



Testimony on H. 422
An Act Relating to Removal of Firearms from a Person Arrested or Cited for
Domestic Violence
Senate Committee on Judiciary
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Thank you for your willingness to take testimony on this important legislation.

By statute, the Center is responsible for promoting the rights and needs of Vermont's crime victims. Preventing homicide and promoting effective prosecution are fundamental to this charge.

Twenty-five years ago, in 1993, domestic assault first became a crime in Vermont. Vermont joined other states in enacting these statutes to dispel any doubt that physically harming an intimate partner or household member is a crime against the state and to address the insidious nature of this conduct with tougher penalties. Nationally, surviving families also shed light on the alarming trend of domestic violence homicide. In theory, these statutes would encourage law enforcement to intervene before a homicide could occur, and that intervention also would be enough to stop the abuse from happening again.

The Constitutional authority for Vermont's domestic assault statute and for laws like H.422 is derived from the Tenth Amendment to the U.S. Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In this instance, the power to remove firearms is inherent in the states' so-called "police power." In fact, when Congress enacted its own legislation to address domestic

violence with Violence Against Women Act of 1994, the United States Supreme Court struck down the civil remedy section, reasoning in part:

“Indeed, we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and the vindication of its victims.” U.S. v. Morrison, 529 U.S. 598, 618 (2000).

The Constitution entrusts individual states to enact laws and exercise its police powers to keep the public safe.

Prosecuting Domestic Violence Alone is Not Enough

Vermont has made tremendous progress in prosecuting domestic violence crimes. According to the Vermont Judiciary’s FY17 statistics, domestic violence felony filings have increased 47% in the past decade. Judiciary reported 497 felony domestic violence cases and 702 misdemeanor cases in FY17.

We can attribute these increases to better training, collaboration, and resources for advocates, law enforcement, prosecutors, social workers, and judges, as well as changing public awareness and attitudes that support survivors coming forward.

A common misperception, however, is that charging a perpetrator with domestic violence is all that it takes to keep survivors safe.

Many domestic violence defendants are released on conditions pre-trial. The Vermont Constitution requires that misdemeanor domestic violence defendants are released unless they pose a risk of flight, and felony domestic violence defendants cannot be held without bail unless the prosecutor can meet several threshold burdens. By way of example, the individual who murdered Molly McLain in Maidstone last summer was on pre-trial release for a DV misdemeanor.

At the post-conviction phase, non-incarcerative sentences are not uncommon, if nothing else, so that the defendant can continue to work and provide support to the family. Overall, Vermont’s rate of incarceration is among the lowest, if not the lowest, in the United States. Notably, the man suspected of the recent domestic violence homicide in South Royalton had a history of domestic violence

convictions and was released on furlough at the time the homicide is alleged to have occurred.

Since 1993, the percentage of domestic violence homicides relative to the overall number adult homicides in Vermont has not appreciably changed. Year after year, the rate reported by the Vermont Domestic Violence Fatality Review Commission fluctuates anywhere from a low of 10% in 2002 to a high of 73% in 2008.

After taking testimony at the public meeting, members of the Committee are well-versed on the economic and social impacts of domestic violence and domestic violence homicide, including the generational consequences when children witness these acts. Beyond the material consequences, failing to offer better tools to prevent domestic violence homicide and support survivors who cooperate with law enforcement also threatens the rule of law. If we want the positive trend of domestic violence prosecution to continue, if we want survivors to feel safe coming forward and participating in the criminal process as witnesses, the criminal justice system can and must do more to keep them safe. When the system prosecutes domestic violence without taking corresponding safety measures, it can actually do more harm than good.

H.422 is one such safety measure that 18 other states have now adopted to empower law enforcement to better protect their citizens and defend the rule of law.

Thank you for considering this bill.