is called or who may be called to testify before a grand jury or in a criminal proceeding in the supreme judicial court, appeals court, superior court, district court, or in a proceeding in the juvenile court, may, in the manner provided in section twenty E, be granted immunity in any proceeding or investigation involving a criminal offense.

SECTION 2. Section 20E(a) of chapter 233 of the General Laws, as appearing in the 2015 Official Edition, is hereby amended by striking the words "or Superior Court" and replacing them with the words "Superior Court, District Court or Juvenile Court."

SECTION 3. Section 20E(c) of chapter 233 of the General Laws, as appearing in the 2015 Official Edition, is hereby amended by striking the words "or Superior Court" and replacing them with the words "Superior Court, District Court or Juvenile Court," and by striking the words "in the superior court" at the conclusion of the subsection.

AN ACT REGARDING TESTIMONY AFTER A GRANT OF IMMUNITY TO A WITNESS

H.1644

Lead Sponsor: Representative Jay D. Livingstone

Impetus

Under current Massachusetts law, an immunized witness who obstructs the investigation or prosecution of a case only faces a potential sentence of up to one year in jail, even when the case involves the most serious offenses of armed robbery, rape of a child, or first-degree murder. This penalty does not serve as an effective deterrent to a witness who, though granted immunity, still refuses to honor their obligation to testify.

Need

The penalties for deliberately obstructing justice in this manner after being granted immunity must be proportionate to the charge that is being undermined by a witness' conduct in refusing to testify.

Legislative Fix

This Bill amends G. L. c. 233 to establish a sentencing structure that mirrors the penalty for the charge whose prosecution is being obstructed and creates a less severe penalty for a minor engaged in this conduct.

HB644 (HD2294) - AN ACT REGARDING TESTIMONY AFTER GRANT OF IMMUNITY TO A WITNESS

Filed January 19, 2023

Presented by: Rep. Jay D. Livingstone, 8th Suffolk

Petition of: Rep. Jay D. Livingstone, 8th Suffolk
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 20H of Chapter 233 of the General Laws, as appearing in the 2015 Official Edition, is hereby amended by striking the existing section and replacing it with the following:

Section 20H. If a witness has been granted immunity pursuant to the provisions of section twenty E and thereafter refuses to testify or produce evidence after being so ordered by the Court, the attorney general or district attorney shall institute contempt proceedings against such witness in the court where the alleged contempt occurred, and, after hearing or trial, if such witness is adjudged to be in contempt of court, they shall be punished, if they have attained the age of eighteen, by imprisonment in the state prison or the house of correction for a term not to exceed the maximum penalty for the crime which is the subject of the grand jury investigation or criminal proceeding, or until they comply with the order of the court, whichever occurs first. A witness who has not attained the age of eighteen shall, if found in contempt, be committed to the Department of Youth Services for a period not to exceed one year, or until they comply with the order of the court, whichever occurs first. The rules of practice and procedure relative to criminal appeals as provided by the Massachusetts Rules of Criminal Procedure and the Massachusetts Rules of Appellate Procedure shall apply to appeals under this section.

AN ACT TO STRENGTHEN EMERGENCY RESTRAINT FOR PERSONS SUFFERING DANGEROUS OR VIOLENT MENTAL ILLNESS

H.1993 / S.1241

Lead Sponsors: Rep. Kay Khan and John J. Cronin

Impetus

General Laws c. 123, § 12 currently allows for emergency hospitalization for a three-day period for persons when there is a reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness. This bill would create a new category of emergency hospitalization where a person's mental illness specifically creates a serious threat of violence toward another person, and would create a period of supervision for persons hospitalized under this section at their release. In addition, the bill 1) strengthens the requirement that hospitals share medical information about a person committed under this section with the social workers who supervise them upon release, and 2) allows a supervising social worker to petition for recommitment of a person who has been released but is not compliant with treatment or supervision.

Need

Persons who present a deadly danger to others may benefit from supervision for a period of time after their release from a hospital under G.L c. 123, § 12 in order to ensure another person's and the public's safety. In recent years, in Middlesex County, there have been many tragic instances of persons suffering from acute mental illness harming their family members and themselves: a young man with longstanding violent tendencies, whose neighbors feared him, is alleged to have stabbed two people in a library, killing one; a young man who had been hospitalized for mental illness is alleged to have killed his grandmother; another young

man with a history of mental illness killed his mother and then himself. Mental illness is also a factor in police shootings, with people in the throes of mental illness accounting for an estimated twenty-five percent of those fatally shot by police. Such incidents traumatize not only victims, but families, police officers and entire communities.

Legislative Fix

This Bill amends G.L. c. 123, § 12 to:

- Create a new category of emergency admissions for people who by reason of mental illness either are violent or homicidal or pose a serious risk of physical harm to another person, and who shall be supervised upon release;
- Require hospitals that admit such patients to share medical information with their supervising social workers upon their release;
- Create a mechanism whereby a social worker or police officer may petition to re-commit a patient who, after release, is relapsing into violent mental illness or is otherwise noncompliant.

HB1993 (HD1809)/SB1241 (SD1764) – AN ACT TO STRENGTHEN EMERGENCY RESTRAINT FOR PERSONS SUFFERING DANGEROUS OR VIOLENT MENTAL ILLNESS

Filed January 18, 2023 / January 19, 2023

Presented by: Rep. Kay Khan, 11th Middlesex
Sen. John Cronin, Worcester & Middlesex

Petition of: Rep. Kay Khan, 11th Middlesex
Rep. Carol Doherty, 3rd Bristol
Rep. Sam Montaño, 15th Suffolk
Rep. Bud Williams, 11th Hampden
Sen. John Cronin, Worcester & Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 12 of Chapter 123 of the General Laws, as appearing in the 2020 official edition, is hereby amended by inserting after the first paragraph the following paragraph:-

(a)(1) A person who is violent, homicidal, or poses a risk of serious physical harm to another may be hospitalized pursuant to this section for a period up to seventy-two hours. Such hospitalization may be based on a statement from a person who has been placed in reasonable fear of violent behavior and risk of serious physical harm to themselves from the person to be hospitalized. A person admitted pursuant to this subsection shall be entitled to appointment of counsel and to request an emergency hearing as provided in paragraph (b) of this section.

SECTION 2. Section 12 of Chapter 123 of the General Laws, as so appearing, is hereby amended in paragraph (d) by inserting after the word "status" the following words:-

A person who has been hospitalized pursuant to paragraph (a)(1) of this section based on violent or homicidal tendency or risk of serious physical harm to another may be released only after three days. After release, such person shall be subject to seven days of supervision, either in person or by video conference, by a licensed independent clinical social worker or by a mental health worker affiliated with a police department.

SECTION 3. Section 12 of said chapter 123, as so appearing, is hereby amended by inserting after paragraph (e) the following paragraphs:-

(f) Any hospital or other facility that admits a person pursuant to this section shall be required to provide, on request, medical information including treatment history and medications prescribed to a social worker with supervisory authority over such person.

(g) If, in the opinion of a social worker or other mental health worker who has supervision over a person committed and then released under this section, that person is relapsing into mental illness such that he or she again presents a danger of serious harm, or is otherwise not compliant with treatment or supervision, that social worker or mental health worker shall have authority to petition for expedited readmission to the facility from which the person was released. Such petition shall not require initiating a new proceeding under this section.

AN ACT TO ENSURE THE ABILITY TO PROSECUTE REPEAT OUI OFFENSES

H.1735

Lead Sponsor: Representative David M. Rogers

Impetus

People should not be haunted by past mistakes when they have gone on to lead law-abiding lives. To that end, recent criminal justice reform measures have made it easier to seal a conviction so that it does not prevent an otherwise law-abiding person from obtaining housing, employment, or other opportunities. At the same time, however, repeat drunk drivers pose a continuing danger to everyone in our communities, and a sealed OUI conviction can prevent the Commonwealth from holding accountable those who repeatedly endanger others by driving under the influence. In recent years the Middlesex District Attorney's Office has seen several cases where a defendant who should have been charged with a third or even fourth OUI could only be prosecuted for a first offense. This legislation seeks to strike a balance between the need for second chances and ensuring that Massachusetts roads are safe for all by appropriately prosecuting repeat OUI offenders. An OUI conviction may still be sealed, and so long as the mistake is not repeated it will not haunt the person convicted. However, the proposed legislation amends the OUI statute to make clear that a sealed prior OUI conviction may be admitted in a subsequent OUI prosecution.

Need

Under current law, there is no mechanism by which a sealed conviction can be admitted in evidence in a subsequent offense prosecution. This legislation addresses that problem.

Rather than amend the sealing statute (G.L. c. 276, § 100A) to prevent sealing an OUI conviction (which would leave that conviction visible on a person's record for all purposes), this legislation amends the OUI statute (G.L. c. 90, § 24) so that it expressly allows the admission of a sealed prior OUI in a subsequent-offense prosecution.

Legislative Fix

This Bill amends G.L. c. 90, § 24 to provide expressly that sealing a conviction for OUI does not render it inadmissible in a prosecution for subsequent-offense OUI.

HB1735 (HD1583) – AN ACT TO ENSURE THE ABILITY TO PROSECUTE REPEAT OUI OFFENSES

Filed January 18, 2023

Presented by: Rep. David M. Rogers, 24th Middlesex

Petition of: Rep. David M. Rogers, 24th Middlesex
Rep. Michelle DuBois, 10th Plymouth
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 24 of chapter 90 of the General Laws is hereby amended by adding, after the last sentence in subsection (1)(c)(4), the following new sentence: Notwithstanding any contrary provision of section 100A of chapter 276 of the General Laws, any such prior conviction, if otherwise admissible, shall not be inadmissible because it has been sealed pursuant to that section.

AN ACT TO INCREASE SAFETY ON PUBLIC WAYS

H.3433

Lead Sponsor: Representative Michael S. Day

Impetus

The Commonwealth is battling an opiate epidemic and overdoses are on the rise. Many of these overdoses occur in or near cars on public roadways when users purchase narcotics and then consume the drugs immediately afterward.

Growing awareness of the effectiveness of the reversal drug naloxone and increasing use of the drug have meant that more people survive an overdose. While that is true, people who have been revived may continue to be in a compromised physical state after receiving the drug. Where first responders assist a person and the person's car is towed from the scene of the incident, there is currently nothing to prohibit them from being able to retrieve their car from a tow yard shortly after being resuscitated.

One concerned tow truck operator estimates that approximately 3–4 times each month he deals with this situation. Even when the operator was revived only hours earlier with naloxone and likely has more narcotics stored in the car, tow operators have no recourse but to release it.

Need

Under existing law, there is a mandatory period of impoundment in certain instances where a person is alleged to be driving under the influence of alcohol on a public way and their car has been towed. Currently, there is no such law where a car has been towed due to a drug overdose occurring on a public way. A mandatory 12-hour period of impoundment will

provide the person revived the necessary time to recover from the effects of the overdose before they drive again on public roadways, protecting both the driver and the driving public.

Legislative Fix

This Bill amends G. L. c. 111E by adding a new § 9A, which provides for a mandatory 12-hour impoundment period where an incapacitated person is found to be the operator or in possession of a motor vehicle on a public roadway.

HB3299 (HD4053) – AN ACT TO INCREASE SAFETY ON PUBLIC WAYS

Filed January 10, 2023

Presented by: Rep. Michael S. Day, 31st Middlesex

Petition of: Rep. Michael S. Day, 31st Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1: General Laws Part I Title XVI Chapter 111E, is amended to include the following Section 9B which provides:

(a) For the purposes of this section, "incapacitated" shall have the same meaning as is defined in Section 9A of Chapter 111E.

(b) Where an incapacitated person is found to be the operator of or in possession of a motor vehicle on a public way, that motor vehicle shall be towed away and impounded for a period of twelve (12) hours.

(c) This (12) hour impoundment period shall be calculated from the time the vehicle is towed. The costs for the towing, storage and maintenance of the vehicle shall be borne by the operator or individual who retrieves the vehicle after the twelve (12) hour hold period is complete.

AN ACT TO CLARIFY PENALTIES FOR VIOLATIONS OCCURRING WHILE DRIVING WITH A HARDSHIP LICENSE

H.3369

Lead Sponsor: Representative David Paul Linsky

Impetus

In *Commonwealth v. Murphy*, 68 Mass. App. Ct. 152 (2007), the defendant, whose license was suspended for driving under the influence, applied for and was granted a hardship license to allow him to drive under certain conditions. When he violated the terms of that hardship license, he was only subject to a $100 fine. The Court held that while a person found to be driving a motor vehicle with a license suspended for driving under the influence would be subject to a sentence of 60 days in jail, because the defendant in this instance was granted a right to drive pursuant to the hardship license statute, he could only be fined.

Additionally, under the current law, a defendant whose license was suspended for driving under the influence based on a conviction in another state could not be convicted of driving on a license suspended for operating under the influence because out-of-state convictions and revocations are not referenced in the statute.

Need

There are several loopholes in our driving under the influence laws. The granting of a hardship license during a suspension period should not lessen the penalty an individual faces when continuing to drive unlawfully. License revocations in other states for driving under the influence should not be treated differently than those in Massachusetts. Drivers who

continually violate restrictions stemming from OUI convictions are of particular concern to public safety.

Legislative Fix

This Bill amends G. L. c. 90, § 23 to:

- Close the hardship license loophole by amending the statute to treat driving outside the terms of a hardship license the same as driving on a license suspended for operating under the influence.
- Establish the same penalty for driving with a license suspended by another jurisdiction for driving under the influence as for driving with a license suspended for operating under the influence in MA.

HB3369 (HD1043) – AN ACT TO CLARIFY PENALTIES FOR VIOLATIONS OCCURRING WHILE DRIVING WITH A HARDSHIP LICENSE

Filed January 18, 2023

Presented by: Rep. David Paul Linsky, 5th Middlesex

Petition of: Rep. David Paul Linsky, 5th Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 23 of Chapter 90 of the 2018 General Laws, as amended by section 67, is hereby amended in paragraph two by inserting, after the words "(1) of section twenty-four," the following:-

"pursuant to paragraph (f)(1) of subdivision (1) of section twenty-four,";

and in the same paragraph by inserting, after the words "section eight A or section eight B of chapter ninety B, or pursuant to a violation of section 8, 9 or 11 of chapter ninety F," the following:-

"or pursuant to a similar or like statute of another jurisdiction," ;

and in the same paragraph by inserting, after the words "right to operate or the issuance to him of a new license to operate," the following:-

"or whoever operates a motor vehicle in violation of the terms of a hardship license granted pursuant to M.G.L. Chapters 90, 90A or 90B," ;

and in paragraph four by inserting, after the words "pursuant to paragraph (a) of subdivision (1) of sections 24, sections 24G or 24L, subsection (a) of section 8 of chapter 90B, sections 8A or 8B of chapter 90B or section 13 ½ of chapter 265 ," the following:-

"or pursuant to a similar or like statute of another jurisdiction, or whoever operates a motor vehicle in violation of paragraph (a) of subdivision (1) of section 24, sections 24G or 24L, subsection (a) of section 8 of chapter 90B, sections 8A or 8B of chapter 90B or section 13 ½ of chapter 265 , where such operation was pursuant to a hardship license granted pursuant to M.G.L. Chapters 90, 90A or 90B or where such operation was outside the terms of such hardship license,".

AN ACT TO PROTECT VICTIMS OF STALKING IN VIOLATION OF HARASSMENT PREVENTION ORDERS

H.1551

Lead Sponsor: Representative Kate Hogan

Impetus

Stalking is a crime that causes its victims to live in constant fear. While current law provides an enhanced penalty where the stalking is in violation of a restraining order obtained against a spouse or family member, there is currently no such provision for stalking in violation of a harassment protection order. Where a person has obtained an order prohibiting the stalker from contacting him or her, that person should be able to rely on the protection of the law, regardless of whether the stalker is a family member or not. Violation of such an order should carry a separate and enhanced penalty, whether the order is a restraining order or a harassment prevention order.

Need

The current statute, G.L. c. 265, § 43 (b), creates an enhanced penalty for stalking where the stalking violates an order issued pursuant to G.L. c. 208, §§ 18, 34B, or 34C (orders to vacate marital home during divorce proceedings); G.L. c. 209, § 32 (restraining order against spouse); G.L. c. 209A, §§ 3, 4, or 5 (abuse prevention orders against family or household members); or 209C, §§ 15 or 20 (orders concerning children born outside marriage). It does not criminalize stalking in violation of a harassment prevention order issued pursuant to G.L. c. 258E, §§ 3, 5, or 6. This may be an oversight by the Legislature; surely the victims of such stalking are no less traumatized than the victims of stalking in violation of other orders. This amendment corrects the oversight.

Legislative Fix

This Bill amends G.L. c. 265, § 43(b) to criminalize a violation of a harassment prevention order issued pursuant to G.L. c. 258E, §§ 3, 5, or 6.

HB1551 (HD3332) – AN ACT TO PROTECT VICTIMS OF STALKING IN VIOLATION OF HARASSMENT PREVENTION ORDERS

Filed January 20, 2023

Presented by: Rep. Kate Hogan, 3rd Middlesex

Petition of: Rep. Kate Hogan, 3rd Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Section 43 of Chapter 265 as appearing in the official 2016 edition of the General Laws is amended by inserting, in subsection (b), line __, after the words ". . . of chapter two hundred and nine C," the words "or sections three, five, or six of chapter two hundred and fifty-eight E," the inserted words to be preceded by a semicolon.

AN ACT RELATIVE TO VISITATION AND FAMILY COURT MATTERS IN DOMESTIC VIOLENCE CASES

S.1025

Lead Sponsor: Senator Jason M. Lewis

Impetus

Under existing law, defendants charged with or convicted of domestic abuse or sexual assault, can continue to subject their victims to abuse and manipulation by using the court system as a mechanism for harassment. Domestic abuse victims may be forced repeatedly to confront their abusers in Family and Probate Court and can be ordered to bring children to visit an abusive parent in jail. Abusers may seek joint custody or visitation as a means to continue to harass and to exert control over their former partners or over other victims they have been accused of assaulting.

Need

Currently, Chapter 209C, Section 3 prohibits ordering visitation rights to a person convicted of a rape whereby the victim became pregnant. This prohibition, however, does not apply to individuals charged with or convicted of the broader range of domestic abuse crimes. Nor does it extend to the pretrial period of a criminal case, when tensions between parties may be at their highest.

Chapter 209C, Section 10 creates a rebuttable presumption that it is not in the best interest of a child to be placed in the custody of an abusive parent, but the process nonetheless creates opportunities for a defendant to use the judicial system as a mechanism to harass a victim.

Legislative Fix

This Bill amends G.L. c. 276 to:

- Create a cooling-off period during which family court matters are stayed and visitation will not be ordered.
- Ban visitation during the pretrial period and, following a conviction, during the first year of a defendant's sentence or incarceration, or for the total duration if less than one year.
- Allow a victim, a parent of a victim, or, under certain proscribed circumstances, a child, to request the ban provision be waived.
- Require a defendant who pursues visitation through the probate court following the termination of the ban to complete a psychological evaluation, a domestic violence education program, a parenting program, and any other treatment that court deems necessary prior to being allowed visitation.

SB1025 (SD1002) – AN ACT RELATIVE TO VISITATION AND FAMILY COURT MATTERS IN DOMESTIC VIOLENCE CASES

Filed January 18, 2023

Presented by: Sen. Jason M. Lewis, 5th Middlesex

Petition of: Sen. Jason M. Lewis, 5th Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Chapter 276 of the General Laws is hereby amended by inserting after section 42A the following section:-

Section 42B. Conditions of release visitation rights.

(a) This section applies to defendants who are:

(1) charged or convicted of the offenses of assault or rape under section 13B to 13B 3/4, inclusive, 13F, 13H, 15 or 22 to 23B, inclusive, of chapter 265, or section 3 of chapter 272, or the strangulation of a pregnant person under section 15D of chapter 265 or the assault or the assault and battery of a pregnant person under section 13A of chapter 265; and

(2) where the victim of the crime is pregnant at the time of the crime or becomes pregnant as a result of the crime; or where the victim and the defendant have a child in common; or where a child is the victim or witness to the crime.

(b) For a defendant as described in subsection (a), the criminal court in which the defendant was charged or convicted shall issue a ban, prohibiting the defendant from obtaining visitation with a child resulting from the pregnancy or a child as described in paragraph (2) of subsection (a), during the entire pretrial period, and following a conviction, for all or a portion of a sentence as described in subsection (c).

(i) The adult victim, or the mother of a child victim or witness, may waive the right to have a visitation ban issue.

(ii) A child of suitable age, or a guardian ad litem acting on their behalf, may request that the ban issue or not issue.

(iii) Where a mother and a child of suitable age disagree about whether to waive the visitation ban, a guardian ad litem shall be appointed to the child and the judge shall make a determination regarding visitation based on the best interests of the child.

(iv) Decisions by victims and any involved children regarding visitation bans are not necessarily permanent and a visitation ban may issue, or be subsequently waived, at any time during the pendency of the case leading to the time when a visitation ban would terminate as described in section (3).

(v) Nothing in this section precludes the Commonwealth or the victim from asking for a stay away or no contact order as a post-conviction condition pursuant to sentencing.

(c) The visitation ban shall terminate after the completion of the defendant's sentence, following a conviction or plea of guilty to the offenses listed in (a)(1), or after 1 year of the defendant's sentence, whichever is shorter. In the event that the defendant then seeks visitation through the probate courts, the defendant must complete a psychological evaluation, a domestic violence education program, a parenting program and any other treatment the probate court deems necessary prior to being allowed visitation.

(1) If the defendant as described in subsection (a) is acquitted of the relevant charges or if the case is terminated, the ban prohibiting visitation shall be immediately lifted.

(d) For defendants for whom there is a ban prohibiting visitation as described in this section, the probate court shall stay any Complaints to Establish Paternity, Motions for Genetic Marker Testing or other motions filed by the defendant, relating to parental rights, such stay to continue until the visitation ban is lifted.

SECTION 2. Chapter 276 of the General Laws is hereby amended by inserting after section 87A the following section:-

Section 87B. Conditions of probation visitation rights.

(a) This section applies to defendants who are:

(1) charged or convicted of the offenses of assault or rape under section 13B to 13B 3/4, inclusive, 13F, 13H, 15 or 22 to 23B, inclusive, of chapter 265, or section 3 of chapter 272, or the strangulation of a pregnant person under section 15D of chapter 265 or the

assault or the assault and battery of a pregnant person under section 13A of chapter 265; and

(2) where the victim of the crime is pregnant at the time of the crime or becomes pregnant as a result of the crime; or where the victim and the defendant have a child in common; or where a child is the victim or witness to the crime.

(b) For a defendant as described in subsection (a), the criminal court in which the defendant was charged or convicted shall issue a ban, prohibiting the defendant from obtaining visitation with a child resulting from the pregnancy or a child as described in paragraph (2) of subsection (a), during the entire pretrial period, and following a conviction, for all or a portion of a sentence as described in subsection (c).

(i) The adult victim, or the mother of a child victim or witness, may waive the right to have a visitation ban issue.

(ii) A child of suitable age, or a guardian ad litem acting on their behalf, may request that the ban issue or not issue.

(iii) Where a mother and a child of suitable age disagree about whether to waive the visitation ban, a guardian ad litem shall be appointed to the child and the judge shall make a determination regarding visitation based on the best interests of the child.

(iv) Decisions by victims and any involved children regarding visitation bans are not necessarily permanent and a visitation ban may issue, or be subsequently waived, at any time during the pendency of the case leading to the time when a visitation ban would terminate as described in section (3).

(v) Nothing in this section precludes the Commonwealth or the victim from asking for a stay away or no contact order as a post-conviction condition pursuant to sentencing.

(c) The visitation ban shall terminate after the completion of the defendant's sentence, following a conviction or plea of guilty to the offenses listed in (a)(1), or after 1 year of the defendant's sentence, whichever is shorter. In the event that the defendant then seeks visitation through the probate courts, the defendant must complete a psychological evaluation, a domestic violence education program, a parenting program and any other treatment the probate court deems necessary prior to being allowed visitation.

(1) If the defendant as described in subsection (a) is acquitted of the relevant charges or if the case is terminated, the ban prohibiting visitation shall be immediately lifted.

(d) For defendants for whom there is a ban prohibiting visitation as described in this section, the probate court shall stay any Complaints to Establish Paternity, Motions for Genetic Marker Testing or other motions filed by the defendant, relating to parental rights, such stay to continue until the visitation ban is lifted.

AN ACT CRIMINALIZING SEXUAL ASSAULT BY FRAUD BY A MEDICAL PROFESSIONAL

H.1550 / S.1122

Lead Sponsors: Representative Kate Hogan and Senator Bruce E. Tarr

Impetus

Under existing law, when a medical or healthcare professional knowingly induces a patient to engage in sexual intercourse or sexual touching by falsely representing that the act is necessary for a legitimate medical purpose, their behavior cannot be punished criminally. Where there is either consent by the patient or a lack of explicit objection to such conduct, and there is no physical force involved, these actions are not prosecutable under the current rape and sexual assault laws. Currently, more than 26 states have enacted laws to address this egregious behavior.

Need

This conduct, perpetrated under the guise of medical or therapeutic "treatment," violates public policy and undermines a victim's consent and sense of personal autonomy. It is important to make it clear that accomplishing sexual intercourse or sexual touching by means of fraud in these circumstances is appropriately condemnable as rape or sexual assault.

Legislative Fix

This Bill amends G. L. c. 265 and c. 277 to:

- Criminalize instances of fraud involving a medical or healthcare professional who knowingly deceives a patient into engaging in sexual intercourse or sexual touching for other than a legitimate medical purpose.
- Eliminate the traditional elements of sexual assault crimes, including "force" and "non-consent, within these very specific circumstances.
- Define "medical or healthcare professional" to include groups of treatment providers who hold a position of trust and upon whom vulnerable victims rely for appropriate care and treatment.
- Apply the statute of limitations for sexual assaults to these new crimes as well.

HB1550 (HD3328) / SB 1122 (SD59) – AN ACT CRIMINALIZING SEXUAL ASSAULT BY FRAUD OF A MEDICAL PROFESSIONAL

Filed January 20, 2023 / January 10, 2023

Presented by: Rep. Kate Hogan, 3rd Middlesex
Sen. Bruce E. Tarr, 1st Essex & Middlesex

Petition of: Rep. Kate Hogan, 3rd Middlesex
Sen. Bruce E. Tarr, 1st Essex & Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Chapter 265 of the General Laws as appearing in the 2016 Official Edition is hereby amended by inserting after Section 13H the following section:-

Section 13H½. Sexual Misconduct on a Patient or Client by a Medical Professional

(a) A person who is, or holds themselves out to be, a medical or health care professional, and who commits an indecent assault and battery on a patient or client during the course of diagnosis, counseling, or treatment, where consent to the act was procured by a false representation that the act was for a bona fide medical purpose, shall be punished by imprisonment in the state prison for not more than five years, or by imprisonment for not more than two and one-half years in a jail or house of correction.

(b) Definition. As used in this section, the following words shall have the following meaning:

"Medical or health care professional" refers to all individuals who provide professional medical or health services, diagnosis, treatment or counseling, and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physician assistants, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, clergy members, and marriage and family counselors or therapists.

SECTION 2. Said Chapter 265 of the General Laws, as so appearing, is hereby amended by inserting after Section 22C the following section:-

Section 22D: Rape on a Patient or Client by a Medical Professional

(a) A person who is, or holds themselves out to be, a medical or health care professional, and who knowingly induces a patient or client to engage in natural or unnatural sexual intercourse during the course of diagnosis, counseling, or treatment, where consent to the intercourse was procured by a false representation that the act was for a bona fide medical purpose, shall be punished by imprisonment in the state prison for not more than 20 years.

(b) Definition. As used in this section, the following words shall have the following meaning:

Medical or health care professional refers to all individuals who provide professional medical or health services, diagnosis, treatment or counseling, and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physician assistants, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, clergy members, and marriage and family counselors or therapists.

SECTION 3. Section 63 of Chapter 277 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 27, the word "13H" and inserting in place thereof the following words:- 13H, 13H ½.

SECTION 4. Said Chapter 277 of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the word "22A" and inserting in place thereof the following words:- 22A, 22D.

AN ACT RELATIVE TO THE PROTECTION OF VULNERABLE ADULTS FROM SEXUAL ASSAULT COMMITTED BY MANDATED REPORTERS, PERSONS IN A POSITION OF TRUST, AND PROVIDERS OF TRANSPORTATION

H.1768 / S.1024

Lead Sponsors: Representative Thomas M. Stanley and Senator Jason M. Lewis

Impetus

Under current law, once a person reaches the age of consent, that person is presumed to be free to agree to engage in sexual activity. No crime occurs unless force or threat of force is used to overcome that free will or choice to participate in sexual activity. However, some people, though of legal age, are vulnerable, and we provide them with a variety of services, including supportive residences or worksites, special educative programs, mental health services, rehabilitation, or transportation.

This Bill addresses those providers upon whom these vulnerable adults rely on a daily basis for these special services. The Bill makes it unlawful for any such service provider who knows someone to be a vulnerable adult to engage in any sexual activity with that vulnerable adult.

For example, a man assigned to provide transportation for residents of a group home came to know a young woman who lived in the group home and who relied on him to drive her to her worksite. Because she had suffered an injury to her cognitive abilities, she was unable to choose as freely as the law would presume. This driver began a sexual relationship with this woman during times when he was alone with her. Although this was an abuse of the trust

placed in him, it was very difficult or impossible to prosecute his breach of trust because this woman had reached the age of consent.

Need

The sexual offenses of rape or indecent assault and battery of adults may not be prosecuted unless there is proof that the conduct was against the will of the victim. Persons known to be vulnerable adults must not be targeted in any circumstances by those professionals upon whom they rely to provide them an independent and safe life.

Legislative Fix

This Bill amends G. L. cc. 6 and 265 to:

- Define "vulnerable adults" as persons age 14 or older who are:
    - Admitted to a mental health facility or to a community based or residential facility, or
    - Receiving community-based services through the Department of Developmental Services, the Department of Mental Health or the Mass. Rehabilitation Commission, or
    - Residents of a long-term care facility.
- Criminalize sexual encounters between vulnerable adults and all mandatory reporters as well as those with supervisory authority or transportation-related control over them.
- Categorize this new offense as a sex offense under existing law.

HB1768 (HD2522) / SB1024 (SD1000) – AN ACT RELATIVE TO THE PROTECTION OF VULNERABLE ADULTS FROM SEXUAL ASSAULT COMMITTED BY MANDATED REPORTERS, PERSONS IN A POSITION OF TRUST AND PROVIDERS OF TRANSPORTATION

Filed January 19, 2023 / January 18, 2023

Presented by: Rep. Thomas M. Stanley, 9th Middlesex
Sen. Jason M. Lewis, 5th Middlesex

Petition of: Rep. Thomas M. Stanley, 9th Middlesex
Rep. David DeCoste, 5th Plymouth
Sen. Jason M. Lewis, 5th Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Chapter 265 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following new section 22D:

(a) Whoever, being at the time (1) a mandated reporter as defined in section 21 of chapter 119, section 1 of chapter 19C, or section 15 of chapter 19A, or (2) a person with supervisory responsibility or disciplinary authority over such vulnerable adult by virtue of his or her legal, professional or occupational status, or (3) in the course of providing transportation, or immediately before or after, as an employee or contracted service provider, has sexual intercourse or unnatural sexual intercourse with, or commits indecent assault and battery upon, a vulnerable adult as defined herein, knowing such person to be a vulnerable adult, shall be punished.

(b) Whoever commits sexual intercourse (natural or unnatural) with a vulnerable adult shall be punished by imprisonment in the state prison for not more than twenty years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life, or for any term of years. Whoever commits an indecent assault and battery on a vulnerable adult shall be punished by imprisonment in the state prison for not more than ten years, or by imprisonment in the house of correction for not more than two and one-half years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for not more than twenty years. A prosecution commenced under either section of this paragraph shall not be placed on file nor continued without a finding.

(c) Consent of the vulnerable adult to such sexual intercourse or indecent assault and battery shall not constitute a defense or excuse to this offense.

(d) A vulnerable adult is a person fourteen years of age or older who at the time of the offense (1) is admitted to a mental health facility or to a community based or residential facility, or (2) is receiving community-based services through the Department of Developmental Services or the Department of Mental Health or the Massachusetts Rehabilitation Commission, or (3) is a resident of a long-term care facility.

SECTION 2. Section 178C of Chapter 6 of the General Laws, as so appearing, is hereby amended by inserting into the definition of "Sex offense" after the words "aggravated rape under section 39 of chapter 277;" the following: "sexual assault of vulnerable adults under section 22D of chapter 265;"

AN ACT TO DEFINE ABUSE AND NEGLECT OF A CHILD

H.1638

Lead Sponsor: Representative Kate Lipper-Garabedian

Impetus

General Laws c. 119, § 51A requires a mandated reporter to immediately communicate with the Department of Children and Families (DCF) when there is reasonable cause to believe that a child is suffering physical or emotional injury resulting from abuse, including sexual abuse; neglect; physical dependence upon an addictive drug at birth; and sexual exploitation.

General Laws c. 119, § 21, the section which sets forth explanations of the terms that are applicable in 51A matters, however, does not include definitions for either abuse or neglect.

Need

Mandated reporters lack guidance as to what the law requires them to report. This confusion could expose them to professional or legal repercussions for errors made in good faith. It also deprives children of the full protection envisioned by the mandatory–reporter statute.

Legislative Fix

This Bill amends G.L. c. 119 to:

- Add and refine definitions of abuse and neglect to assist mandated reporters.
- Adopt the definition of neglect set forth in 110 Code of Mass. Regulations (CMR) 2.00, which pertains to DCF.
- Broaden the CMR definition of abuse such that it applies not only to a caregiver, but to any individual who commits abuse of a child, thus ensuring that vulnerable children have the full range of protections.
- Clarify that abuse encompasses both physical and sexual abuse.

HB1638 (HD3721) – AN ACT TO DEFINE ABUSE AND NEGLECT OF A CHILD

Filed January 20, 2023

Presented by: Rep. Kate Lipper-Garabedian, 32nd Middlesex

Petition of: Rep. Kate Lipper-Garabedian, 32nd Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. (a) Section 21 of Chapter 119 of the General Laws, as appearing in the 2020 official edition, is hereby amended by inserting after the words "or neglect" in line 5 the following definition:

"Abuse", both physical and sexual abuse. Any individual, not limited to a caregiver, may commit abuse.

(b) Said section 21, as so appearing, is hereby further amended by inserting after the words "child advocate" in line 74 the following definition:

"Neglect", the failure by a caregiver to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care, including malnutrition. Neglect may be deliberate or through negligence or inability, but it cannot be due solely to inadequate economic resources or due solely to the existence of a handicapping condition. Actual injury, whether physical or emotional, is not required.

(c) Said section 21, as so appearing, is hereby further amended by inserting after the words "transitional assistance" in lines 77–78 the following definition:

"Physical abuse", a non-accidental act that causes or creates a substantial risk of physical injury to a child, including knowingly or recklessly engaging in behavior that was dangerous to the child and resulted in injury. Intent to cause injury to the child is not required.

(d) Said section 21, as so appearing, is hereby further amended by inserting after the words "mental faculty" in line 94 the following definition:

"Sexual abuse", (1) A non-accidental sexual act with a child that causes harm or substantial risk of harm to the child's health or welfare. In determining whether the act causes such harm or substantial risk of harm, the following factors are to be considered: whether the act

was committed by force or threat of bodily injury; whether the child was incapable of consent due to factors such as intoxication, sleep, or intellectual disability; any age disparity between the child and the alleged perpetrator; the child's cognitive, emotional, psychological, and social maturity; any power imbalance between the child and the alleged perpetrator; and the presence of any coercive factors; (2) Sexual contact between a caregiver and a child for whom the caregiver is responsible; or (3) Sexual contact between a child and any individual, not limited to a caregiver, by verbal or written communication, except that a communication (a) that is reasonably intended to provide information and direction for a child's education and physical and emotional well-being; or (b) that is consensual, is between peers, and shall not involve coercion or exploitation, does not constitute sexual abuse.

AN ACT TO EXTEND THE STATUTE OF LIMITATIONS FOR INCEST

H.1613

Lead Sponsor: Representative John Lawn, Jr.

Impetus

Embarrassment, humiliation, shame, and trauma are a few of the factors that may cause survivors of sexual assault to delay in making timely reports to law enforcement. Survivors who eventually report may do so only after periods of considerable delay, sometimes years later. When the perpetrator is a family member or caretaker, the trauma may be even more complex. Perpetrators of incest often use their access to victims, or a victim's dependency on them, to exert fear and intimidation that prevent survivors from reporting while the physical abuse is ongoing and even after it has ended.

Need

The Legislature addressed the complex issues in reporting and pursuing charges of sexual assault in 1996 when it increased the statute of limitations for prosecuting these crimes. The amendment, however, did not apply to the crime of incest. Currently, the statute of limitations begins to run when a victim reaches the age of 16. At 16, however, many survivors of incest are still living in the same home as, and are dependent upon, the perpetrator of the crime. An extension of the tolling period to the age of 18, when survivors would no longer legally be under their perpetrator's care and control, would better address the particular dynamics that survivors of incest face and is therefore appropriate.

Legislative Fix

This Bill amends G. L. c. 277, § 63 to enlarge the statute of limitations for prosecuting crimes of incest so that it is commensurate with the time period that currently applies to other sex assault crimes.

HB1613 (HD1462) - AN ACT TO EXTEND STATUTE OF LIMITATIONS FOR INCEST

Filed January 18, 2023

Presented by: Rep. John Lawn, Jr., 10th Middlesex

Petition of: Rep. John Lawn, Jr., 10th Middlesex
Rep. Carol Doherty, 3rd Bristol
Rep. Vanna Howard, 17th Middlesex
Rep. Hannah Kane, 11th Worcester
Marian T. Ryan, Middlesex District Attorney

SECTION 1. The second paragraph of Section 63 of Chapter 277, is hereby amended to provide as follows: -

Notwithstanding the first paragraph, if a victim of a crime set forth in section 13B, 13F, 13H, 22, 22A, 23, 24B, 26A or 50 of chapter 265, or section 1, 2, 3, 4, 4A, 4B, 5, 6, 7, 8, 12, 13, 26, 28, 29A, 29B, 33, 34, 35 or 35A of chapter 272 is under the age of 16 at the time the crime is committed, or, if a victim of section 17 of chapter 272 is under the age of 18 at the time the crime is committed, the period of limitation for prosecution shall not commence until the victim has reached the age of 16 (or has reached age 18 if a victim of section 17 of chapter 272) or the violation is reported to a law enforcement agency, whichever occurs earlier.

AN ACT PROVIDING PROTECTION FROM CHILD ENTICEMENT

H.1636 / S.1030

Lead Sponsors: Representative Kate Lipper-Garabedian and Senator Jason M. Lewis

Impetus

As she was leaving work, a fourteen-year-old girl was approached by a man in an Ashland parking lot who asked her if she wanted a ride. After responding "no," the man immediately shouted "get in the truck." The teenager ran and sought help from the first person she encountered.

At trial, a jury found the defendant guilty of child enticement, but the judge later dismissed the charge upon a finding that the evidence was insufficient to prove what the defendant intended to do with the child by luring her into the truck. The Appeals Court held that cornering the child and ordering her into the truck did not establish that the defendant intended to forcibly confine her.[4]

Need

The current child enticement statute was enacted in response to an earlier SJC opinion which held that attempting to lure a child into a motor vehicle was insufficient to establish an attempted kidnapping.[5] However, the Appeals Court's more recent interpretation of the current statute reflects that an issue with the law still remains and children who may be

[4] *Commonwealth v. LaPlante*, 73 Mass. App. Ct. 199 (2008).
[5] *Commonwealth v. Banfill*, 413 Mass. 1002 (1992).

harmed are not protected. Where a stranger attempts to lure a child into a vehicle, specific unlawful intent should be presumed.

Legislative Fix

This Bill amends G. L. c. 265, § 26C to:

- Revise the existing child enticement statute to mirror that of other jurisdictions by eliminating the requirement to prove a specific unlawful intent when a stranger entices a child under the age of 16 into a vehicle.
- Require a showing that the actions were taken without the permission of the child's parent or guardian or without other authority to do so.
- Provide an affirmative defense for actions undertaken based on a reasonable belief that they are in the best interests of the child so as to encourage, rather than criminalize, well-intentioned behavior.

HB1636 (HD3588) / SB1030 (SD1344) – AN ACT PROVIDING PROTECTION FROM CHILD ENTICEMENT

Filed January 20, 2023 / January 19, 2023

Presented by: Rep. Kate Lipper-Garabedian, 32nd Middlesex
Sen. Jason M. Lewis, 5th Middlesex

Petition of: Rep. Kate Lipper-Garabedian, 32nd Middlesex
Rep. Carol Doherty, 3rd Bristol
Sen. Jason M. Lewis, 5th Middlesex
Marian T. Ryan, Middlesex District Attorney

Section 26C of chapter 265 of the General Laws, as amended by Chapter 267 of the Acts of 2016, is hereby amended by inserting after the existing subsection (b), a new subsection (c) as follows:-

(c) No person, by any means and without privilege to do so, shall knowingly entice any child under the age of 16, or someone he believes to be a child under the age of 16, to enter into any vehicle, if:

(1) The person does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity; and

(2) (i) The person is not a law enforcement officer, emergency services provider as defined in section 71-507, firefighter, or other person who regularly provides emergency services, is not the operator of a bookmobile or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is not a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, and is not an employee or agent of or a volunteer acting under the direction of any board of education or (ii) the person is a person listed in subdivision (c)(2)(i) of this section but, at the time the person undertakes the activity, he or she is not acting within the scope of his or her lawful duties in that capacity.

