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H.422

Introduced by Representatives Grad of Moretown, Christie of Hartford, Cina
of Burlington, Copeland-Hanzas of Bradford, Deen of
Westminster, Donovan of Burlington, Head of South
Burlington, O'Sullivan of Burlington, Till of Jericho, and
Townsend of South Burlington

Referred to Committee on

Date:

Subject: Domestic assault; arrest or citation; confiscation of dangerous or
deadly weapons

Statement of purpose of bill as introduced: This bill proposes to require a law
enforcement officer to confiscate a dangerous or deadly weapon from a person
who is arrested or cited for domestic assault if the weapon is (1) in the
immediate possession or control of the person being arrested or cited; (2) in
plain view of the officer; or (3) discovered during a consensual search.

An act relating to ~~confiscation of dangerous or deadly weapons from a
person arrested or cited for domestic assault~~ *removal of firearms from a
person arrested or cited for domestic assault*

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

~~Sec. 1. 13 V.S.A. § 1048 is added to read:~~

~~§ 1048. CONFISCATION OF DANGEROUS OR DEADLY WEAPONS~~

1 ~~(a) When a law enforcement officer arrests or cites a person for domestic~~
2 assault in violation of this subchapter, the officer shall confiscate any
3 dangerous or deadly weapon that is:

4 (1) in the immediate possession or control of the person being arrested
5 or cited;

6 (2) in plain view of the officer; or

7 (3) discovered during a consensual search.

8 (b) The law enforcement agency in possession of a weapon confiscated
9 pursuant of his section shall return the weapon to the person from whom it was
10 confiscated within five days after confiscation unless:

11 (1) the weapon is being or may be used as evidence in a pending
12 criminal or civil proceeding;

13 (2) a court orders relinquishment of the weapon pursuant to 15 V.S.A.
14 chapter 21 (abuse prevention) or any other provision of law consistent with
15 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to
16 20 V.S.A. § 2307; or

17 (3) the person from whom it was confiscated declines to accept return of
18 the weapon.

19 (c) This section shall not be construed to permit conduct by a law
20 enforcement officer that violates the U.S. or Vermont Constitution.

21 ~~(d) As used in this section, "dangerous or deadly weapon" shall have the~~

1 ~~same meaning as in subdivision 4016(a)(2) of this title.~~

2 Sec. 2. EFFECTIVE DATE

3 ~~This act shall take effect on passage.~~

Sec. 1. FINDINGS

The General Assembly finds:

(1) The State of Vermont has a compelling interest in preventing domestic abuse.

(2) Domestic violence is often volatile, escalates rapidly, and is possibly fatal. The victim has a substantial interest in obtaining immediate relief because any delay may result in further injury or death. The State's compelling interest in protecting domestic violence victims from actual or threatened harm and safeguarding children from the effects of exposure to domestic violence justifies providing law enforcement officers with the authority to undertake immediate measures to stop the violence. For these reasons the State has a special need to remove firearms from a home where law enforcement has probable cause to believe domestic violence has occurred.

(3) The General Assembly recognizes that it is current practice for law enforcement to remove firearms from a domestic violence scene if the firearms are contraband or evidence of the offense. However, given the potential harm of delay during a domestic violence incident, this legislation authorizes law enforcement officers to temporarily remove other dangerous firearms from

~~persons arrested or cited for domestic violence while protecting rights guaranteed by the Vermont and U.S. Constitutions, and insuring that those firearms are returned to the owner as soon as doing so would be safe and lawful.~~

Sec. 2. 13 V.S.A. § 1048 is added to read:

§ 1048. REMOVAL OF FIREARMS

(a) When a law enforcement officer arrests or cites a person for domestic assault in violation of this subchapter, the officer may remove any firearm obtained pursuant to a search warrant or a judicially recognized exception to the warrant requirement if the removal is necessary for the protection of the officer or any other person.

