

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 422
3 entitled "An act relating to removal of firearms from a person arrested or cited
4 for domestic assault" respectfully reports that it has considered the same and
5 recommends that the Senate propose to the House that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. FINDINGS

9 The General Assembly finds:

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

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

1 ~~(3) The General Assembly recognizes that it is current practice for law~~
2 ~~enforcement to remove firearms from a domestic violence scene if the firearms~~
3 ~~are contraband or evidence of the offense. However, given the potential harm~~
4 ~~of delay during a domestic violence incident, this legislation authorizes law~~
5 ~~enforcement officers to temporarily remove other dangerous firearms from~~
6 ~~persons arrested or cited for domestic violence, while protecting rights~~
7 ~~guaranteed by the Vermont and U.S. Constitutions, and insuring that those~~
8 ~~firearms are returned to the owner as soon as doing so would be safe and~~
9 ~~lawful.~~

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

11 § 1048. REMOVAL OF FIREARMS

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

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

17 (B) that is in the immediate possession or control of the person being
18 arrested or cited, in plain view of the officer at the scene of the alleged
19 domestic assault, or discovered during a lawful search, including under exigent
20 circumstances, obtained pursuant to a search warrant or a judicially recognized
21 exception to the warrant requirement if the removal is necessary for the

1 protection of the officer ~~or any other person~~, the alleged victim, the person
2 being arrested or cited, or a family member of the alleged victim or of the
3 person being arrested or cited.

4 (2) As used in this section, ~~“judicially recognized exception to the~~
5 warrant requirement” includes a search incident to a lawful arrest, a search
6 with consent, a search under exigent circumstances, a search of objects in plain
7 view, and a search pursuant to a regulatory statute “family member” means any
8 family member, a household member as defined in 15 V.S.A. § 1101(2), or a
9 child of a family member or household member.

10 (b) A person cited for domestic assault shall be arraigned on the next
11 business day after the citation is issued except for good cause shown. Unless
12 the person is held without bail, the State’s Attorney shall request conditions of
13 release for a person cited or lodged for domestic assault.

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

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

19 (B) a court orders relinquishment of the firearm pursuant to
20 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law

1 consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be
2 stored pursuant to 20 V.S.A. § 2307;

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

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

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

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

18 (2) A law enforcement agency shall be immune from civil or criminal
19 liability for any damage or deterioration of firearms removed, stored, or
20 transported pursuant to this section. This subdivision shall not apply if the

1 damage or deterioration occurred as a result of recklessness, gross negligence,
2 or intentional misconduct by the law enforcement agency.

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

7 (e) This section shall not be construed:

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

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

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

14 Sec. 3. EFFECTIVE DATE

15 This act shall take effect on September 1, 2018.

16
17 (Committee vote: _____)

18 _____

19 Senator _____

20 FOR THE COMMITTEE