(3) It is an affirmative defense to a charge under this subsection (c) that the person undertook the activity in response to a bona fide emergency situation or that the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(4) Any person who violates this subsection (c) shall be punished by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 1/2 years, or by both imprisonment and a fine of not more than $5,000.

AN ACT TO DEFINE INDUCING A MINOR INTO PROSTITUTION

H.1734

Lead Sponsor: Representative David M. Rogers

Impetus

In *Commonwealth v. Matos*, 78 Mass. App. Ct. 578 (2011), the defendant was found guilty at trial of inducing a 16-year-old minor to have sex with him for a fee. On appeal, the defendant argued that the statute prohibiting this conduct required proof that the minor had never previously engaged in prostitution because the statutory language only prohibited a person from inducing a minor "to become" a prostitute. The Appeals Court agreed with this interpretation of the statutory language and overturned the conviction.

Need

The current statute has been found to only apply when a minor has been induced into prostitution for the very first time. The statutory language has created an unnecessarily limited prohibition.

The Legislature has recognized the need to protect minor victims from commercial sexual activity as evidenced by its enactment of the human trafficking statutes. This statute which prohibits another aspect of commercial sexual activity should be updated so that it reflects this same concern. Frequently, minors who have previously engaged in prostitution are particularly vulnerable. They deserve at least the same protections as those minors who have not been previously exploited.

Legislative Fix

This Bill amends G. L. c. 272, § 4A to allow charges to be brought whenever a person induces a minor to engage in, agree to engage in, or offer to engage in prostitution or in sexual conduct with another for a fee, regardless of their prior history.

HB1734 (HD1576) - AN ACT TO DEFINE INDUCING A MINOR INTO PROSTITUTION

Filed January 18, 2023

Presented by: Rep. David M. Rogers, 24th Middlesex

Petition of: Rep. David M. Rogers, 24th Middlesex
Rep. Michelle DuBois, 10th Plymouth
Marian T. Ryan, Middlesex District Attorney

SECTION 1. The first sentence of Section 4A of Chapter 272, is hereby amended to provide as follows: -

Whoever induces a minor to engage in or to agree to engage in or offer to engage in prostitution or in sexual conduct with another person in return for a fee, or who knowingly aids and assists in such inducement, shall be punished by imprisonment in the state prison for not more than five, nor less than three years, and by a fine of five thousand dollars.

AN ACT TO PROTECT THE PROPERTY OF ELDER OR DISABLED PERSONS

H.1635

Lead Sponsor: Representative Kate Lipper-Garabedian

Impetus

An 86-year-old woman, a widow with no children, lay in a nursing home bed near death. She was confused and no longer able to recognize the family friend who served as her healthcare proxy. While heavily medicated, the woman was duped by her neighbor into signing over a quitclaim deed of her property.

The neighbor was charged and convicted in the Middlesex Superior Court with larceny of property valued over $250 from an elderly person. On appeal, the SJC reversed the conviction, determining that in order to be found guilty, the defendant himself—rather than a reasonable person in his position—must be shown to have known the victim lacked capacity to consent.[6]

Need

Given that elder and disabled persons may be especially vulnerable to fraud, the focus of any legal analysis of a transfer of property should be on whether the recipient can show that they gave their consent.

Financial exploitation of an elder or disabled person is frequently committed by people with close access to them, including family members, friends, neighbors or caretakers. The law

[6] *Commonwealth v. St. Hilaire*, 470 Mass. 338 (2015).

must protect the state's senior population, especially considering the projected population growth of this demographic. It is estimated that nearly 1.5 million Massachusetts residents (about 21%) will be 65 years or older by 2030.

Legislative Fix

This Bill amends G. L. c. 266, § 30 to:

- Create a chargeable offense for obtaining the property of an elderly or disabled person without their actual consent.
- Provide elderly and disabled victims with restitution commensurate with the value of the property.
- Require a recipient of property to make sure that any caretaker is present when property is conveyed to a third party to verify that the transfer was voluntary and lawful.

HB1635 (HD3562) – AN ACT TO PROTECT PROPERTY OF ELDER OR DISABLED PERSONS

Filed January 20, 2023

Presented by: Rep. Kate Lipper-Garabedian, 32nd Middlesex

Petition of: Rep. Kate Lipper-Garabedian, 32nd Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1: Section 30 of chapter 266, as appearing in the Official 2020 edition of the General Laws, is amended by adding after subsection (6) the following subsection:-

(7) Whoever, without consent of the owner, obtains possession or control over the property of another, sixty years of age or older, or of a person with a disability as defined in section thirteen K of chapter two hundred and sixty-five, if the value of such property exceeds one thousand dollars, shall be guilty of unlawful possession of property, and shall be punished by imprisonment in the state prison for not more than five years or in the house of correction for not more than two and one-half years, or by a fine of not more than twenty-five thousand dollars or by both such fine and imprisonment; if the property is an interest in real estate, whoever is guilty of unlawful possession of property shall be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than two and one-half years, or by a fine of not more than fifty thousand dollars or by both such fine and imprisonment, and shall restore or forfeit such interest in real estate to the owner. The court may order, regardless of the value of the property, restitution to be paid to the victim commensurate with the value of the property. If there is a caretaker for the person who is the owner, the consent of the owner shall not be deemed voluntary and lawful to convey the property unless witnessed in writing by the caretaker. A caretaker may not witness the consent of the owner if the caretaker intends to receive or does receive any interest in the property conveyed or any other benefit as witness. Lack of knowledge that a person has a caretaker shall not be a defense to prosecution under this section.

For the purposes of this section, "caretaker" is defined as a person with responsibility for the care of an elder or person with a disability, which responsibility may arise as the result of a family relationship, by a fiduciary duty imposed by law, or by a voluntary or contractual duty undertaken on behalf of such elder or person with a disability.

Where circumstances give rise to a reasonable doubt as to whether the person who is the owner is competent to enter into such a property transfer, the other party to the transfer must make reasonable inquiry as to whether the owner has a caretaker as defined above.

AN ACT RELATIVE TO THE ESTABLISHMENT OF AND PAYMENTS INTO AN OPIOID STEWARDSHIP FUND

H.1969 / S.1259

Lead Sponsors: Representative Simon Cataldo and Senator Jason M. Lewis

Impetus

For years, law enforcement and other first responders have been administering nasal naloxone to revive people who are experiencing an opioid overdose. Today, as communities across the Commonwealth continue to grapple with the impact of the opioid epidemic, more and more citizens are equipping themselves with this safe antidote that can reverse the effects of an opioid overdose. Meanwhile, other overdose reversal agents are in active development as well.

Recognizing that naloxone is a key part of the community public health response to this epidemic, Massachusetts has already removed certain barriers preventing this life-saving drug from being available at the critical minute by adapting rules on prescriptions, instituting training efforts, and developing improved delivery mechanisms such as more effective nasal sprays. Although public funds have been used to create a basic inventory of naloxone for law enforcement and other first responders, others are still denied access by the drug's cost, even those whose insurance provides some level of drug coverage.

This Bill would create an additional source of funds to meet the existing insurance co-payments so that the cost of naloxone or any similar overdose reversal agent is greatly reduced or free of charge to those who need it.

Need

This Bill calls on those who sell, distribute, or deliver opioids in the Commonwealth to direct some of their profits to reducing harm in our community. It requires them to supplement insurance co-payments so that the cost of naloxone and other overdose reversal agents is greatly reduced or free of charge to those who need it.

Legislative Fix

This Bill amends G. L. c. 94C to direct the Massachusetts Department of Public Health to establish a Naloxone Co-Pay Assistance Program to improve access by supplementing or covering insurance co-payments. The program is to be supported by monies paid annually into an Opioid Stewardship Fund by each manufacturer and distributor, based on their share of the value of all opioids sold or distributed in the Commonwealth.

HB1969 (HD1692) / SB1259 (SD957) - AN ACT RELATIVE TO THE ESTABLISHMENT OF AND PAYMENTS INTO AN OPIOID STEWARDSHIP FUND

Filed January 18, 2023

Presented by: Rep. Simon Cataldo, 14th Middlesex
Sen. Jason M. Lewis, 5th Middlesex

Petition of: Rep. Simon Cataldo, 14th Middlesex
Rep. Kate Donaghue, 19th Worcester
Rep. Margaret Scarsdale, 1st Middlesex
Sen. Jason M. Lewis, 5th Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Over the past few years across the state we have become all too aware of the prevalence of opioid use disorders. Despite increased public awareness and prevention efforts, all of our communities have been impacted by the ongoing opioid epidemic.

