

1 TO THE HOUSE OF REPRESENTATIVES:

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

7 Sec. 1. FINDINGS

8 The General Assembly finds:

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

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

20 (3) The General Assembly recognizes that it is current practice for law
21 enforcement to remove firearms from a domestic violence scene if the firearm

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

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

9 § 1048. REMOVAL OF FIREARMS

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

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

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

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

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

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

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

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 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on September 1, 2017.

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10 and that after passage the title of the bill be amended to read: “An act
11 relating to removal of firearms from a person arrested or cited for domestic
12 assault”

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15 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE