

~~774539~~

774517, as

remembered

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.

X ✓

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.

X

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:-

SEE INSERT B

"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.

up to

(B)

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

X ✓

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

X ✓

"Court", 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.

X ✓

14 "Family or household member", a person who:

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

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

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

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

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

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

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

*as so appearing,*

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

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

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

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

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

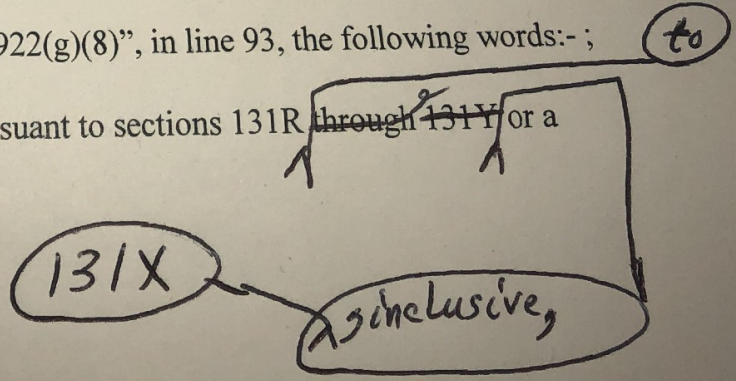
37 SECTION 6. Said section 121 of said chapter 140 is hereby further amended by inserting  
38 after the definition of "Shotgun", as so appearing, the following <sup>2</sup> definitions:-

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

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

46 SECTION 7. Section 129B of said chapter 140, as <sup>50</sup> appearing in the 2016 Official Edition,  
47 is hereby amended by striking out, in line 90, the first time it appears, the word "or".

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



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

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

131X  
inclusives

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

59 SECTION 12. Said chapter 140 is hereby <sup>further</sup> amended by inserting after section 131Q the  
60 following ~~IT~~ sections:-

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

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

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

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

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

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;  
(iii) identify the number.

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

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

79  
80 (c) No fees for filing or service of process may be charged by a court or any public  
81 agency to a petitioner filing a petition pursuant to this section.

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

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

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

98  
99 (b) Notwithstanding the provisions of subsection (a), the court shall, within 2 days of  
100 receipt of a petition made pursuant to section 131R, conduct a hearing on the petition if the  
101 respondent files an affidavit that a firearm, rifle, shotgun, machine gun, weapon or ammunition is  
102 required in the performance of the respondent's employment.

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

108  
109 (d) Upon granting a petition, the court shall issue an extreme risk protection order and  
110 shall order the respondent to surrender all firearms, rifles, shotguns, machine guns, weapons and  
111 ammunition which the respondent then controls, owns or possesses, to the licensing authority of  
112 the municipality where the respondent resides. The court shall enter written findings as to the  
113 basis of its order. X ✓

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7 of 14

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. X ✓



(D) ✓

The court may modify its order at any subsequent time upon motion by either party. When the petitioner's address is inaccessible 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 respondent. In no event shall the court disclose any such inaccessible address.

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

at the best known address

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

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.

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

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

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

, within twenty-four hours of granting said order

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

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

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

(C) ✓

; 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; 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.

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X ✓

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

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

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

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

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

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

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

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

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

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

225

(c) Upon receipt of service of an extreme risk protection order pursuant to this section,

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the respondent shall immediately surrender their license to carry firearms or firearm

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identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition to

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the local licensing authority serving the order as provided in subsection (f) of section 131S.

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Section 131U. (a) <sup>(i)</sup> ~~The~~ clerk magistrate of the court shall forward a copy of an extreme

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risk protection order <sup>(ii)</sup> issued pursuant to section 131S or section 131T <sup>(iii)</sup> the same day such order is

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~~issued to the licensing authority; the commissioner of probation; the department of criminal~~

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justice information services who shall transmit the report, pursuant to paragraph (h) of section

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167A of chapter 6, to the attorney general of the United States to be included in the National

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Instant Criminal Background Check System; and <sup>(iv)</sup> any other federal or state computer-based

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systems used by law enforcement or others to identify prohibited purchasers of firearms. Upon

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the expiration or termination of an extreme risk protection order issued pursuant to section 131S

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or section 131T, the court shall transmit a report containing the respondent's name and

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identifying information, a statement describing the respondent's alleged conduct and relationship

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to the petitioner and an explanation that the order is no longer current or valid ~~to the licensing~~

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~~authority; the department of criminal justice information services who shall transmit the report,~~

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~~pursuant to paragraph (h) of section 167A of chapter 6, to the attorney general of the United~~

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~~States to be included in the National Instant Criminal Background Check System; and any other~~

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federal or state computer-based systems used by law enforcement or others to identify prohibited

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purchasers of firearms.

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Section 131V. (a) Any person who files a petition for an extreme risk protection order,

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knowing the information in the petition to be materially false or with an intent to harass the

On the same day that

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)



no less than \$2,500 and

247 respondent, shall be punished by a fine of no more than \$5,000 or by imprisonment for no more  
248 than 2 1/2 years in the house of correction. or by both such fine and imprisonment

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

131X

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

131Y

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

SEE INSERT  
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policies

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

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

(l) 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 this section 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 131X. (a) Sections 131R to 131X, 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.

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

H4517

police



(A)

Section 131Z. The court shall annually, on or before December thirty-first, 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 Joint Committee on Public Safety and Homeland Security; The Joint Committee on the Judiciary; the Joint Committee on Mental Health Substance Use and Recovery; and the House and Senate Clerks. 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 forfeiture subject to Section 131X;
- (3) The number of emergency extreme risk protective order petitions filed;
- (4) The number of emergency extreme risk protective order petitions that lead to a respondent's forfeiture subject to Section 131X;
- (5) The number of extreme risk protective order or emergency extreme risk protective order petitions filed that are deemed to be fraudulent;
- (6) The race and ethnicity of the petitioner and respondent;
- (7) The gender and gender identity of the petitioner and respondent;
- (8) The data on the duration of extreme risk protection orders.