

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. 13 V.S.A. § 1048 is added to read:

9 § 1048. REMOVAL OF FIREARMS

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

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

15 (B) that is in the immediate possession or control of the person being
16 arrested or cited, in plain view of the officer at the scene of the alleged
17 domestic assault, or discovered [ONE OF 3 FOLLOWING OPTIONS]

18 (1) during a consensual search under exigent circumstances OR

19 (2) during a consensual search or under exigent circumstances OR

20 (3) during a lawful search

1 if the removal is necessary for the protection of the officer, the victim,
2 the person being arrested or cited, or a family member of the person being
3 arrested or cited. In determining whether removal is necessary, the officer
4 shall consider whether the firearm presents a risk of imminent harm to the
5 officer, the victim, the person being arrested or cited, or a family member of
6 the person being arrested or cited.

7 (2) As used in this section, “family member” means any family member,
8 a household member as defined in 15 V.S.A. § 1102(2), or a child of a family
9 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. The
12 State’s Attorney shall request conditions of release for a person cited or lodged
13 for domestic assault.

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

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

18 (B) a court orders relinquishment of the firearm pursuant to
19 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law
20 consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be
21 stored pursuant to 20 V.S.A. § 2307;

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

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

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

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

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

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

5 (e) This section shall not be construed:

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

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

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

12 Sec. 3. EFFECTIVE DATE

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

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE