

**HOUSE . . . . . No. 4539**

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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.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
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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  
2 striking out, in line 1 the words “to 131Q” and inserting in place thereof the following words:- to  
3 131X.

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

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

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

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

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

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

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

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

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

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

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

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

29 SECTION 4. Said section 121 of said chapter 140 is hereby further amended by inserting  
30 after the definition of “Machine gun”, as amended by section 20 of chapter 110 of the acts of  
31 2017, the following 2 definitions:-

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

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

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

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

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

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

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

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

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

56 SECTION 9. Section 131 of said chapter 140, is hereby amended by striking out, in line  
57 248, as so appearing, the first time it appears, the word “or”.

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

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

63 SECTION 12. Said chapter 140 is hereby further amended by inserting after section  
64 131Q the following 7 sections:-

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

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

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

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

74 (iii) identify the number, types, and locations of any firearms, rifles, shotguns, machine  
75 guns, weapons or ammunition the petitioner believes to be in the respondent's current control,  
76 ownership, or possession;

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

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

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

85 (d) The petitioner's residential address, residential telephone number and workplace  
86 name, address and telephone number, contained within the records of the court related to a  
87 petition shall be confidential and withheld from public inspection, except by order of the court;  
88 provided, however, that the petitioner's residential address and workplace address shall appear  
89 on the court order and shall be accessible to the respondent and the respondent's attorney unless  
90 the petitioner specifically requests, and the court orders, that this information be withheld from  
91 the order. All confidential portions of the records shall be accessible at all reasonable times to the  
92 petitioner and petitioner's attorney, the licensing authority of the municipality where the

93 respondent resides and to law enforcement officers, if such access is necessary in the  
94 performance of their official duties. Such confidential portions of the court records shall not be  
95 deemed to be public records under the provisions of clause twenty-sixth of section 7 of chapter 4.

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

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

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

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

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

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

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

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

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

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

145 Upon receipt of service of an extreme risk protection order the respondent shall  
146 immediately surrender their license to carry firearms or a firearm identification card and all  
147 firearms, rifles, shotguns, machine guns, weapons or ammunition in their possession to the local  
148 licensing authority serving the order, within twenty-four hours of granting said order in  
149 accordance with section 129D; provided, however, that nothing in this section or in said section  
150 129D shall allow the respondent to: (i) transfer any firearms, rifles, shotguns, machine guns,  
151 weapons or ammunition required to be surrendered, or surrendered, by the respondent to anyone  
152 other than a licensed dealer; or (ii) maintain control, ownership or possession of any firearms,  
153 rifles, shotguns, machine guns, weapons or ammunition during the pendency of any appeal of an  
154 extreme risk protection order; and provided further that, notwithstanding section 129D, if the  
155 licensing authority cannot reasonably ascertain a lawful owner of firearms, rifles, shotguns,  
156 machine guns, weapons or ammunition surrendered pursuant to extreme risk protection order  
157 within 180 days of the expiration or termination of the extreme risk protection order the licensing  
158 authority may, in its discretion, trade or dispose of surplus, donated, abandoned or junk firearms,

159 rifles, shotguns, machine guns, weapons or ammunition to properly licensed distributors or  
160 firearms dealers and the proceeds of such sale or transfer shall be remitted or credited to the  
161 municipality in which the licensing authority presides to be used for violence reduction or  
162 suicide prevention Any violation of this subsection shall be punishable by a fine of not more than  
163 \$5,000, or by imprisonment for not more than 2 ½ years in a house of correction, or by both such  
164 fine and imprisonment.

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

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

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

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

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

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

204 notify the petitioner of the termination of the extreme risk protection order and the return of a  
205 license to carry firearms or firearm identification card and the return of any firearms, rifles,  
206 shotguns, machine guns, weapons or ammunition to the respondent.

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

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

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

231           Upon issuance of an emergency extreme risk protection order pursuant to this section, the  
232 clerk magistrate of the court shall notify the respondent pursuant to subsection (e) of section  
233 131S.

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

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

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

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

271 respondent, shall be punished by a fine of no less than \$2,500 and no more than \$5,000 or by  
272 imprisonment for no more than 2 ½ years in the house of correction or by both such fine and  
273 imprisonment.

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

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

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

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

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

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

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

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

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

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

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

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

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

309 SECTION 13. Notwithstanding any general or special law to the contrary, the chief  
310 justice of the trial court shall promulgate rules, regulations and policies and shall develop and

311 prepare instructions, brochures, petitions, forms and other material required pursuant to section  
312 131X of chapter 140 of the General Laws within 45 days of the effective date of this act.

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