

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 141 entitled  
3 “An act relating to possession of firearms” respectfully reports that it has  
4 considered the same and recommends that the House propose to the Senate that  
5 the bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

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

8 § 4017. PERSONS PROHIBITED FROM POSSESSING FIREARMS;

9 CONVICTION OF VIOLENT CRIME

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

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

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

16 (d) As used in this section:

17 (1)(A) “Firearm” means:

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

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

1                   (iii) any firearm muffler or firearm silencer.

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

3                   (2) "Antique firearm" means:

4                   (A) Any firearm (including any firearm with a matchlock, flintlock,  
5 percussion cap, or similar type of ignition system) manufactured in or before  
6 1898.

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

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

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

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

1           (3) “Violent crime” means:

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

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

6                           (II) recklessly endangering another person as defined in section  
7           1025 of this title;

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

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

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

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

17                           (ii) a comparable offense and sentence in another jurisdiction if  
18          the offense prohibits the person from possessing a firearm under 18 U.S.C.  
19          § 922(g)(1) or 18 U.S.C. § 921(a)(20).

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

1 jurisdiction if the offense prohibits the person from possessing a firearm under  
2 18 U.S.C. § 922(g)(1) or 18 U.S.C. § 921(a)(20).

3 (C) A violation of 18 V.S.A. § 4231(b)(2), (b)(3), or (c) (selling,  
4 dispensing, or trafficking cocaine); 4232(b)(2) or (b)(3) (selling or dispensing  
5 LSD); 4233 (b)(2), (b)(3), or (c) (selling, dispensing, or trafficking heroin);  
6 4234(b)(2) or (b)(3) (selling or dispensing depressants, stimulants, and  
7 narcotics); 4234a(b)(2), (b)(3), or (c) (selling, dispensing, or trafficking  
8 methamphetamine); 4235(c)(2) or (c)(3) (selling or dispensing hallucinogenic  
9 drugs); 4235a(b)(2) or (b)(3) (selling or dispensing Ecstasy), or a comparable  
10 offense and sentence in another jurisdiction if the offense prohibits the person  
11 from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C.  
12 § 921(a)(20).

13 (D) A conviction of possession with intent to distribute a controlled  
14 substance other than marijuana in another jurisdiction if the offense prohibits  
15 the person from possessing a firearm under 18 U.S.C. § 922(g)(1) or 18 U.S.C.  
16 § 921(a)(20).

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

18 § 2307. FIREARMS RELINQUISHED PURSUANT TO RELIEF FROM  
19 ABUSE ORDER; STORAGE; FEES; RETURN

20 \* \* \*

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

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

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

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

5 \* \* \*

6 Sec. 3. REPORT; NEW HAMPSHIRE VERMONT GUN SHOP PROJECT

7 (a) On or before December 15, 2015, January 31, 2016, the Departments of  
8 Public Safety and of Mental Health shall report to the Senate and House  
9 Committees on Judiciary, the Senate Committee on Health and Welfare, and  
10 the House Committee on Human Services on the establishment of a Vermont  
11 version of the New Hampshire Gun Shop Project. The Department may satisfy  
12 the reporting requirement by providing testimony on the issue to the  
13 committees identified in this subsection.

14 (b) The report required by this section shall include the following  
15 provisions:

16 (1) A review of the methods and strategies the New Hampshire Gun  
17 Shop Project employs to help gun shop owners avoid selling firearms to  
18 suicidal people.

19 (2) A description of the manner in which suicide prevention outreach  
20 information can be transmitted to gun owners and friends of gun owners at gun  
21 shops, gun ranges, and gun shows.

1 ~~(3) An analysis of whether the New Hampshire Gun Shop Project could~~  
2 ~~be effectively implemented in Vermont to reduce the number of suicide deaths~~  
3 ~~by gunshot in this State.~~

4 (c) For purposes of ~~developing~~ the report required by this section, the  
5 ~~Departments of Public Safety~~ and of Mental Health shall consult with:

6 (1) the Vermont Suicide Prevention Coalition;

7 ~~(2) principals in the New Hampshire Gun Shop Project;~~

8 (2) the Vermont Federation of Sportsmen's Clubs, and other firearms  
9 ~~owners organizations;~~

10 (3) ~~gun shop owners and other firearms retailers; and~~

11 (4) ~~any other parties that may assist in preparing the report.~~

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

13 § 4824. REPORTING; NATIONAL INSTANT CRIMINAL

14 BACKGROUND CHECK SYSTEM

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

1        (b) A report required by this section shall be submitted notwithstanding  
2        18 V.S.A. § 7103 or any other provision of law.

