

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. *Nollet v. Massachusetts*, 83 F.Supp. 2d, 204, 213 (D.Mass. 2000).

11 (2) “Domestic violence is often volatile, quick to escalate, and potentially
12 fatal. The victim has a strong interest in obtaining immediate relief, as delay
13 may result in further injury or death.” *Hamilton v. Lethem*, 260 P.3d 1148. 1161
14 (Hawaii 2011). The State’s “extraordinary interest in protecting victims of
15 domestic violence from actual or threatened injury and children from the
16 effects of exposure to domestic violence justifies the use of immediate
17 measures to stop the violence.” *Grant v. Pugh*, 887 N.Y.S.2d 802, 808 (N.Y.
18 Fam. Ct. 2009). For these reasons the State has a special need to remove
19 firearms from a home where law enforcement has probable cause to believe
20 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 firearm
3 is contraband or evidence of the offense. However, given the potential harm of
4 delay during a domestic violence incident, this legislation authorizes law
5 enforcement officers to temporarily remove other dangerous firearms from
6 persons arrested for cited for domestic violence, while protecting the rights
7 under the Vermont and U.S. Constitutions, and insuring that those firearms are
8 returned to the owner as soon as doing so would be safe, lawful, and
9 practicable.

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

11 § 1048. REMOVAL OF FIREARMS

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

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

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

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

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

9 (D) the person from whom it was removed declines to accept return
10 of the firearm.

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

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

16 (d)(1) A law enforcement officer shall not be subject to civil or criminal
17 liability for acts or omissions made in reliance on the provisions of this section.

18 This section shall not be construed to create a legal duty to a victim or to any
19 other person, and no action may be filed based upon a claim that a law
20 enforcement officer removed or did not remove a firearm as authorized by this
21 section.

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

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

10 Sec. 3. EFFECTIVE DATE

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

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

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18 (Committee vote: _____)

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Representative _____

FOR THE COMMITTEE