

S.141

An act relating to possession of firearms.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4017 is added to read:

§ 4017. PERSONS PROHIBITED FROM POSSESSING FIREARMS;

CONVICTION OF VIOLENT CRIME

(a) A person shall not possess a firearm if the person has been convicted of a violent crime.

(b) A person who violates this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(c) This section shall not apply to a person who is exempt from federal firearms restrictions under 18 U.S.C. § 925(c).

(d) As used in this section:

(1)(A) "Firearm" means:

(i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

(ii) the frame or receiver of any such weapon; or

(iii) any firearm muffler or firearm silencer.

(B) "Firearm" shall not include an antique firearm.

(2) “Antique firearm” means:

(A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898.

(B) Any replica of any firearm described in subdivision (A) of this subdivision (2) if the replica:

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol which is designed to use black powder or a black powder substitute and which cannot use fixed ammunition. As used in this subdivision (C), “antique firearm” shall not include a weapon which incorporates a firearm frame or receiver, a firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(3) “Violent crime” means:

(A)(i) A listed crime as defined in subdivision 5301(7) of this title
other than:

(I) lewd or lascivious conduct as defined in section 2601 of
this title;

(II) recklessly endangering another person as defined in section
1025 of this title;

(III) operating a vehicle under the influence of intoxicating
liquor or other substance with either death or serious bodily injury resulting as
defined in 23 V.S.A. § 1210(f) and (g);

(IV) careless or negligent operation resulting in serious bodily
injury or death as defined in 23 V.S.A. § 1091(b);

(V) leaving the scene of an accident resulting in serious bodily
injury or death as defined in 23 V.S.A. § 1128(b) or (c); or

(VI) a misdemeanor violation of chapter 28 of this title, relating
to abuse, neglect, and exploitation of vulnerable adults; or

(ii) a comparable offense and sentence in another jurisdiction if
the offense prohibits the person from possessing a firearm under 18 U.S.C.
§ 922(g)(1) or 18 U.S.C. § 921(a)(20).

(B) An offense involving sexual exploitation of children in violation
of chapter 64 of this title, or a comparable offense and sentence in another

jurisdiction if the offense prohibits the person from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C. § 921(a)(20).

(C) A violation of 18 V.S.A. § 4231(b)(2), (b)(3), or (c) (selling, dispensing, or trafficking cocaine); 4232(b)(2) or (b)(3) (selling or dispensing LSD); 4233 (b)(2), (b)(3), or (c) (selling, dispensing, or trafficking heroin); 4234(b)(2) or (b)(3) (selling or dispensing depressants, stimulants, and narcotics); 4234a(b)(2), (b)(3), or (c) (selling, dispensing, or trafficking methamphetamine); 4235(c)(2) or (c)(3) (selling or dispensing hallucinogenic drugs); 4235a(b)(2) or (b)(3) (selling or dispensing Ecstasy), or a comparable offense and sentence in another jurisdiction if the offense prohibits the person from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C. § 921(a)(20).

(D) A conviction of possession with intent to distribute a controlled substance other than marijuana in another jurisdiction if the offense prohibits the person from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C. § 921(a)(20).

Sec. 2. 20 V.S.A. § 2307 is amended to read:

§ 2307. FIREARMS RELINQUISHED PURSUANT TO RELIEF FROM
ABUSE ORDER; STORAGE; FEES; RETURN

* * *

(g)(1) A law enforcement agency, an approved federally licensed firearms dealer, or any other person that takes possession of firearms, ammunition, or weapons for storage purposes pursuant to this section shall not release the items to the owner without a court order unless the items are to be sold pursuant to subdivision (2)(A) of this subsection. If a court orders the release of firearms, ammunition, or weapons stored under this section, the law enforcement agency or firearms dealer in possession of the items shall make them available to the owner within three business days of receipt of the order and in a manner consistent with federal law. The Supreme Court may promulgate rules under 12 V.S.A. § 1 for judicial proceedings under this subsection.

(2)(A)(i) If the owner fails to retrieve the firearm, ammunition, or weapon and pay the applicable storage fee within 90 days of the court order releasing the items, the firearm, ammunition, or weapon may be sold for fair market value. Title to the items shall pass to the law enforcement agency or firearms dealer for the purpose of transferring ownership.

(ii) The law enforcement agency or approved firearms dealer shall make a reasonable effort to notify the owner of the sale before it occurs. In no event shall the sale occur until after the ~~court~~ Court issues a final relief from abuse order pursuant to 15 V.S.A. § 1103.

(iii) As used in this subdivision (2)(A), “reasonable effort” shall ~~include providing notice to the owner at least 21 days prior to the date of the sale via first class mail, certified restricted delivery~~ mean notice shall be served as provided for by Rule 4 of the Vermont Rules of Civil Procedure.

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Sec. 3. REPORT; VERMONT GUN SHOP PROJECT

(a) On or before January 31, 2016, the Department of Mental Health shall report to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services on the establishment of a Vermont version of the New Hampshire Gun Shop Project. The Department may satisfy the reporting requirement by providing testimony on the issue to the committees identified in this subsection.

(b) For purposes of the report required by this section, the Department of Mental Health shall consult with:

- (1) the Vermont Suicide Prevention Coalition;
- (2) the Vermont Federation of Sportsmen’s Clubs, and other firearms owners organizations;
- (3) gun shop owners and other firearms retailers; and
- (4) any other parties that may assist in preparing the report.

Sec. 4. 13 V.S.A. § 4824 is added to read:

§ 4824. REPORTING; NATIONAL INSTANT CRIMINAL

BACKGROUND CHECK SYSTEM

(a) If the Court finds that a person is a person in need of treatment pursuant to section 4822 of this title, the Court Administrator shall within 48 hours report the name of the person subject to the order to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) A report required by this section shall be submitted notwithstanding 18 V.S.A. § 7103 or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice

to the person who is the subject of the report that the person is not permitted to possess a firearm.

Sec. 5. 18 V.S.A. § 7103 is amended to read:

§ 7103. DISCLOSURE OF INFORMATION

(a) All certificates, applications, records, and reports, other than an order of a court made for the purposes of this part of this title, and directly or indirectly identifying a patient or former patient or an individual whose hospitalization or care has been sought or provided under this part, together with clinical information relating to such persons shall be kept confidential and shall not be disclosed by any person except insofar:

(1) as the individual identified, the individual's health care agent under section 5264 of this title, or the individual's legal guardian, if any (~~or, or~~, if the individual is an unemancipated minor, his or her parent or legal ~~guardian~~), guardian shall consent in writing; ~~or~~

(2) as disclosure may be necessary to carry out any of the provisions of this part; ~~or~~

(3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest; or

(4) as the disclosure is made to comply with the reporting requirements of section 7617a of this title or 13 V.S.A. § 4824.

* * *

Sec. 6. 18 V.S.A. § 7617a is added to read:

§ 7617a. REPORTING; NATIONAL INSTANT CRIMINAL

BACKGROUND CHECK SYSTEM

(a) If the Court issues a hospitalization order pursuant to subdivision 7617(b)(1) or (2) of this title or a nonhospitalization order pursuant to subdivision 7617(b)(3), the Court Administrator shall within 48 hours report the name of the person subject to the order to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) A report required by this section shall be submitted notwithstanding section 7103 of this title or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose

permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not permitted to possess a firearm.

Sec. 7. 13 V.S.A. § 4825 is added to read:

§ 4825. PERSONS PROHIBITED BY FEDERAL LAW FROM

POSSESSING FIREARMS DUE TO MENTAL ILLNESS;

PETITION FOR RELIEF FROM DISABILITY

(a)(1) A person who is prohibited from possessing firearms by 18 U.S.C. § 922(g)(4) may petition the Family Division of the Superior Court for an order that the person be relieved from the firearms disability imposed by that section. When the petition is filed the petitioner shall provide notice and a copy of the petition to the State's Attorney or the Attorney General, who shall be the respondent in the matter. The petition shall be filed in the county where the offense or the adjudication occurred.

(2)(A) The Court shall grant a petition filed under this section without hearing if neither the State's Attorney nor the Attorney General files an objection within six months after receiving notice of the petition. If the Court

grants the petition pursuant to this subdivision, the Court shall make findings and issue an order in accordance with this section.

(B) The Court shall grant the petition filed under this section without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the Court, and the Court shall make findings and issue an order in accordance with this section.

(b) In determining a petition filed under this section, unless the petition is granted pursuant to subdivision (a)(2) of this subsection, the Court shall consider:

(1) the circumstances regarding the firearms disabilities imposed on the person by 18 U.S.C. § 922(g)(4);

(2) the petitioner's record, including his or her mental health and criminal history records; and

(3) the petitioner's reputation, as demonstrated by character witness statements, testimony, or other character evidence.

(c)(1) The Court shall grant a petition filed under this section if it finds that the petitioner has demonstrated by a preponderance of the evidence that the person is no longer a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) As the terms are used in this subsection, a finding that the person is no longer a person in need of treatment shall also mean that granting the relief will not be contrary to the public interest.

(d) If a petition filed under this section is granted, the Court shall enter an order declaring that the basis under which the person was prohibited from possessing firearms by 18 U.S.C. § 922(g)(4) no longer applies. The Court shall inform the Federal Bureau of Investigation, the U.S. Attorney General, and the National Instant Criminal Background Check System of its decision.

(e) If the Court denies the petition, the petitioner may appeal the denial to the Vermont Supreme Court. The appeal shall be on the record, and the Supreme Court may review the record de novo.

(f) If the Court denies a petition filed under this section, no further petition shall be filed by the person until at least one year after the order of the trial court, or of the Supreme Court if an appeal is taken, becomes final.

(g) At the time a petition is filed pursuant to this section, the respondent shall give notice of the petition to a victim of the offense, if any, who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the Court a statement. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(h) As used in this section, “reasonable effort” means attempting to contact the victim by first class mail at the victim’s last known address and by telephone at the victim’s last known telephone number.

Sec. 8. REPORTING; DEPARTMENT OF MENTAL HEALTH; COURT
ADMINISTRATOR

(a) The Department of Mental Health shall report to the Court Administrator on or before October 1, 2015 the names of all persons under the custody of the Department who on that date are subject to a hospitalization order issued pursuant to 18 V.S.A. § 7617(b)(1) or (2), a nonhospitalization order issued pursuant to 18 V.S.A. § 7617(b)(3), or an order that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822. The Court Administrator shall report the names provided pursuant to this section to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

(b) Reports required by this section shall be submitted notwithstanding 18 V.S.A. § 7103 or any other provision of law.

(c) A report required by this section is confidential and exempt from public inspection and copying under the Public Records Act except as provided in

subsection (d) of this section. The report shall not be used for any purpose other than for submission to the National Instant Criminal Background Check System pursuant to this section, where it may be used for any purpose permitted by federal law, including in connection with the issuance of a firearm-related permit or license.

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not thereafter permitted to possess a firearm.

Sec. 9. REPORTS

(a) On or before January 15, 2018, the Court Administrator, in consultation with the Commissioner of Mental Health and the Executive Director of State's Attorneys and Sheriffs, shall report to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services on data compiled with respect to the legal requirements established by this act. The report shall include:

(1)(A) The number of persons reported to the National Instant Criminal Background Check System since October 1, 2015 pursuant to:

(i) 13 V.S.A. § 4824 (persons in custody of the Department of Mental Health as the result of an order issued under 13 V.S.A. § 4822); and

(ii) 18 V.S.A. § 7617a (persons in custody of the Department of Mental Health as the result of a hospitalization order issued under 18 V.S.A. § 7617(b)(1) or (2), or a nonhospitalization order issued under 18 V.S.A. § 7617(b)(3)); and

(B) with respect to each of the persons reported to the National Instant Criminal Background Check System pursuant to 13 V.S.A. § 4824 and 18 V.S.A. § 7617a since October 1, 2015, whether the person filed a petition for relief from disabilities pursuant to 13 V.S.A. § 4825, and whether the petition was granted, denied, or remains pending.

(2) The total number of petitions for relief from disabilities filed pursuant to 13 V.S.A. § 4825 since October 1, 2015, and the number of those petitions that were granted, denied, and remain pending.

(b) On or before January 15, 2018, the Executive Director of State's Attorneys and Sheriffs shall report to the Senate and House Committees on Judiciary the number of persons charged with violating 13 V.S.A. § 4017 since July 1, 2015, and the number of charges that resulted in conviction, dismissal, and acquittal.

Sec. 10. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1, 2, 3, 8, 9, and this section shall take effect on July 1, 2015.

(b) Secs. 4, 5, and 6 shall take effect on October 1, 2015, and shall apply to hospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(1) or (2),

nonhospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(3), or orders that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822 issued on or after that date.

(c) Sec. 7 shall take effect on October 1, 2015.