

Proposed revisions: Anne Donahue, 5-8-15

S.141

An act relating to possession of firearms

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1 and 2. [omitted]

Sec. 3. ~~REPORT;~~ NEW HAMPSHIRE GUN SHOP PROJECT

~~(a) On or before December 15, 2015, the Departments of Public Safety and 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 its progress in helping to coordinate the establishment of a Vermont version of the New Hampshire Gun Shop Project.*~~

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

- ~~(1) A review of the methods and strategies the New Hampshire Gun Shop Project employs to help gun shop owners avoid selling firearms to suicidal people.~~
- ~~(2) A description of the manner in which suicide prevention outreach information can be transmitted to gun owners and friends of gun owners at gun shops, gun ranges, and gun shows.~~
- ~~(3) An analysis of whether the New Hampshire Gun Shop Project could be effectively implemented in Vermont to reduce the number of suicide deaths by gunshot in this State.~~

~~(c) (b) For purposes of developing the report required by this section, the Departments of Public Safety and of Mental Health *shall assist in and support the coordination of the following groups in the establishment of a Vermont version of the New Hampshire Gun Shop Project:* with the following consult with:~~

(1)the Vermont Suicide Prevention Coalition;

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

~~(3)(2)the Vermont Federation of Sportsmen's Clubs, and other firearms~~

owners organizations;

~~(4)(3)gun shop owners and other firearms retailers; and~~

~~(5)(4)any other interested parties, that may assist in preparing the report.~~

Sec. 4, 5 and 6; omitted; only one proposed change:

For the purposes of this act, the definition of a person in need of treatment in 18

V.S.A. § 7101(17) shall exclude (17)(B)(ii).

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) 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. The petitioner shall provide notice of the petition to the State's

Attorney or the Attorney General, who shall be an interested party. the respondent in

the matter.

(b)In determining a petition filed under this section, 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 all *relevant* 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~~ *unless* it finds ~~that~~ ~~the petitioner has demonstrated~~ by a preponderance of the evidence that:

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

(B) ~~the person *remains* 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, *the failure of the court to find*

~~*that the person remains a person in need of treatment, 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 chapter, the respondent
shall give notice of the petition to ~~any~~ *a* victim of ~~the~~ *an offense related to the
circumstances regarding the firearms disabilities, 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~~ *within three months after this statute*

takes effect 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

(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~~ *from three months after the effective date* ~~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 *from three months after the effective date* ~~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,~~ *from three months after the*
effective date and the number of those
petitions that were granted, denied, and remain pending.

(b) On or before January 15, 2018, the Executive Director of the
Department 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, 6, ~~and 7,~~ and 8 shall take effect ~~on October 1, 2015,~~ *when the*
federal Bureau of Alcohol, Tobacco and Firearms has certified the relief
from disabilities plan established in this section, and shall apply
to hospitalization orders issued pursuant to subdivision 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.