HOUSE . . . . . No. 4670

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2549) of the House Bill relative to firearms (House, No. 4539), reports recommending passage of the accompanying bill (House, No. 4670). June 27, 2018.

Harold P.Naughton, Jr.	Cynthia Stone Creem
Marjorie Decker	Karen E. Spilka
David T. Viera	Bruce E. Tarr

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HOUSE . . . . . No. 4670

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:

SECTION 1. Section 121 of chapter 140 of the General Laws is hereby amended by striking out, in line 1, as appearing in the 2016 Official Edition the words "to 131Q" and inserting in place thereof the following words:- to 131Y.

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

"Court", as used in sections 131R to 131X, inclusive, the division of the district court department or the Boston municipal court department of the trial court having jurisdiction in the city or town in which the respondent resides.

SECTION 3. 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 2 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; provided, however, that an extreme risk protection order shall be in effect for up to 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; (v) is or has been in a substantive dating relationship with the respondent; or (vi) is or has been engaged to the respondent.

SECTION 4. Said section 121 of said chapter 140 is hereby further amended by striking out, in line 44, as so appearing, the word "a" and inserting in place thereof the following words:- a stun gun or a.

SECTION 5. 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 2 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 6. 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 7. Said section 121 of said chapter 140 is hereby further amended by inserting after the definition of “Shotgun”, as so appearing, the following 2 definitions:-

“Stun gun”, a portable device or weapon, regardless of whether it passes an electrical shock by means of a dart or projectile via a wire lead, from which an electrical current, impulse, wave or beam that is designed to incapacitate temporarily, injure or kill may be directed.

“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 8. Section 123 of said chapter 140, as so appearing, is hereby amended by striking out, in line 506, the words “or (iii)” and inserting in place thereof the following words:- (iii) a stun gun, as defined in section 121; or (iv).

SECTION 9. Section 129B of said chapter 140, as so appearing, is hereby amended by striking out, in line 90, the first time it appears, the word “or”.

SECTION 10. 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 to 131X, inclusive, or a similar order issued by another jurisdiction.

SECTION 11. Section 131 of said chapter 140, is hereby amended by striking out, in line 248, as so appearing, the first time it appears, the word “or”.

SECTION 12. 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 to 131X, inclusive, or a similar order issued by another jurisdiction.

SECTION 13. Said chapter 140 is hereby further amended by striking out section 131J and inserting in place thereof the following section:-

Section 131J. Sections 131¾, 131K and 131P shall not apply to stun guns. The secretary of public safety and security shall promulgate regulations restricting access or use of stun guns by non-licensed persons and establishing minimum safety and quality standards, safe storage requirements, education and safety training requirements and law enforcement training on the appropriate use of stun guns, which shall require that any stun gun purchased or used by a law enforcement or public safety official include a mechanism for tracking the number of times the stun gun has been fired.

SECTION 14. Subsection (a) of section 131L of said chapter 140 is hereby amended by inserting after the first sentence, as appearing in the 2016 Official Edition, the following

sentence:- It shall be unlawful to store or keep any stun gun in any place unless such weapon is secured in a locked container accessible only to the owner or other lawfully authorized user.

SECTION 15. Said chapter 140 is hereby further amended by inserting after section 131Q the following 8 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 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, rifles, shotguns, machine guns, weapons 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 petition 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.

(f) Upon receipt of a petition under this section and if the petitioner is a family or household member as defined in section 121, the clerk of the court shall provide to the petitioner and respondent informational resources about: (i) crisis intervention; (ii) mental health; (iii) substance use disorders; (iv) counseling services; and (v) the process to apply for a temporary commitment under section 12 of chapter 123.

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

(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 the respondent's 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 upon a determination that the petitioner has demonstrated by a preponderance of the evidence that the respondent poses such a risk.

(d) Upon granting a petition, the court shall issue an extreme risk protection order and shall order the respondent to surrender any licenses to carry firearms, firearms identification cards and 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 within 24 hours of granting the order. The court may modify, suspend or terminate its order at any subsequent time upon motion by either party; provided, however, that due notice shall be given to the respondent and petitioner, and the court shall hold a hearing on said motion. When the petitioner's address is confidential to the respondent as provided in subsection (d) of section 131R and the respondent has filed a motion to modify the court's order, the court shall be responsible for notifying the petitioner. In no event shall the court disclose any such confidential address.

