

An Act Relative to Illegal Drug and Firearm Trafficking

SECTION 1. Chapter 94C of the General Laws shall be amended by adding the following new section:

Section 32O: Illegal Trafficking of Opioids, Heroin, Firearms.

(a) Whoever is found guilty for trafficking substances under section 32E paragraphs (c) or (c1/2) of this chapter and is concurrently or separately found guilty of any of the following laws regarding the trafficking or theft of firearms, rifles, shotguns or machine guns

- Section 10E of Chapter 269;
- Section 10I of Chapter 269;
- Section 10J of Chapter 269;
- Section 10K of Chapter 269

shall be punished by a term of up to life imprisonment in the state prison, that said sentence may include a fine of not more than \$500,000.

A prosecution commenced under this section shall not be placed on file or continued without a finding.

A person convicted of violating this section shall not be eligible for furlough, work release, temporary release or receive any deduction from his sentence for good conduct under sections 129C or 129D of chapter 127.

Section 10E. Whoever, except as provided by law, in a single transaction or occurrence or in a series of transactions within a 12 month period, knowingly or intentionally distributes, sells, or transfers possession of a quantity of firearms, rifles, shotguns, machine guns, or any combination thereof, shall, if the quantity of firearms, rifles, shotguns, machine guns, or any combination thereof is:

(1) 1 or more, but less than 3, be punished by a term of imprisonment of not more than 10 years in the state prison or by a fine of not more than \$50,000, or by both such imprisonment and fine;

(2) 3 or more, but less than 10, be punished by a term of imprisonment, not to exceed 20 years in the state prison; provided, however, that said sentence shall not be less than a mandatory minimum term of imprisonment of 5 years; and provided further, that said sentence may include a fine of not more than \$100,000, which shall not be in lieu of the mandatory minimum term of imprisonment;

(3) 10 or more, be punished by a term of imprisonment up to life imprisonment in the state prison; provided, that said sentence shall not be less than a mandatory minimum term of imprisonment of 10 years; and provided further, that said sentence may include a fine of not more than \$150,000, which shall not be in lieu of the mandatory minimum term of imprisonment.

A prosecution commenced under this section shall not be placed on file or continued without a finding and the sentence imposed upon a person convicted of violating this section shall not be reduced to less than the mandatory minimum term of imprisonment, as established in the first paragraph, nor shall any sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory minimum term of imprisonment.

A person convicted of violating this section shall not, until the individual has served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections 129C or 129D of chapter 127; provided, however, that the commissioner of corrections may, on the recommendation of the warden, superintendent or other person in charge of the correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes: to attend the funeral of a relative, to visit a critically ill relative or to obtain emergency medical or psychiatric services unavailable at said institution. Section 87 of chapter 276 shall not apply to any person, 18 years of age or over, charged with a violation of this section, or to any child between the age of 14 and 18, so charged, if the court is of the opinion that the interests of the public require that the child be tried for such offense instead of being dealt with as a child.

Section 10I. (a) Whoever transports a firearm, rifle, shotgun, machine gun or sawed-off shotgun into the commonwealth to use the weapon for the commission of criminal activity shall be punished by imprisonment in the state prison for not less than 5 years nor more than 10 years.

(b) Whoever transports a firearm, rifle, shotgun, machine gun or sawed-off shotgun into the commonwealth to unlawfully distribute, sell or transfer possession of the weapon to a prohibited person, as defined in section 131 of chapter 140, shall be punished by imprisonment in the state prison for not less than 10 years nor more than 20 years.

(c) Whoever transports a firearm, rifle, shotgun, machine gun or sawed-off shotgun into the commonwealth to unlawfully distribute, sell or transfer the weapon to a prohibited person, as defined in section 131 of chapter 140, and if the weapon is subsequently used to cause the death of another, shall be punished by imprisonment in the state prison for not less than 20 years.

Section 10J. (a) Whoever in the nighttime or the daytime breaks and enters a building, ship, vessel or vehicle to steal a firearm 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 2½ years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

(b) Whoever in the nighttime or the daytime breaks and enters a building, ship, vessel or vehicle to steal a firearm to distribute to a prohibited person, as defined in section 131 of chapter 140 shall be punished by imprisonment in the state prison for not more than 10 years or by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

(c) Whoever in the nighttime or the daytime breaks and enters a building, ship, vessel or vehicle to steal a firearm and in the process causes injury of another shall be punished by imprisonment in the state prison for not more than 10 years or by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

Any motor vehicle lawfully owned or operated by any person convicted pursuant to this section shall be forfeited pursuant to section 24W of chapter 90. All proceeds from the auction of the vehicle shall be deposited into the Public Safety Training Fund established under section 2JJJJ of chapter 29.

Section 10K. (a) Whoever in the nighttime or the daytime breaks and enters any building in which a firearm retailer, wholesaler or manufacturer conducts business shall be punished by imprisonment in the state prison for

not more than 10 years or by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

(b) Whoever in the nighttime or the daytime breaks and enters any building in which a firearm retailer, wholesaler or manufacturer conducts business with the intent to unlawfully obtain a firearm, rifle, shotgun, machine gun or ammunition shall be punished by imprisonment in the state prison for not more than 10 years or by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

(c) Whoever unlawfully obtains a firearm, rifle, shotgun, machine gun or ammunition by means of breaking and entering, in the nighttime or the daytime, any building in which a firearm retailer, wholesaler or manufacturer conducts business and who unlawfully distributes said firearm, rifle, shotgun, machine gun or ammunition shall be punished by imprisonment in the state prison for not more than 20 years or by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

Chapter 94C Section 32E: Trafficking in marihuana, cocaine, heroin, morphine, opium, etc.; eligibility for parole

Section 32E. (a) Any person who trafficks in marihuana by knowingly or intentionally manufacturing, distributing, dispensing, or cultivating or possessing with intent to manufacture, distribute, dispense, or cultivate, or by bringing into the commonwealth a net weight of fifty pounds or more of marihuana or a net weight of fifty pounds or more of any mixture containing marihuana shall, if the net weight of marihuana or any mixture thereof is:

(1) Fifty pounds or more, but less than one hundred pounds, be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than fifteen years or by imprisonment in a jail or house of correction for not less than one nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of one year and a fine of not less than five hundred nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum one year term of imprisonment, as established herein.

(2) One hundred pounds or more, but less than two thousand pounds, be punished by a term of imprisonment in the state prison for not less than 2 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 2 years and a fine of not less than two thousand and five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) Two thousand pounds or more, but less than ten thousand pounds, be punished by a term of imprisonment in the state prison for not less than 3½ nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 3½ years and a fine of not less than five thousand nor more than fifty thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(4) Ten thousand pounds or more, be punished by a term of imprisonment in the state prison for not less than 8 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 8 years and a fine of not less than twenty thousand nor more than two hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(b) Any person who trafficks in a controlled substance defined in clause (4) of paragraph (a), clause (2) of paragraph (c) or in clause (3) of paragraph (c) of Class B of section thirty-one by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of 18 grams or more of a controlled substance as so defined, or a net weight of 18 grams or more of any mixture containing a controlled substance as so defined shall, if the net weight of a controlled substance as so defined, or any mixture thereof is:

(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not less than 2 nor more than 15 years. No sentence imposed under this clause shall be for less than a minimum term of imprisonment of 2 years, and a fine of not less \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Thirty-six grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 3½ nor more than 20 years. No sentence imposed under this clause shall be for less than a mandatory minimum

term of imprisonment of 3 1/2 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) One hundred grams or more, but less than two hundred grams, be punished by a term of imprisonment in the state prison for not less than 8 nor more than twenty years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 8 years and a fine of not less than ten thousand nor more than one hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not less than 12 nor more than twenty years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 12 years and a fine of not less than fifty thousand nor more than five hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(c) Any person who trafficks in heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute, or dispense or by bringing into the commonwealth a net weight of 18 grams or more of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or a net weight of 18 grams or more of any mixture containing heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof shall, if the net weight of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or any mixture thereof is:--

(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than 30 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 3 1/2 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Thirty-six grams or more but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 30 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 5 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed, but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) One hundred grams or more but less than two hundred grams, be punished by a term of imprisonment in the state prison for not less than 8 nor more than 30 years. No sentence imposed under the provisions of this clause shall be for less than the mandatory minimum term of imprisonment of 8 years, and a fine of not less than ten thousand nor more than one hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established therein.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not less than 12 nor more than 30 years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 12 years and a fine of not less than fifty thousand nor more than five hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established therein.

[Subsection (c1/2) inserted by 2015, 136 effective February 22, 2016.]

(c1/2) Any person who trafficks in fentanyl, by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of more than 10 grams of fentanyl shall be punished by a term of imprisonment in state prison for not more than 20 years.

For purposes of this subsection, "fentanyl" shall include any derivative of fentanyl and any mixture containing more than 10 grams of fentanyl or a derivative of fentanyl.

(d) Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another others who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.