(b)(1) The law enforcement agency in possession of a firearm removed pursuant to this section shall return it to the person from whom it was removed or to any other person whom the agency reasonably believes is an owner of the firearm within five days after removal if the person requests that the firearm be returned, unless:

(A) the firearm is being or may be used as evidence in a pending criminal or civil proceeding;

(B) a court orders relinquishment of the firearm pursuant to 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to

20 V.S.A. § 2307: or

(C) the person requesting the return is prohibited by law from possessing a firearm.

(2) A law enforcement officer who removes a firearm pursuant to this section shall provide notice of the procedure to obtain return of the firearm to the person from whom it was removed.

(c) This section shall not be construed to permit conduct by a law enforcement officer that violates the U.S. or Vermont Constitution.

(d)(1) A law enforcement officer shall not be subject to civil or criminal liability for acts or omissions made in reliance on the provisions of this section. This section shall not be construed to create a legal duty to a victim or to any other person, and no action may be filed based upon a claim that a law enforcement officer removed or did not remove a firearm as authorized by this section.

(2) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms removed, stored, or transported pursuant to this section. This subdivision shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(3) This section shall not be construed to limit the authority of a law enforcement agency to take any necessary and appropriate action, including

~~disciplinary action regarding an officer's performance in connection with this section.~~

Sec. 3. EFFECTIVE DATE

~~*This act shall take effect on September 1, 2017.*~~

Sec. 1. 13 V.S.A. § 1048 is added to read:

§ 1048. REMOVAL OF FIREARMS

(a)(1) When a law enforcement officer arrests, cites, or obtains an arrest warrant for a person for domestic assault in violation of this subchapter, the officer may remove any firearm:

(A) that is contraband or will be used as evidence in a criminal proceeding; or

(B) that is in the immediate possession or control of the person being arrested or cited, in plain view of the officer at the scene of the alleged domestic assault, or discovered during a lawful search, including under exigent circumstances, if the removal is necessary for the protection of the officer, the alleged victim, the person being arrested or cited, or a family member of the alleged victim or of the person being arrested or cited.

(2) As used in this section, "family member" means any family member, a household member as defined in 15 V.S.A. § 1102(1), or a child of a family member or household member.

(b) A person cited for domestic assault shall be arraigned on the next

business day after the citation is issued except for good cause shown. Unless the person is held without bail, the State's Attorney shall request conditions of release for a person cited or lodged for domestic assault.

(c)(1) At arraignment, the court shall issue a written order releasing any firearms removed pursuant to subdivision (a)(1)(B) of this section unless:

(A) the firearm is being or may be used as evidence in a pending criminal or civil proceeding;

(B) a court orders relinquishment of the firearm pursuant to 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to 20 V.S.A. § 2307;

(C) the person requesting the return is prohibited by law from possessing a firearm; or

(D) the court imposes a condition requiring the defendant not to possess a firearm.

(2) If the court under subdivision (1) of this subsection orders the release of a firearm removed under subdivision (a)(1)(B) of this section, the law enforcement agency in possession of the firearm shall make it available to the owner within three business days after receipt of the written order and in a manner consistent with federal law.

(d)(1) A law enforcement officer shall not be subject to civil or criminal

liability for acts or omissions made in reliance on the provisions of this section. This section shall not be construed to create a legal duty to a victim or to any other person, and no action may be filed based upon a claim that a law enforcement officer removed or did not remove a firearm as authorized by this section.

(2) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms removed, stored, or transported pursuant to this section. This subdivision shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(3) This section shall not be construed to limit the authority of a law enforcement agency to take any necessary and appropriate action, including disciplinary action, regarding an officer's performance in connection with this section.

(e) This section shall not be construed:

(1) to prevent a court from prohibiting a person from possessing firearms under any other provision of law;

(2) to prevent a law enforcement officer from searching for and seizing firearms under any other provision of law; or

(3) to authorize a warrantless search under any circumstances other than those permitted by this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on September 1, 2018.