

S.141; An Act Relating to Possession of Firearms

Section by Section Summary

Sec. 1.

This section establishes a Vermont criminal offense for possession of a firearm by a person who has been convicted of a violent crime. All 49 other states and the federal government already have a similar crime on the books. However, the United States Attorney and the BATF do not have the time or resources to prosecute these offenses in federal court, and many prosecutions do not go forward for that reason. Creating a Vermont offense permits the charge to be brought by a State's Attorney in a Vermont court.

The new offense prohibits a person who has been convicted of a violent crime from possessing a firearm. A violation is punishable as a two-year misdemeanor. "Firearm" is defined the same way as in the federal statute, which excludes antique firearms and muzzle loaders. This means a person can still possess these types of firearms without violating the new law, even if the person has been convicted of one of the qualifying offenses.

A violent offense is defined to include several types of offenses. First, it includes "listed crime," which is a legislatively created list of major offenses that has been used for many years to distinguish between serious and less serious offenses. However, the bill excludes six offenses from the usual "listed crime" definition: lewd or lascivious conduct; reckless endangerment; operating a vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting; careless or negligent operation resulting in serious bodily injury or death; leaving the scene of an accident resulting in serious bodily injury or death; and a misdemeanor violation relating to abuse, neglect, or exploitation of a vulnerable adult. Second, "violent offense" includes an offense involving sexual exploitation of children, such as using a child in a sexual performance. Lastly, "violent offense" includes selling, dispensing, or trafficking significant amounts of illegal drugs (where the amount is so great that the penalty is a 10-year felony), or possessing a drug with the intent to distribute it under the law of another state (since Vermont does not have a possession with intent to distribute statute). A violent offense also generally includes an offense in another jurisdiction comparable to one on this list if the penalty would prohibit a person from possessing a firearm under federal law.

Sec. 2.

Last year in Act 191 (the Fee Bill), the General Assembly created a procedure for a person who is required to relinquish his or her firearms pursuant to a relief from abuse order to store the firearm with a law enforcement agency, an approved federally licensed firearms dealer, or

another person. If the applicable storage fee is not paid then the weapon may be sold after a reasonable effort is made to notify the owner of the sale. Act 191 defined “reasonable effort” to mean providing notice of the sale by first class mail, certified restricted delivery. Section 2 of S.141, amends that definition and provides that reasonable notice means notice as provided for in the Vermont Rules of Civil Procedure. This means that notice must be provided through personal service, and only if that proves impossible can notice be provided by mail or by publication.

Sec. 3.

This section requires the Departments of Public Safety and of Mental Health to report on the establishment of a Vermont version of the New Hampshire Gun Shop Project, an initiative in New Hampshire to reduce the number of firearms-related suicide deaths by helping gun shop owners and friends of gun owners avoid providing firearms to suicidal persons. Under the Project, suicide prevention outreach information is provided to gun owners and friends of gun owners at gun shops, gun ranges, and gun shows. This section requires DPS and DMH to analyze whether the Project could be effectively implemented in Vermont to reduce the number of suicide deaths by gunshot in this State.

Secs. 4, 5, and 6.

Sections 4, 5, and 6 all deal with reporting the names of some persons prohibited by federal law from possessing firearms for mental health reasons to the National Instant Criminal Background Check System (known as NICS). Federal law very clearly prohibits broad categories of persons from possessing firearms for mental health reasons. This bill has no effect on that federal prohibition, and does not add anyone to it or expand it in any way. All this bill does is require the names of some of the people who are already covered by the federal prohibition to be reported to NICS. This reporting is important because it currently is not being done, which means a seriously dangerous and mentally ill person could purchase a gun at a firearms dealer right now and the person’s name will not appear when the dealer conducts its federally-required background check. According to the Congressional Research Service, 38 states already do this type of reporting, and S.141 requires for a certain group of persons that it be done in Vermont as well.

It is important to note here that the bill does not sweep as widely as the federal law since it only requires reporting of persons who have been found by a court to be a danger to themselves or others. Section 4 relates to criminal proceedings and requires that a report be made if the person is found not responsible for a crime by reason of insanity or incompetent to stand trial due to a mental illness and is committed to the Department of Mental Health after a determination by the Criminal Division of the Superior Court that the person is a danger to himself or herself or others. Section 6 relates to civil commitment proceedings and requires that a report be made if the person is subject to a hospitalization order or non-hospitalization order after a determination by the Family Division of the Superior Court that the person is a danger to himself or herself or

others. The reports are confidential and only include information sufficient to identify the person, the reason for the report, and a statement that it is made in accordance with the federal law that prohibits persons from possessing firearms for mental health reasons. The person who is the subject of the report is also provided with a copy, which must inform the person that he or she is thereafter prohibited from possessing a firearm. Confidentiality is also addressed in Section 5, which is a technical provision that permits the reports to be made without violating state confidentiality laws.

Sec. 7.

Section 7 establishes a process through which a person who has been prohibited from possessing a firearm for mental health reasons can petition the Court to have his or her name taken off the NICS database. Vermont does not currently have such a procedure, and while there is a federal procedure on the books it is non-operational because Congress has intentionally defunded it for many years. So a Vermonter who is for mental health reasons banned from possessing firearms for mental health reasons has no way to get the ban lifted. Section 7 creates a way for a Vermonter in this situation to have his or her firearms rights restored.

Under this process, the person seeking to have the firearms prohibition lifted files a petition in the Civil Division of the Superior Court in the same way that a petition for expungement is filed. The Court considers the circumstances regarding the petitioner's case, including his or her mental health and criminal history records, character evidence, and statements from known victims who wish to provide them. The Court will grant the petition if it finds that at least 18 months have elapsed since the date that the person was last in the custody of the Department of Mental Health and that the person is no longer a person in need of treatment (which means that the person is no longer a danger to himself, herself, or others). If the petition is denied, the person may refile it at a later date, but must wait at least one year before doing so.

Several pieces of this section are required by federal law in order for the program to receive approval from ATF and to qualify for federal grant money. For example, the person's right to appeal and to have the record on appeal reviewed de novo by the Supreme Court is a federal requirement, as is the bill's provision that finding a person is no longer in need of treatment also means that granting the relief will not be contrary to the public interest. With these pieces in place, the Committee hopes that Vermonters who recover from their mental health issues will for the first time have a federally-approved program available to have their firearms rights returned.

Sec. 8.

Since the bill is prospective and only applies to court findings of dangerousness made after the effective date, Section 8 provides a mechanism to report the names of those who have been previously found dangerous and for that reason are currently in the custody of the Department of Mental Health when the bill is enacted. Section 8 requires that by October 1, 2015, the

Department must report the names of those persons to the Court Administrator, who then reports them to NICS in the same manner as will be done for other proceedings going forward.

Sec. 9.

Section 9 is the effective date section, which provides that the violent criminals in possession, fee for storage, and New Hampshire Gun Shop Project provisions are effective July 1, 2015, while the provisions related to mental health reporting are effective October 1, 2015.