

HOUSE No. 4539

House bill No. 4517, as changed by the committee on Bills in the Third Reading, and as amended and passed to be engrossed by the House. May 23, 2018. (Corrected line numbers).

The Commonwealth of Massachusetts

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

An Act relative to firearms.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to regulate forthwith the possession of firearms in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 striking out,
2 in line 1 the words “to 131Q” and inserting in place thereof the following words:- to 131X.

3 **SECTION 1A.** Said section 121 of said chapter 140 is hereby further amended, by inserting
4 after the definition of “Conviction”, as appearing in the 2016 Official Edition, the following
5 definition:-

6 “Court”, the division of the district court department or the Boston municipal court department
7 of the trial court having jurisdiction in the city or town in which the respondent resides.

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

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

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

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

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

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

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

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

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

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

27 **SECTION 4.** Said section 121 of said chapter 140 is hereby further amended by inserting after
28 the definition of “Machine gun”, as amended by section 20 of chapter 110 of the acts of 2017,
29 the following 2 definitions:-

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

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

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

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

38 **SECTION 6.** Said section 121 of said chapter 140 is hereby further amended by inserting after
39 the definition of “Shotgun”, as so appearing, the following 2 definitions:-

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

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

46 **SECTION 7.** Section 129B of said chapter 140, as so appearing, is hereby amended by striking
47 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 amended
49 by inserting after the figure “18 U.S.C. 922(g)(8)”, in line 93, the following words:- ; or (C) an
50 extreme risk protection order issued pursuant to sections 131R to 131X, inclusive, or a similar
51 order issued by another jurisdiction.

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

54 **SECTION 10.** Said section 131 of said chapter 140 is hereby further amended by inserting after
55 the figure “18 U.S.C. 922(g)(8)”, in line 251, as so appearing, the following words:- ; or (C) an
56 extreme risk protection order issued pursuant to sections 131R to 131X, inclusive, or a similar
57 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 further amended by inserting after section 131Q the
60 following 7 sections:-

61 Section 131R. (a) A petitioner who believes that a person holding a license to carry firearms or a
62 firearm identification card may pose a risk of causing bodily injury to self or others may, on a
63 form furnished by the court and signed under the pains and penalties of perjury, file a petition in
64 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 risk of
68 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, rifles, shotguns, machine guns,
71 weapons 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 (c) No fees for filing or service of process may be charged by a court or any public
80 agency to a petitioner filing a petition pursuant to this section.

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

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

94 Section 131S. (a) The court shall, within 10 days of receipt of a petition pursuant to section
95 131R, conduct a hearing on the petition. Upon receipt of the petition, the court shall issue a
96 summons with the date, time and location of the hearing. The court shall direct a law
97 enforcement officer to personally serve a copy of the petition and the summons on the
98 respondent, or if personal service by a law enforcement officer is not possible, the court may,
99 after a hearing, order that service be made by some other identified means reasonably calculated
100 to reach the respondent. Service shall be made not less than 7 days prior to the hearing.

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

105 (c) If after the hearing pursuant to subsection (a) or subsection (b), the court finds by a
106 preponderance of the evidence that the respondent poses a risk of causing bodily injury to self or

107 others by having in his or her control, ownership or possession a firearm, rifle, shotgun, machine
108 gun, weapon or ammunition, the court shall grant the petition. If the respondent does not appear
109 at the hearing pursuant to subsection (a) or subsection (b), the court shall grant the petition.

110 (d) Upon granting a petition, the court shall issue an extreme risk protection order and
111 shall order the respondent to surrender all firearms, rifles, shotguns, machine guns, weapons and
112 ammunition which the respondent then controls, owns or possesses, to the licensing authority of
113 the municipality where the respondent resides. The court shall enter written findings as to the
114 basis of its order. The court may modify its order at any subsequent time upon motion by either
115 party. When the petitioner's address is inaccessible to the respondent as provided in subsection
116 (d) of section 131R and the respondent has filed a motion to modify the court's order, the court
117 shall be responsible for notifying the respondent. In no event shall the court disclose any such
118 inaccessible address.

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

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

133 department of mental health, shall annually update the informational resource guides required under
134 this section.

135 Each extreme risk protection order issued by the court shall contain the following statement:

136 VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

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

141 Upon receipt of service of an extreme risk protection order the respondent shall
142 immediately surrender their license to carry firearms or a firearm identification card and all
143 firearms, rifles, shotguns, machine guns, weapons or ammunition in their possession to the local
144 licensing authority serving the order, within twenty-four hours of granting said order in accordance
145 with section 129D; provided, however, that nothing in this section or in said section 129D shall allow
146 the respondent to: (i) transfer any firearms, rifles, shotguns, machine guns, weapons or ammunition
147 required to be surrendered, or surrendered, by the respondent to anyone other than a licensed dealer;
148 or (ii) maintain control, ownership or possession of any firearms, rifles, shotguns, machine guns,
149 weapons or ammunition during the pendency of any appeal of an extreme risk protection order; and
150 provided further that, notwithstanding section 129D, if the licensing authority cannot reasonably
151 ascertain a lawful owner of firearms, rifles, shotguns, machine guns, weapons or ammunition
152 surrendered pursuant to extreme risk protection order within 180 days of the expiration or termination
153 of the extreme risk protection order the licensing authority may, in its discretion, trade or dispose of
154 surplus, donated, abandoned or junk firearms, rifles, shotguns, machine guns, weapons or ammunition
155 to properly licensed distributors or firearms dealers and the proceeds of such sale or transfer shall be
156 remitted or credited to the municipality in which the licensing authority presides to be used for violence
157 reduction or suicide prevention Any violation of this subsection shall be punishable by a fine of
158 not more than \$5,000, or by imprisonment for not more than 2 ½ years in a house of correction,
159 or by both such fine and imprisonment.

160 (g) Upon receipt of a license to carry firearms or a firearm identification card and any
161 firearms, rifles, shotguns, machine guns, weapons or ammunition surrendered by a respondent

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

170 (h) If a person other than the respondent claims title to any firearms, rifles, shotguns,
171 machine guns, weapons or ammunition required to be surrendered, or surrendered, pursuant to
172 this section, and is determined by the licensing authority to be the lawful owner of the firearms,
173 rifles, shotguns, machine guns, weapons or ammunition, the firearms, rifles, shotguns, machine
174 guns, weapons or ammunition shall be returned to said person; provided, however, that: (i) the
175 firearms, rifles, shotguns, machine guns, weapons or ammunition are removed from the
176 respondent's control, ownership, or possession and the lawful owner agrees to store the firearms,
177 rifles, shotguns, machine guns, weapons or ammunition in a manner such that the respondent
178 does not have access to, or control of, the firearms, rifles, shotguns, machine guns, weapons or
179 ammunition; and (ii) the firearms, rifles, shotguns, machine guns, weapons or ammunition are
180 not otherwise unlawfully possessed by the owner. Any violation of this subsection shall be
181 punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 ½ years in
182 a house of correction, or by both such fine and imprisonment.

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

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

196 As soon as reasonably practicable after receiving notice of the termination of an extreme
197 risk protection order by the court, a licensing authority holding any firearms, rifles, shotguns,
198 machine guns, weapons or ammunition that have been surrendered pursuant to this section shall
199 notify the petitioner of the termination of the extreme risk protection order and the return of a
200 license to carry firearms or firearm identification card and the return of any firearms, rifles,
201 shotguns, machine guns, weapons or ammunition to the respondent.

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

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

218 shotguns, machine guns, weapons or ammunition the licensing authority may dispose of the
219 firearms, rifles, shotguns, machine guns, weapons or ammunition pursuant to section 129D.

220 Section 131T. (a) Upon the filing of a petition pursuant to section 131R, the court may issue an
221 emergency extreme risk protection order without notice to the respondent and prior to the
222 hearing required pursuant to subsection (a) of section 131S if the court finds reasonable cause to
223 conclude that the respondent poses a risk of causing bodily injury to self or others by being in
224 possession of a license to carry firearms or a firearm identification card or having in his control,
225 ownership or possession a firearm, rifle, shotgun, machine gun, weapon or ammunition.

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

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

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

246 Section 131U. (a) On the same day that an extreme risk protection order is issued pursuant to
247 section 131S or section 131T, the clerk magistrate of the court shall forward a copy of such order
248 to: (i) the licensing authority; (ii) the commissioner of probation; (iii) the department of criminal
249 justice information services who shall transmit the report, pursuant to paragraph (h) of section
250 167A of chapter 6, to the attorney general of the United States to be included in the National
251 Instant Criminal Background Check System; and (iv) any other federal or state computer-based
252 systems used by law enforcement or others to identify prohibited purchasers of firearms. Upon
253 the expiration or termination of an extreme risk protection order issued pursuant to section 131S
254 or section 131T, the court shall transmit a report containing the respondent's name and
255 identifying information, a statement describing the respondent's alleged conduct and relationship
256 to the petitioner and an explanation that the order is no longer current or valid to: (i) the licensing
257 authority; (ii) the commissioner of probation; (iii) the department of criminal justice information services
258 who shall transmit the report, pursuant to paragraph (h) of section 167A of chapter 6, to the attorney
259 general of the United States to be included in the National Instant Criminal Background Check System;
260 and (iv) any other federal or state computer-based systems used by law enforcement or others to
261 identify prohibited purchasers of firearms.

262 Section 131V. (a) Any person who files a petition for an extreme risk protection order, knowing
263 the information in the petition to be materially false or with an intent to harass the respondent,
264 shall be punished by a fine of no less than \$2,500 and no more than \$5,000 or by imprisonment for
265 no more than 2 ½ years in the house of correction or by both such fine and imprisonment.

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

271 Section 131X. (a) Sections 131R to 131X, inclusive, shall not affect the ability of a law
272 enforcement officer to remove firearms, rifles, shotguns, machine guns, weapons or ammunition

273 from any person or conduct any search and seizure for firearms, rifles, shotguns, machine guns,
274 weapons or ammunition pursuant to other lawful authority.

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

278 (l) The supreme judicial court and the appeals court shall have concurrent jurisdiction to review
279 any proceedings had, determinations made, and orders or judgments entered in the court pursuant
280 to this section or section 131T. The supreme judicial court or the appeals court, subject to the
281 provisions of section 13 of chapter 211A may by rule vary the procedure authorized or required
282 for such review upon a finding that the review by the court will thereby be made more simple,
283 speedy and effective.

284 Section 131Z. The court shall annually, on or before December thirty-first, issue a report on the
285 use of extreme risk protective orders. The report shall be submitted to the Executive Office of
286 Public Safety and Security; the Joint Committee on Public Safety and Homeland Security; The
287 Joint Committee on the Judiciary; the Joint Committee on Mental Health Substance Use and
288 Recovery; and the House and Senate Clerks. The report shall include but shall not be limited to
289 the following information:

290 (1)The number of extreme risk protective order petitions filed;

291 (2)The number of extreme risk protective order petitions that lead to a respondent's forfeiture
292 subject to Section 131X;

293 (3)The number of emergency extreme risk protective order petitions filed;

294 (4)The number of emergency extreme risk protective order petitions that lead to a respondent's
295 forfeiture subject to Section 131X;

296 (5)The number of extreme risk protective order or emergency extreme risk protective order
297 petitions filed that are deemed to be fraudulent;

298 (6) The race and ethnicity of the petitioner and respondent;

299 (7) The gender and gender identity of the petitioner and respondent;

300 (8) The data on the duration of extreme risk protection orders.

301 **SECTION 13.** Notwithstanding any general or special law to the contrary, the chief justice of
302 the trial court shall promulgate rules, regulations and policies and shall develop and prepare
303 instructions, brochures, petitions, forms and other material required pursuant to section 131X of
304 chapter 140 of the General Laws within 45 days of the effective date of this act.

305 **SECTION 14.** Sections 1, 1A, 2, 4, 5, 7, 8, 9, 10 and 12 shall take effect 45 days after passage.