

HOUSE No. 2325

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act concerning the protection of persons from domestic violence.

PETITION OF:

NAME:

Aaron Michlewitz

DISTRICT/ADDRESS:

3rd Suffolk

HOUSE No. 2325

By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 2325) of Aaron Michlewitz relative to the powers of police during domestic violence situations. The Judiciary.

The Commonwealth of Massachusetts

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

An Act concerning the protection of persons from domestic violence.

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. Chapter 209A of the General Laws is hereby amended in Section 6 by
2 adding the following language at the end:

3 In addition to a law enforcement officer’s authority to seize any weapon that is
4 contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable
5 cause to believe that an act of domestic violence has been committed shall:

6 (a)question persons present to determine whether there are weapons on the premises; and

7 (b)upon observing or learning that a weapon is present on the premises, seize any weapon
8 that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a
9 law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize
10 any firearm purchaser identification card or permit to purchase a handgun issued to the person
11 accused of the act of domestic violence.

12 A law enforcement officer shall deliver all weapons, firearms purchaser identification
13 cards and permits to purchase a handgun seized pursuant to this section to the relevant District
14 Attorney's office and shall append an inventory of all seized items to the domestic violence
15 report.

16 The District Attorney's office shall retain the relevant firearms until the charges of
17 domestic abuse, if there are any, are either dropped or the matter has been settled in Court. Once
18 that occurs the, owner of the firearm may petition the District Attorney's Office for return of any
19 weapons, firearms purchaser identification cards and permits to purchase a handgun that were
20 seized by a law enforcement officer. The District Attorney's office shall have 45 days to respond
21 to the owner's petition by either returning the seized weapons, or by filing a petition with a Judge
22 in District Court justifying why it would be improper for the weapons to be returned to the
23 owner.

24 The District Attorney's office may object to the return of the weapons on the grounds that
25 the owner is unfit or that the owner poses a threat to the public in general or a person or persons
26 in particular.

27 If the prosecutor does not institute an action within 45 days of seizure, the seized
28 weapons shall be returned to the owner.

29 A hearing shall be held and a record made thereof within 45 days of the District
30 Attorney's petition provided above. No formal pleading and no filing fee shall be required as a
31 preliminary to such hearing. The hearing shall be summary in nature. Appeals from the results of
32 the hearing shall be to the District Court, or Boston Municipal Court as the case maybe, in
33 accordance with the law.

34 Nothing in this act shall impair the right of the State to retain evidence pending a criminal
35 prosecution.

36 If, after the hearing, the court determines that the weapons are not to be returned to the
37 owner, the court may:

38 (a)With respect to weapons other than firearms, order the prosecutor to dispose of the
39 weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate
40 person within 60 days; or

41 (b)Order the revocation of the owners firearms purchaser identification card or any
42 permit, license or authorization, in which case the court shall order the owner to surrender any
43 firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to
44 dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered
45 dealer of the firearms within 60 days; or

46 (c)Order such other relief as it may deem appropriate. When the court orders the weapons
47 forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall
48 dispose of the property. A civil suit may be brought to enjoin a wrongful failure to return a
49 seized firearm where the prosecutor refuses to return the weapon after receiving a written request
50 to do so and notice of the owner's intent to bring a civil action pursuant to this section. Failure of
51 the prosecutor to comply with the provisions of this act shall entitle the prevailing party in the
52 civil suit to reasonable costs, including attorney's fees, provided that the court finds that the
53 prosecutor failed to act in good faith in retaining the seized weapon.

54 No law enforcement officer, prosecutor, or agency shall be held liable in any civil action
55 brought by any person for failing to learn of, locate or seize a weapon pursuant to this act, or for
56 returning a seized weapon to its owner.