Law enforcement and first responders have had much success reviving people who have overdosed with the use of nasal naloxone. Naloxone has been credited as a significant factor in the decrease in the number of fatal overdoses in the last year in the Commonwealth.

Recognizing the impact that access to this drug has on saving lives, now people across the state can go to a pharmacy and get naloxone. Having access is not enough, however, if--even with insurance--the cost of the co-pay is prohibitive.

Every overdose death is the loss of someone's child, someone's parent, someone's brother or sister, someone's friend; and it need not happen. We must work to get naloxone into the hands of everyone who needs it.

SECTION 2: Chapter 94C of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding the following new section 50:

(a) Naloxone Co-Pay Assistance Program.

The department of public health shall establish and promulgate regulations for administration of a Naloxone Co-Pay Assistance Program, a program to improve access to those who seek to obtain naloxone and other medications approved by the United States Food and Drug Administration that, when administered, negates or neutralizes in whole or

in part the pharmacological effects of an opioid in the body. The program shall supplement the cost of insurance copayments so that the cost of Naloxone is greatly reduced or free of charge to those who need it.

(b)(1) There shall be established in the Commonwealth a separate trust fund to be known as the Opioid Stewardship Fund to support the Naloxone Co-Pay Assistance Program established in subsection 50(a).

(b)(2) Monies in the Opioid Stewardship Fund shall be kept separate and shall not be commingled with any other monies in the custody of the State Comptroller and the Commissioner of Administration and Finance. The fund shall be maintained by the Commissioner of Public Health or a designee. The monies shall be expended under the direction of the department of public health, without prior appropriation. Any balance in the fund at the close of a fiscal year shall be available for expenditure in subsequent fiscal years and shall not be transferred to any other fund or revert to the General Fund. The Commissioner of Public Health or a designee shall annually report the amount of funds collected and any expenditures made from the fund to the clerks of the house of representatives and senate to be forwarded on to the house and senate committees on ways and means, the house and senate chairs of the joint committee on public health and the house and senate chairs of the joint committee on health care financing.

(b)(3) The Opioid Stewardship Fund shall consist of the opioid stewardship payments made by each manufacturer and distributor as directed in subsection 50(c)(3), monies appropriated for the purpose of such fund, and monies transferred to such fund pursuant to law.

(c)(1) Definitions:

(i) "Opioid stewardship payment" shall mean the total amount to be paid into the Opioid Stewardship Fund for each state fiscal year as set forth in subsection (d)(4);

(ii) "Ratable share" shall mean the individual portion of the opioid stewardship payment to be paid by each manufacturer and distributor registered with the Commissioner of Public Health pursuant to section 7(a) of this chapter or registered with the board of registration in pharmacy pursuant to section 12(a) of this chapter (hereinafter "registrants") that sells or distributes or delivers opioids in the Commonwealth;

(c)(2) Reports and records of Registrants. Annually each registrant shall provide to the Commissioner of Public Health a report detailing all opioids sold or distributed by such manufacturer or distributor in the Commonwealth. Such information shall be reported to the department of public health in such form as designed by the Commissioner, provided however that the initial report provided upon the establishment of the Opioid Stewardship

Fund shall report all opioids sold or distributed by the registrant in the Commonwealth for the 2019 calendar year, and must be submitted by August 1, 2020. Subsequent annual reports shall be submitted on April first of each year based on the actual opioid sales and distributions of the prior calendar year.

Such report shall include:

(i) the manufacturer's or distributor's name, address, phone number, federal Drug Enforcement Agency (DEA) registration number and controlled substance registration number issued by the department of public health or board of registration in pharmacy;

(ii) the name, address and DEA registration number of the entity to whom the opioid was sold or distributed;

(iii) the date of the sale or distribution of the opioid;

(iv) the gross receipt total, in dollars, of all opioids sold or distributed;

(v) the name and National Drug Code (NDC) of the opioid sold or distributed;

(vi) the number of containers and the strength and metric quantity of controlled substance in each container of the opioid sold or distributed;

(vii) the total number of morphine milligram equivalents (MMEs) sold or distributed; and

(viii) any other elements as deemed necessary by the commissioner.

For the purpose of such annual reporting, MMEs shall be determined pursuant to a formulation to be issued by the department of public health and updated as the department deems appropriate.

(c)(3) Determination of ratable share. Each registered manufacturer and distributor that sells or distributes opioids in the Commonwealth shall pay a portion of the total opioid stewardship payment amount. The department shall notify the registrant in writing annually on or before October fifteenth of each year of the registrant's ratable share, based on the report of opioids sold or distributed for the prior calendar year. The ratable share shall be calculated as follows:

(i) The total amount of MMEs sold or distributed in the Commonwealth by the registrant for the preceding calendar year, as reported by the registrant pursuant to

subsection (c)(2), shall be divided by the total amount of MME sold or distributed in the Commonwealth by all registrants to determine the registrant payment percentage. The registrant payment percentage shall be multiplied by the total opioid stewardship payment. The product of such calculations shall be the registrant's ratable share. The department of public health shall have the authority to adjust the total number of a registrant's MMEs to account for the nature and use of the product, as well as the type of entity purchasing the product from the registrant, when making such determination and adjust the ratable share accordingly.

(ii) The registrant's total amount of MME sold or distributed, as well as the total amount of MME sold or distributed by all registrants under this chapter, used in the calculation of the ratable share shall not include the MME of those opioids which are: (a) manufactured in the Commonwealth, but whose final point of delivery or sale is outside of the Commonwealth; (b) sold or distributed to entities certified to operate pursuant to section 5 of chapter 111E, or section 57D of chapter 111; or (c) the MMEs attributable to buprenorphine, methadone or morphine.

(c)(4) Opioid stewardship payment imposed on manufacturers and distributors. All registered manufacturers and distributors that sell or distribute opioids in the Commonwealth shall be required to pay an opioid stewardship payment. On an annual basis, the Commissioner of Public Health shall certify to the State Comptroller the amount of all revenues collected from opioid stewardship payments and any penalties imposed. The amount of revenues so certified shall be deposited quarterly into the opioid stewardship fund established pursuant to subsection 50(b).

(c)(5). Payment of ratable share. The registrant shall make payments of the ratable share quarterly to the department of public health with the first quarter's due on January 1 following the annual notice as set forth in subsection (d)(3); additional quarterly payments shall be due and owing on the first day of every quarter thereafter.

(c)(6). Rebate of ratable share. In any year for which the Commissioner of Public Health determines that any registrant has failed to make a timely report of required information pursuant to subsection (c)(2), then those registrants who comply by making a timely report pursuant to subsection (c)(2) shall receive a reduced assessment of their ratable share in the following year equal to the amount in excess of any overpayment in the prior year's payment.

(c)(7). Registrant's opportunity to appeal. A registrant shall be afforded an opportunity to submit information to the department of public health to justify why the ratable share calculated for the registrant pursuant to subsection (c)(3), or amounts paid thereunder, are in error or otherwise not warranted. If the department determines thereafter that all or a portion of such ratable share, as determined by the Commissioner pursuant to subsection

(c)(3), is not warranted, the department may: (a) adjust the ratable share; (b) adjust the assessment of the ratable share in the following year equal to the amount in excess of any overpayment in the prior payment period; or (c) refund amounts paid in error.

(c)(8) Penalties.

(i) The department may assess a civil penalty in an amount not to exceed one thousand dollars per day against any registrant that fails to comply with subsections (d)(2) or (d)(5).

(ii) In addition to any other civil or criminal penalty provided by law, where a registrant has failed to pay its ratable share in accordance with subsection (d)(5), the department may also assess a penalty of no less than ten percent and no greater than three hundred percent of the ratable share due from such registrant.

AN ACT RELATIVE TO THE PUNISHMENT OF ORGANIZED RETAIL CRIMES

H.1443

Lead Sponsor: Representative Michael Day

Impetus

The term "organized retail crime" refers to an aggravated form of larceny or shoplifting committed by three or more people acting together to steal and resell or redeem $2,500 or more within no more than six months. Under the current law, each person in these criminal organizations faces the same lengthy prison sentence. This Bill would allow minor participants, not the leaders of these criminal organizations, to face punishment in line with that faced by others who steal a similar value of property at a single time.

Given the variation of roles that individuals may have as participants in "organized retail crime," a range of greater and lesser punishments must be available in this statute. The current version of the "organized retail crime" statute requires that each offender be indicted and, if incarcerated, a sentence to the state prison must be imposed.

Need

Retail crime organizations are complex, with numerous roles of varying levels of involvement and culpability. There should be a range of sentencing options so that minor members of a retail crime organization receive a punishment that fits their role in the crime. Currently the same severe sentences are provided for the leaders of a criminal enterprise as for the people who are directed from above to participate. This bill would provide a more

flexible response than the present requirement of seeking a Superior Court indictment, and of providing no possible sentence but commitment to the state prison.

Legislative Fix

This Bill amends:

- General Laws c. 218, § 26 to bring the charge of Organized Retail Crime within the jurisdiction of the District Court.
- General Laws c. 266, § 30D to provide an alternative sentence of not more than 2 ½ years in the House of Correction.

HB1443 (HD3924) - AN ACT RELATIVE TO THE PUNISHMENT OF ORGANIZED RETAIL CRIMES

Filed January 20, 2023

Presented by: Rep. Michael Day, 31st Middlesex

Petition of: Rep. Michael Day, 31st Middlesex
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Subsection (b) of § 30D of Chapter 266 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting in the second sentence after the words "shall be punished by imprisonment in the state prison for not more than 10 years" the following language: "or imprisonment in the house of correction for not more than 2 ½ years".

SECTION 2. Subsection (c) of § 30D of Chapter 266 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting in the second sentence after the words "shall be punished by imprisonment in the state prison for not more than 15 years" the following language: "or imprisonment in the house of correction for not more than 2 ½ years".

SECTION 3. § 26 of Chapter 218 of the General Laws, as amended by St.2018, c. 69, §109, is hereby amended by inserting after the words "and sections sixteen, seventeen, eighteen, nineteen, twenty-eight, thirty" the following language: "thirty D".

AN ACT RELATIVE TO FIRES AND EXPLOSIONS

H.1647

Lead Sponsor: Representative Jay D. Livingstone

Impetus

In the summer of 2014, two juveniles obtained fireworks and ignited them in their backyard without adult supervision. One of the fireworks exploded, leaving both juveniles with serious injuries including missing fingers, broken bones, burns and hearing loss.

In the spring of 2014, there was a two-alarm residential fire in Tewksbury which caused personal injury and a great deal of property damage, and posed a serious safety risk to the people in the neighborhood. That fire was caused when several individuals tried to extract oil from marijuana using pressurized butane, so that they could smoke the oil. The highly volatile butane caused an explosion when it was placed over an open flame. The explosion caused serious burns to the people standing closest to the stove and a fire which spread throughout the home and the two adjoining apartments.

In the summer of 2016, trespassers who started a fire and allowed it to spread were responsible for tens of thousands of dollars in damage to property at a campground.

Each year, small fires are set on school property by students seeking to interrupt the school day or cause a distraction. These fires are typically set in trash barrels or to paper in sinks or toilets.

Need

Under existing law, there is no mechanism to charge a person whose wanton or reckless use of fireworks or other incendiary or explosive material causes harm to a bystander or another party or to the property of another. Nor is there an applicable statute addressing conduct wherein a person negligently or recklessly causes a fire during the manufacture of controlled substances. This is because our current arson and burning statutes require proof of the specific intent to set a fire or cause an explosion, rather than the intent to make controlled substances. Currently, a misdemeanor charge for wanton destruction of property in violation of G.L. c. 266, § 127 may be brought in these cases. This property charge, however, does not sufficiently address the extent of the property damage that could occur and does not address at all the more important harm of personal injury.

Existing law is particularly deficient in its treatment of minor school fires. General Laws c. 266, § 2 prohibits the willful and malicious burning of the "contents" of "any building or structure" other than a dwelling, which could be applied to incidents where fires are set in schools. And G.L. c. 266, § 5 prohibits the willful and malicious burning of "any personal property of whatsoever class or character exceeding a value of twenty-five dollars." However, § 2 establishes a felony charge for which there is no jurisdiction in District Court, while § 5 establishes a felony charge for which there is concurrent District Court jurisdiction. Both of these charges are disproportionate to the minor nature of most school fires.

In fact, the current statutes criminalizing the burning of property only provide for a misdemeanor charge where an individual damages the land or property of another through negligent management of an intentionally set fire, regardless of the extent and dollar value of the damage. This statutory scheme simultaneously requires the Commonwealth to prove a high level of intent that does not reflect the risk of public harm and imposes overly harsh sentences in the event of a conviction.

Legislative Fix

This Bill amends G. L. cc. 265 and 266 to:

- Establish a penalty for the wanton or reckless use of fireworks or other incendiary or explosive material causing personal injury or property damage.
- Establish a penalty for the manufacture of controlled substances or products derived therefrom causing a fire or explosion that results in personal injury or property damage.
- Establish a misdemeanor penalty for intentionally setting a fire on school grounds, regardless of the value of damage caused thereby.

- Provide an appropriate charging option for cases that merit prosecution and eliminates ambiguity about damage thresholds caused by existing statutes in the context of school fires.
- Broaden the sentencing options to correspond to the value of the damage caused when a person sets a fire and negligently allows it to spread.

HB1647 (HD2384) - AN ACT RELATIVE TO FIRES AND EXPLOSIONS

Filed January 19th, 2023

Presented by: Rep. Jay D. Livingstone, 8th Suffolk

Petition of: Rep. Jay D. Livingstone, 8th Suffolk
Marian T. Ryan, Middlesex District Attorney

SECTION 1. Chapter 265 is hereby amended by adding after Section 13D½ the following section: -

Section 13D¾. Whoever wantonly or recklessly sets or uses a fire or fireworks or pyrotechnic or any incendiary or explosive device or material, as those terms are defined in section 39 of chapter 148 and/or section 101 of chapter 266, and thereby causes injury to the person of another shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than two years.

Any person who, as a result of or in the course of unlawfully and intentionally manufacturing a controlled substance as defined by section 31 of chapter 94C, or any substance or product derived therefrom, causes a fire or explosion that causes personal injury, whether to themselves or to other persons, shall be punished by imprisonment in the state prison for not more than ten years, or by imprisonment in a jail or house of correction for not more than two and one half years.

SECTION 2. Section 2 of Chapter 266 is hereby amended by adding as a second paragraph the following: -

Any person who, without authorization of the school administration, intentionally sets fire to, burns, or causes to be burned any property, whether of himself or another, within any building or structure of a school or educational institution (including but not limited to any elementary school, secondary school, college, or university), whether such institution is public or private and whether or not such institution is currently in session or not, or on the grounds thereof, shall be punished by imprisonment in a jail or house of correction for not more than two and one half years.

SECTION 3. Chapter 266 is hereby amended by striking out Section 8 as appearing in the 2014 Official Edition, and inserting in place thereof the following paragraph: -

Section 8. Whoever, without the consent of the owner, sets or increases a fire upon the land of another whereby the woods or property of another is injured, or whoever negligently or wilfully suffers any fire, set upon his own land or upon the land of another by consent of the owner, to extend beyond the limits thereof so as to cause injury to the woods or property of another, if the cost to restore or replace the property injured is less than $5,000, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than two years; if the cost to restore or replace the property injured equals or exceeds $5,000, such person shall be punished by imprisonment in the state prison for not more than five years, or by imprisonment in a jail or house of correction for not more than two and one half years. The town where such fire occurred may recover the expense of extinguishing such fire in an action of tort, brought within two years after the cause of action accrues, against any such person.

SECTION 4. Chapter 266 is hereby amended by adding after Section 8 the following section: -

Section 8A. Any person who, as a result of or in the course of unlawfully and intentionally manufacturing a controlled substance as defined by section 31 of chapter 94C, or any substance or product derived therefrom, causes a fire or explosion that causes injury to a dwelling house (as defined in section 1 of this chapter), structure, building or real property, or that causes injury to a motor vehicle, boat or other conveyance, whether such property is owned by such person or by another, or is apparently abandoned, shall be punished by imprisonment in the state prison for not more than ten years, or by imprisonment in a jail or house of correction for not more than two and one half years.

SECTION 5. Section 102B of Chapter 266 is hereby amended by adding as a second paragraph the following: -

Whoever wantonly or recklessly sets or uses a fire or fireworks or pyrotechnic or any incendiary or explosive device or material, as those terms are defined in section 39 of chapter 148 and/or section 101 of chapter 266, and thereby causes injury to the property of another shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than two years.