HOUSE DOCKET, NO. 2404 FILED ON: 1/19/2017

HOUSE . . . . . No. 2325

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act concerning the protection of persons from domestic violence.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Aaron Michlewitz	*3rd Suffolk*	*1/19/2017*

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HOUSE . . . . . No. 2325

By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 2325) of Aaron Michlewitz relative to the powers of police during domestic violence situations. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act concerning the protection of persons from domestic violence.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 209A of the General Laws is hereby amended in Section 6 by adding the following language at the end:

In addition to a law enforcement officer's authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall:

(a)question persons present to determine whether there are weapons on the premises; and

(b)upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.

A law enforcement officer shall deliver all weapons, firearms purchaser identification cards and permits to purchase a handgun seized pursuant to this section to the relevant District Attorney's office and shall append an inventory of all seized items to the domestic violence report.

The District Attorney's office shall retain the relevant firearms until the charges of domestic abuse, if there are any, are either dropped or the matter has been settled in Court. Once that occurs the, owner of the firearm may petition the District Attorney's Office for return of any weapons, firearms purchaser identification cards and permits to purchase a handgun that were seized by a law enforcement officer. The District Attorney's office shall have 45 days to respond to the owner's petition by either returning the seized weapons, or by filing a petition with a Judge in District Court justifying why it would be improper for the weapons to be returned to the owner.

The District Attorney's office may object to the return of the weapons on the grounds that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular.

If the prosecutor does not institute an action within 45 days of seizure, the seized weapons shall be returned to the owner.

A hearing shall be held and a record made thereof within 45 days of the District Attorney's petition provided above. No formal pleading and no filing fee shall be required as a preliminary to such hearing. The hearing shall be summary in nature. Appeals from the results of the hearing shall be to the District Court, or Boston Municipal Court as the case maybe, in accordance with the law.

Nothing in this act shall impair the right of the State to retain evidence pending a criminal prosecution.

If, after the hearing, the court determines that the weapons are not to be returned to the owner, the court may:

(a)With respect to weapons other than firearms, order the prosecutor to dispose of the weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate person within 60 days; or

(b)Order the revocation of the owners firearms purchaser identification card or any permit, license or authorization, in which case the court shall order the owner to surrender any firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered dealer of the firearms within 60 days; or

(c)Order such other relief as it may deem appropriate. When the court orders the weapons forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall dispose of the property. A civil suit may be brought to enjoin a wrongful failure to return a seized firearm where the prosecutor refuses to return the weapon after receiving a written request to do so and notice of the owner’s intent to bring a civil action pursuant to this section. Failure of the prosecutor to comply with the provisions of this act shall entitle the prevailing party in the civil suit to reasonable costs, including attorney’s fees, provided that the court finds that the prosecutor failed to act in good faith in retaining the seized weapon.

No law enforcement officer, prosecutor, or agency shall be held liable in any civil action brought by any person for failing to learn of, locate or seize a weapon pursuant to this act, or for returning a seized weapon to its owner.