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.

FILED ON: 5/21/2018

HOUSE . . . . . No. 4517

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:

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

"Court", the division of the district court department of the trial court having jurisdiction in the city or town in which the respondent resides.

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

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

"Family or household member", a person who:

(i) is or was married to the respondent;

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

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

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

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

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

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

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

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

"Petitioner", the family or household member, or the licensing authority of the municipality where the respondent resides, filing a petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) state any relevant facts supporting the petition;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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