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

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

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

15       § 7103. DISCLOSURE OF INFORMATION

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



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

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

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

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

12 \* \* \*

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

14 § 7617a. REPORTING; NATIONAL INSTANT CRIMINAL

15 BACKGROUND CHECK SYSTEM

16 (a) If the Court issues a hospitalization order pursuant to subdivision  
17 7617(b)(1) or (2) of this title or a nonhospitalization order pursuant to  
18 subdivision 7617(b)(3), the Court Administrator shall within 48 hours report  
19 the name of the person subject to the order to the National Instant Criminal  
20 Background Check System, established by Section 103 of the Brady Handgun  
21 Violence Prevention Act of 1993. The report shall include only information

1 sufficient to identify the person, the reason for the report, and a statement that  
2 the report is made in accordance with 18 U.S.C. § 922(g)(4).

3 (b) A report required by this section shall be submitted notwithstanding  
4 18 V.S.A. § 7103 of this title or any other provision of law.

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

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

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

17 § 4825. PERSONS PROHIBITED BY FEDERAL LAW FROM

18 POSSESSING FIREARMS DUE TO MENTAL ILLNESS;

19 PETITION FOR RELIEF FROM DISABILITY

20 (a)(1) A person who is prohibited from possessing firearms by 18 U.S.C.  
21 § 922(g)(4) may petition the Family Division of the Superior Court for an

1 order that the person be relieved from the firearms disability imposed by that  
2 section. **When the petition is filed** the petitioner shall provide notice **and a**  
3 **copy** of the petition to the State's Attorney or the Attorney General, who shall  
4 be the respondent in the matter.

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

9 (b) In determining a petition filed under this section, the Court shall  
10 consider:

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

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

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

17 (c)(1) The Court shall grant a petition filed under this section if it finds that  
18 the petitioner has demonstrated by a preponderance of the evidence that:

19 (A) at least **?? 18 ??** months have elapsed since the date that the  
20 person was last in the custody of the Department of Mental Health; and

1           (B) the person is no longer a person in need of treatment as defined in  
2           18 V.S.A. § 7101(17).

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

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

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

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

17           (g) At the time a petition is filed pursuant to this **chapter section**, the  
18           respondent shall give notice of the petition to **any** a victim of the offense, **if**  
19           **any**, who is known to the respondent. The victim shall have the right to offer  
20           the respondent a statement prior to any stipulation or to offer the Court a  
21           statement. The disposition of the petition shall not be unnecessarily delayed

1 pending receipt of a victim's statement. The respondent's inability to locate a  
2 victim after a reasonable effort has been made shall not be a bar to granting a  
3 petition.

4 (h) As used in this section, "reasonable effort" means attempting to contact  
5 the victim by first class mail at the victim's last known address and by  
6 telephone at the victim's last known telephone number.

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

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

1        (b) Reports required by this section shall be submitted notwithstanding  
2        18 V.S.A. § 7103 or any other provision of law.

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

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

14       Sec. 9. REPORTS

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

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

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

5                   (ii) 18 V.S.A. § 7617a (persons in custody of the Department of  
6                   Mental Health as the result of a hospitalization order issued under 18 V.S.A.  
7                   § 7617(b)(1) or (2), or a nonhospitalization order issued under 18 V.S.A.  
8                   § 7617(b)(3)); and

9                   (B) with respect to each of the persons reported to the National  
10                  Instant Criminal Background Check System pursuant to 13 V.S.A. § 4824 and  
11                  18 V.S.A. § 7617a since October 1, 2015, whether the person filed a petition  
12                  for relief from disabilities pursuant to 13 V.S.A. § 4825, and whether the  
13                  petition was granted, denied, or remains pending.

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

17                  (b) On or before January 15, 2018, the Executive Director of the  
18                  Department of State's Attorneys and Sheriffs shall report to the Senate and  
19                  House Committees on Judiciary the number of persons charged with violating  
20                  13 V.S.A. § 4017 since July 1, 2015, and the number of charges that resulted in  
21                  conviction, dismissal, and acquittal.

1       Sec. 10. EFFECTIVE DATES; APPLICABILITY

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

3           (b) Secs. 4, 5, 6, and 7 shall take effect on October 1, 2015, and shall apply  
4 to hospitalization orders issued pursuant to subdivision 18 V.S.A. § 7617(b)(1)  
5 or (2), nonhospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(3), or  
6 orders that a person is a person in need of treatment pursuant to 13 V.S.A.  
7 § 4822 issued on or after that date.

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15       (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE