

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 currently have a similar crime. A violation is punishable as a two-year misdemeanor.

A violent crime is defined to include several types of offenses. First, it includes “listed crimes,” a legislatively created list of major offenses, though it excludes several misdemeanor and motor vehicle offenses from the usual “listed crime” definition. 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. “Firearm” is defined the same way as in the federal law, which excludes antique firearms and muzzle loaders.

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.

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). According to the Congressional Research Service, 38 states currently do some version of this type of reporting, and S.141 requires for a certain group of persons that it be done in Vermont as well.

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 federal law. 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. Section 5 is a technical provision that permits these 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. 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 grants the petition if it finds that at least 18 months have elapsed since the person was last in DMH custody and that the person is no longer a danger to himself, herself, or others.

Sec. 8, 9.

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.

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.