

HOUSE No. 4517

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 21, 2018.

The committee on Ways and Means, to whom was referred the Bill providing for immediate capital improvement needs of the Commonwealth (House, No. 3610, changed), reports, recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4517) [Representatives Boldyga of Southwick and Campanale of Leicester dissent].

For the committee,

JEFFREY SÁNCHEZ.

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The Commonwealth of Massachusetts

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

An Act relative to firearms.

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

1 SECTION 1. Section 121 of chapter 140 of the General Laws is hereby amended by
2 inserting after the definition of “Conviction”, as appearing in the 2016 Official Edition, the
3 following definition:-

4 “Court”, the division of the district court department of the trial court having jurisdiction
5 in the city or town in which the respondent resides.

6 SECTION 2. Said section 121 of said chapter 140 is hereby further amended, by inserting
7 after the definition of “Deceptive weapon device”, as so appearing, the following definitions:-

8 "Extreme risk protection order", an order by the court ordering the immediate suspension
9 and surrender of any license to carry firearms or firearm identification card which the respondent
10 may hold and ordering the respondent to surrender all firearms, rifles, shotguns, machine guns,
11 weapons or ammunition which he or she then controls, owns or possesses. An extreme risk
12 protection order shall be in effect for 1 year from the date of issuance and may be renewed upon
13 petition.

14 “Family or household member”, a person who:

15 (i) is or was married to the respondent;

16 (ii) is or was residing with the respondent in the same household;

17 (iii) is or was related by blood or marriage to the respondent;

18 (iv) has or is having a child in common with the respondent, regardless of whether they
19 have ever married or lived together; or

20 (v) is or has been in a substantive dating relationship with the respondent;

21 (vi) is or has been engaged to the respondent.

22 SECTION 3. Said section 121 of said chapter 140 is hereby further amended by striking
23 out, in line 44, the words “a pistol” and inserting in place thereof the following words:- a stun
24 gun or a pistol.

25 SECTION 4. Said section 121 of said chapter 140 is hereby further amended by inserting
26 after the definition of “Machine gun”, as amended by section 20 of chapter 110 of the acts of
27 2017, the following definitions:-

28 “Petition”, a request filed with the court by a petitioner for the issuance or renewal of an
29 extreme risk protection order.

30 “Petitioner”, the family or household member, or the licensing authority of the
31 municipality where the respondent resides, filing a petition.

32 SECTION 5. Said section 121 of said chapter 140 is hereby further amended by inserting
33 after the definition of “Purchase”, as appearing in the 2016 Official Edition, the following
34 definition:-

35 "Respondent", the person identified as the respondent in a petition against whom an
36 extreme risk protection order is sought.

37 SECTION 6. Said section 121 of said chapter 140 is hereby further amended by inserting
38 after the definition of “Shotgun”, as so appearing, the following definitions:-

39 “Stun gun”, a portable device or weapon from which an electrical current, impulse, wave
40 or beam may be directed, which current, impulse, wave or beam is designed to incapacitate.

41 “Substantive dating relationship”, a relationship as determined by the court after
42 consideration of the following factors: (i) the length of time of the relationship; (ii) the type of
43 relationship; (iii) the frequency of interaction between the parties; and (iv) if the relationship has
44 been terminated by either person, the length of time elapsed since the termination of the
45 relationship.

46 SECTION 7. Section 129B of said chapter 140, as appearing in the 2016 Official Edition,
47 is hereby amended by striking out, in line 90, the first time it appears, the word “or”.

48 SECTION 8. Said section 129B of said chapter 140, as so appearing, is hereby further
49 amended by inserting after the figure “18 U.S.C. 922(g)(8)”, in line 93, the following words:- ;
50 or (C) an extreme risk protection order issued pursuant to sections 131R through 131Y or a
51 similar order issued by another jurisdiction.

52 SECTION 9. Section 131 of said chapter 140, is hereby amended by striking out, in line
53 248, as appearing in the 2016 Official Edition, the first time it appears, the word “or”.

54 SECTION 10. Said section 131 of said chapter 140 is hereby further amended by
55 inserting after the figure “18 U.S.C. 922(g)(8)”, in line 251, as so appearing, the following
56 words:- ; or (C) an extreme risk protection order issued pursuant to sections 131R through 131Y
57 or a similar order issued by another jurisdiction.

58 SECTION 11. Section 131J of said chapter 140 is hereby repealed.

59 SECTION 12. Said chapter 140 is hereby amended by inserting after section 131Q the
60 following 11 sections:-

61 Section 131R. (a) A petitioner who believes that a person holding a license to carry
62 firearms or a firearm identification card may pose a risk of causing bodily injury to self or others
63 may, on a form furnished by the court and signed under the pains and penalties of perjury, file a
64 petition in court.

65 (b) A petition filed pursuant to this section shall:

66 (i) state any relevant facts supporting the petition;

67 (ii) identify the reasons why the petitioner believes that the respondent poses a significant
68 risk of causing bodily injury to self or others by having in the respondent’s control, ownership or
69 possession a firearm, rifle, shotgun, machine gun, weapon or ammunition;

70 (iii) identify the number, types, and locations of any firearms, rifle, shotgun, machine
71 gun, weapon or ammunition the petitioner believes to be in the respondent's current control,
72 ownership, or possession;

73 (iv) identify whether there is an abuse prevention order pursuant to chapter 209A, a
74 harassment prevention order pursuant to chapter 258E or an order similar to an abuse prevention
75 or harassment prevention order issued by another jurisdiction in effect against the respondent;
76 and

77 (v) identify whether there is a pending lawsuit, complaint, petition, or other legal action
78 between the parties to the petition.

79

80 (c) No fees for filing or service of process may be charged by a court or any public
81 agency to a petitioner filing a petition pursuant to this section.

82

83 (d) The petitioner's residential address, residential telephone number and workplace
84 name, address and telephone number, contained within the records of the court related to a
85 petition shall be confidential and withheld from public inspection, except by order of the court;
86 provided, however, that the petitioner's residential address and workplace address shall appear
87 on the court order and shall be accessible to the respondent and the respondent's attorney unless
88 the petitioner specifically requests, and the court orders, that this information be withheld from
89 the order. All confidential portions of the records shall be accessible at all reasonable times to the
90 petitioner and petitioner's attorney, the licensing authority of the municipality where the
91 respondent resides and to law enforcement officers, if such access is necessary in the
92 performance of their official duties. Such confidential portions of the court records shall not be
93 deemed to be public records under the provisions of clause twenty-sixth of section 7 of chapter 4.

94 (e) The court may order that any information in the petition or case record be impounded
95 in accordance with court rule.

96 Section 131S. (a) The court shall, within 10 days of receipt of a petition pursuant to
97 section 131R, conduct a hearing on the petition.

98

99 (b) Notwithstanding the provisions of subsection (a), the court shall, within 2 days of
100 receipt of a petition made pursuant to section 131R, conduct a hearing on the petition if the
101 respondent files an affidavit that a firearm, rifle, shotgun, machine gun, weapon or ammunition is
102 required in the performance of the respondent's employment.

103 (c) If after the hearing pursuant to subsection (a) or subsection (b), the court finds by a
104 preponderance of the evidence that the respondent poses a risk of causing bodily injury to self or
105 others by having in his or her control, ownership or possession a firearm, rifle, shotgun, machine
106 gun, weapon or ammunition, the court shall grant the petition. If the respondent does not appear
107 at the hearing pursuant to subsection (a) or subsection (b), the court shall grant the petition.

108

109 (d) Upon granting a petition, the court shall issue an extreme risk protection order and
110 shall order the respondent to surrender all firearms, rifles, shotguns, machine guns, weapons and
111 ammunition which the respondent then controls, owns or possesses, to the licensing authority of
112 the municipality where the respondent resides. The court shall enter written findings as to the
113 basis of its order.

114 Not less than 30 calendar days prior to the expiration of an extreme risk protection order,
115 the court shall notify the petitioner of the scheduled expiration of the order and that the petitioner
116 may file a petition to renew the order pursuant to section 131R.

117 (e) Upon issuing an extreme risk protection order the clerk-magistrate of the court shall
118 transmit 2 certified copies of the order and 1 copy of the petition and summons forthwith to the
119 licensing authority of the municipality where the respondent resides which, unless otherwise
120 ordered by the court, shall serve a copy of the order and petition upon the respondent. Licensing
121 authorities shall establish adequate procedures to ensure that, when effecting service upon a
122 respondent, a law enforcement officer shall, to the extent practicable: (i) fully inform the
123 respondent of the contents and terms of the order and the available penalties for any violation of
124 an order; and (ii) provide the respondent with informational resources, including, but not limited
125 to, a list of services relating to crisis intervention, mental health, substance abuse and counseling,
126 and a list of interpreters, as necessary, located within or near the court's jurisdiction.

127 Each extreme risk protection order issued by the court shall contain the following
128 statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

129 (f) Upon receipt of service of an extreme risk protection order, the licensing authority of
130 the municipality where the respondent resides shall immediately suspend the respondent's
131 license to carry firearms or a firearm identification card and shall immediately notify the
132 respondent of said suspension.

133 Upon receipt of service of an extreme risk protection order the respondent shall
134 immediately surrender their license to carry firearms or a firearm identification card and all
135 firearms, rifles, shotguns, machine guns, weapons or ammunition in their possession to the local

136 licensing authority serving the order in accordance with section 129D. Nothing herein shall
137 authorize the transfer of any weapons required to be surrendered, or surrendered, by the
138 respondent to anyone other than a licensed dealer. Any violation of this subsection shall be
139 punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 ½ years in
140 a house of correction, or by both such fine and imprisonment.

141 (g) Upon receipt of a license to carry firearms or a firearm identification card and any
142 firearms, rifles, shotguns, machine guns, weapons or ammunition surrendered by a respondent
143 pursuant to subsection (f), the licensing authority taking possession of the license to carry
144 firearms or a firearm identification card, and firearms, rifles, shotguns, machine guns, weapons
145 or ammunition shall issue a receipt identifying any license to carry firearms or a firearm
146 identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition
147 surrendered by the respondent and shall provide a copy of the receipt to the respondent. The
148 licensing authority to which the respondent surrendered a license to carry firearms or a firearm
149 identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition
150 shall, within 48 hours of the surrender, file the receipt with the court.

151 (h) If a person other than the respondent claims title to any firearms, rifles, shotguns,
152 machine guns, weapons or ammunition required to be surrendered, or surrendered, pursuant to
153 this section, and is determined by the licensing authority to be the lawful owner of the firearms,
154 rifles, shotguns, machine guns, weapons or ammunition, the firearms, rifles, shotguns, machine
155 guns, weapons or ammunition shall be returned to said person; provided, however, that: (i) the
156 firearms, rifles, shotguns, machine guns, weapons or ammunition are removed from the
157 respondent's control, ownership, or possession and the lawful owner agrees to store the firearms,
158 rifles, shotguns, machine guns, weapons or ammunition in a manner such that the respondent

159 does not have access to, or control of, the firearms, rifles, shotguns, machine guns, weapons or
160 ammunition; and (ii) the firearms, rifles, shotguns, machine guns, weapons or ammunition are
161 not otherwise unlawfully possessed by the owner. Any violation of this subsection shall be
162 punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 ½ years in
163 a house of correction, or by both such fine and imprisonment.

164 (i) Upon the expiration or termination of an extreme risk protection order, a licensing
165 authority holding any firearms, rifles, shotguns, machine guns, weapons or ammunition that have
166 been surrendered pursuant to this section shall return any license to carry firearms or firearm
167 identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition
168 requested by a respondent only after confirming that the respondent is suitable for a license to
169 carry firearms or a firearm identification card and to control, own or possess firearms, rifles,
170 shotguns, machine guns, weapons or ammunition under federal and state law.

171 At least 7 days prior to expiration of an extreme risk protection order, a licensing
172 authority holding any firearms, rifles, shotguns, machine guns, weapons or ammunition that have
173 been surrendered pursuant to this section shall notify the petitioner of the expiration of the
174 extreme risk protection order and the return of a license to carry firearms or firearm
175 identification card and the return of any firearms, rifles, shotguns, machine guns, weapons or
176 ammunition to the respondent.

177 As soon as reasonably practicable after receiving notice of the termination of an extreme
178 risk protection order by the court, a licensing authority holding any firearms, rifles, shotguns,
179 machine guns, weapons or ammunition that have been surrendered pursuant to this section shall
180 notify the petitioner of the termination of the extreme risk protection order and the return of a

181 license to carry firearms or firearm identification card and the return of any firearms, rifles,
182 shotguns, machine guns, weapons or ammunition to the respondent.

183 (j) A respondent who has surrendered a license to carry firearms or firearm identification
184 card and all firearms, rifles, shotguns, machine guns, weapons or ammunition to a licensing
185 authority and who does not wish to have the license to carry firearms or firearm identification
186 card or firearms, rifles, shotguns, machine guns, weapons or ammunition returned or who is no
187 longer eligible to control, own or possess firearms, rifles, shotguns, machine guns, weapons or
188 ammunition pursuant to this chapter or federal law, may sell or transfer title of the firearms,
189 rifles, shotguns, machine guns, weapons or ammunition to a licensed firearms dealer; provided,
190 however, that the respondent shall not take physical possession of the firearms, rifles, shotguns,
191 machine guns, weapons or ammunition. The licensing authority may transfer possession of the
192 firearms, rifles, shotguns, machine guns, weapons or ammunition to a licensed dealer upon said
193 dealer providing the licensing authority with written proof of the sale or transfer of title of the
194 firearms, rifles, shotguns, machine guns, weapons or ammunition from the respondent to the
195 dealer.

196 (k) If the licensing authority cannot reasonably ascertain the lawful owner of any
197 firearms, rifles, shotguns, machine guns, weapons or ammunition surrendered pursuant to this
198 section within 180 days of expiration or termination of the order to surrender the firearms, rifles,
199 shotguns, machine guns, weapons or ammunition the licensing authority may dispose of the
200 firearms, rifles, shotguns, machine guns, weapons or ammunition pursuant to section 129D.

201 Section 131T. (a) Upon the filing of a petition pursuant to section 131R, the court may
202 issue an emergency extreme risk protection order without notice to the respondent and prior to

203 the hearing required pursuant to subsection (a) of section 131S if the court finds reasonable
204 cause to conclude that the respondent poses a significant risk of causing bodily injury to self or
205 others by being in possession of a license to carry firearms or a firearm identification card or
206 having in his control, ownership or possession a firearm, rifle, shotgun, machine gun, weapon or
207 ammunition.

208 Upon issuance of an emergency extreme risk protection order pursuant to this section, the
209 clerk magistrate of the court shall notify the respondent pursuant to subsection (e) of section
210 131S.

211 (b) When the court is closed for business, a justice of the court may grant an extreme risk
212 protection order if the court finds reasonable cause to conclude that the respondent poses a
213 significant risk of causing bodily injury to self or others by being in possession of a license to
214 carry firearms or firearm identification card or by having in his control, ownership or possession
215 of a firearm, rifle, shotgun, machine gun, weapon or ammunition. In the discretion of the justice,
216 such relief may be granted and communicated by telephone to the licensing authority of the
217 municipality where the respondent resides, which shall record such order on a form of order
218 promulgated for such use by the chief justice of the trial court and shall deliver a copy of such
219 order on the next court business day to the clerk-magistrate of the court. If relief has been
220 granted without the filing of a petition pursuant to section 131R, the petitioner shall appear in
221 court on the next available court business day to file a petition. Any order issued under this
222 subsection shall expire at the conclusion of the next court business day after the order was issued
223 unless a petitioner has filed a petition with the court pursuant to section 131R and the court has
224 issued an emergency extreme risk protection order pursuant to subsection (a).

225 (c) Upon receipt of service of an extreme risk protection order pursuant to this section,
226 the respondent shall immediately surrender their license to carry firearms or firearm
227 identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition to
228 the local licensing authority serving the order as provided in subsection (f) of section 131S.

229 Section 131U. (a) The clerk magistrate of the court shall forward a copy of an extreme
230 risk protection order issued pursuant to section 131S or section 131T the same day such order is
231 issued to the licensing authority; the commissioner of probation; the department of criminal
232 justice information services who shall transmit the report, pursuant to paragraph (h) of section
233 167A of chapter 6, to the attorney general of the United States to be included in the National
234 Instant Criminal Background Check System; and any other federal or state computer-based
235 systems used by law enforcement or others to identify prohibited purchasers of firearms. Upon
236 the expiration or termination of an extreme risk protection order issued pursuant to section 131S
237 or section 131T, the court shall transmit a report containing the respondent's name and
238 identifying information, a statement describing the respondent's alleged conduct and relationship
239 to the petitioner and an explanation that the order is no longer current or valid to the licensing
240 authority; the department of criminal justice information services who shall transmit the report,
241 pursuant to paragraph (h) of section 167A of chapter 6, to the attorney general of the United
242 States to be included in the National Instant Criminal Background Check System; and any other
243 federal or state computer-based systems used by law enforcement or others to identify prohibited
244 purchasers of firearms.

245 Section 131V. (a) Any person who files a petition for an extreme risk protection order,
246 knowing the information in the petition to be materially false or with an intent to harass the

247 respondent, shall be punished by a fine of no more than \$5,000 or by imprisonment for no more
248 than 2 ½ years in the house of correction.

249 Section 131W. The chief justice of the trial court, in consultation with the chief justice of
250 the district court, shall promulgate rules, regulations and policies and shall develop and prepare
251 instructions, brochures, petitions, forms and other material required for the administration and
252 enforcement of sections 131R to 131Y, inclusive, which shall be in such form and language to
253 permit a petitioner to prepare and file a petition pro se.

254 Section 131X. (a) Sections 131R to 131X, inclusive, shall not affect the ability of a law
255 enforcement officer to remove firearms or ammunition from any person or conduct any search
256 and seizure for firearms pursuant to other lawful authority.

257 (b) Sections 131R to 131X, inclusive, shall not impose any duty on a family or household
258 member to file a petition and no family or household member shall be held criminally or civilly
259 liable for failure to petition.

260 SECTION 13. Notwithstanding any general or special law to the contrary, the chief
261 justice of the trial court shall promulgate rules, regulations and polices and shall develop and
262 prepare instructions, brochures, petitions, forms and other material required pursuant to section
263 131X of chapter 140 of the General Laws within 30 days of the effective date of this act.

264 SECTION 14. Sections 1 to 12, inclusive, shall take effect 30 days after passage.