Not less than 30 calendar days prior to the expiration of an extreme risk protection order, the court shall notify the petitioner at the best known address 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 use disorders and counseling, and a list of interpreters, as necessary, located within or near the court's jurisdiction. The chief justice of the trial court, in consultation with the executive office of public safety and

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

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 control, ownership or possession to the local licensing authority serving the order, in accordance with section 129D; provided, however, that nothing in this section or in said section 129D shall allow the respondent to: (i) transfer any firearms, rifles, shotguns, machine guns, weapons or ammunition required to be surrendered, or surrendered, by the respondent to anyone other than a licensed dealer; or (ii) maintain control, ownership or possession of any firearms, rifles, shotguns, machine guns, weapons or ammunition during the pendency of any appeal of an extreme risk protection order; provided, however, that while the surrender of ownership pursuant to an extreme risk protection order shall require the immediate surrender of any license to carry firearms or a firearm identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition in the respondent's control or possession, it shall not require the surrender of permanent ownership rights; and provided further that, notwithstanding section 129D, if the licensing authority cannot

reasonably ascertain a lawful owner of firearms, rifles, shotguns, machine guns, weapons or ammunition surrendered pursuant to extreme risk protection order within 180 days of the expiration or termination of the extreme risk protection order, the licensing authority may, in its discretion, trade or dispose of surplus, donated, abandoned or junk firearms, rifles, shotguns, machine guns, weapons or ammunition to properly licensed distributors or firearms dealers and the proceeds of such sale or transfer shall be remitted or credited to the municipality in which the licensing authority presides to be used for violence reduction or suicide prevention. 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 the licensing authority of the municipality in which the respondent resides confirms 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.

Not less than 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 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. An order issued under this subsection shall expire 10 days after its issuance unless a hearing is scheduled pursuant to subsection (a) or (b) of section 131S or at the conclusion of a hearing held pursuant to said subsection (a) or (b) of said section 131S unless a permanent order is issued by the court pursuant to subsection (d) of said section 131S.

(b) When the court is closed for business, a justice of the court may grant an emergency extreme risk protection order if the court finds reasonable cause to conclude that the respondent poses a 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) On the same day that an extreme risk protection order is issued pursuant to section 131S or section 131T, the clerk magistrate of the court shall forward a copy of such order to: (i) the licensing authority; (ii) the commissioner of probation; (iii) 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 (iv) 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 clerk magistrate of the court shall notify (i) the licensing authority; (ii) the commissioner of probation; (iii) 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 (iv) any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms that the order has been terminated or has expired.

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 less than $2,500 and no more than $5,000 or by imprisonment for no more than 2 ½ years in the house of correction or by both such fine and imprisonment.

Section 131W. The chief justice of the trial court, in consultation with the chief justice of the district court and the chief justice of the Boston municipal 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 131X, 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 131Y, inclusive, shall not affect the ability of a law enforcement officer to remove firearms, rifles, shotguns, machine guns, weapons or ammunition from any person or conduct any search and seizure for firearms, rifles, shotguns, machine guns, weapons or ammunition pursuant to other lawful authority.

(b) Nothing in sections 131R to 131Y, inclusive, shall supersede or limit a licensing authority's ability to suspend or revoke a license that the licensing authority has issued pursuant to other lawful authority.

(c) Sections 131R to 131Y, 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.

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

Section 131Z. The court shall annually, on or before December 31, issue a report on the use of extreme risk protective orders. The report shall be submitted to the executive office of public safety and security; the chairs of the joint committee on public safety and homeland security; the chairs of the joint committee on the judiciary; the chairs of the joint committee on mental health substance use and recovery; and clerks of the senate and the house of representatives. The report shall include but shall not be limited to the following information:

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

(2) the number of extreme risk protective order petitions that lead to a respondent's surrender pursuant to section 131S;

(3) the number of extreme risk protective order petitions that are heard but not granted;

(4) the number of emergency extreme risk protective order petitions filed;

(5) the number of emergency extreme risk protective order petitions that lead to a respondent's surrender pursuant to 131T;

(6) the number of emergency extreme risk protective order petitions that are heard but not granted;

(7) the number of extreme risk protective order or emergency extreme risk protective order petitions filed that are deemed to be fraudulent;

(8) the race and ethnicity of the petitioner and respondent;

(9) the gender and gender identity of the petitioner and respondent;

(10) the data on the duration of extreme risk protection orders.

(11) The number of instances in which an order has been terminated or otherwise modified prior to its original expiration date; and

(12) The number of instances in which a fine has been assessed for a filed petition that was deemed to be fraudulent.

SECTION 16. Notwithstanding any general or special law to the contrary, the department of mental health shall develop county based informational resources about crisis intervention, mental health, substance use disorders, counseling services, interpreter services, the process to apply for temporary commitment under section 12 of chapter 123 of the General Laws and other relevant resources that serve each county. The department shall provide said county based

informational resources to the chief justice of the trial court who shall distribute the informational resources to each district and municipal court in the Commonwealth for distribution pursuant to subsection (f) of section 131R of the chapter 140 of the General Laws. The department of mental health shall develop county based informational resources required pursuant to this section within 45 days of the effective date of this act.

SECTION 17. Notwithstanding any general or special law to the contrary, the chief justice of the trial court shall promulgate rules, regulations and policies 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 45 days of the effective date of this act.

SECTION 18. Sections 1, 2, 3, 5, 6, 9, 10, 11, 12, 15, 16 and 17 shall take effect 45 days after passage.