

**H.422**  
**Testimony to House Judiciary Committee**  
**Chris Bradley, President - Vermont Federation of Sportsmen's Clubs**  
**March 16th, 2018**

For the record my name is Chris Bradley and I am the President of the Vermont Federation of Sportsmen's Clubs, an organization that has existed in Vermont since 1875. I speak to you today on behalf of the over 15,000 Vermonters from over 50 member clubs that the VTFSC represents.

The Federation condemns, in the strongest possible terms, Domestic Violence (DV) in all its various forms, we sincerely wish there was some way to stop this, but this bill is not the answer and we cannot support it.

According to the 4th Amendment, people have a right to be "secure in their persons, houses, papers, and effects against unreasonable searches and seizures."

According to the 5th Amendment, no one shall be "deprived of life, liberty or property without due process of law." These same eleven words also appear in the 14th Amendment, which obligates the states to honor this individual right in the same manner that the 5th Amendment obligates the federal government.

Unfortunately, each of these Amendments are compromised by the wording and intent of H.422.

As a quick review: When a DV incident happens today, if the situation is serious enough the individual who is alleged to have been the perpetrator is typically arrested. When that arrest is made, Law Enforcement typically adheres to the "Plain View Doctrine" which instructs that the Officer(s) must make the area surrounding the perpetrator safe/free of weapons. If a weapon was used in the DV incident, then the Law Enforcement Officer would likely seize that object as evidence, with both the alleged perpetrator and any evidence then being secured. The alleged perpetrator and any seized evidence would then

remain secured until such time as a Judge can conduct a hearing on the case in a Court. When that hearing occurs: The Judge has the power to order that the perpetrator may not have weapons in his/her possession.

This is what we have in place today, and that process adheres to the rights enumerated in the 4th, 5th and 14th amendments.

With H.422 as proposed however, not only is the arresting Officer given the ability to abridge the alleged perpetrator's 4th, 5th and 14th Amendment's rights; the Officer is also given the ability to violate the alleged victim's 2nd Amendment/Article 16 right to self-defense.

Denying an alleged victim the ability to defend themselves is particularly egregious to me, so let me stress this. Under H.422, and when it is apparent that a DV incident has taken place, the Officer is given the option (I.E. "...MAY REMOVE...") to take any firearm "if the removal is necessary for the protection of the officer or another person."

While the intent of H.422 appears to be the removal of weapons that \*might\* be used by the alleged perpetrator, this also has the reverse effect of removing any weapons from the premises with which the alleged victim could possibly use to defend herself / himself should any subsequent incident occur. That subsequent incident would not necessarily have to involve the alleged perpetrator again, it could be some other perpetrator of some other crime such as robbery, rape or assault.

Put another way: When a firearm is arguably THE BEST method of self-defense, how logical is it to have Law Enforcement be given the option of disarming an alleged victim whether they want to be disarmed or not?

I now turn to the question of what might be used as a weapon in cases of DV. According to the 2017 Domestic Violence Fatality Review Commission Report, we see that this report cites that there were 20 homicides in Vermont for 2016, and of those 20 the reports states that 6 were domestic violence related homicides. Of those 6, 3 were attributed to firearms,

and there was one each for "Stabbing", "Blunt Trauma" or "Neglect of Care". As this data shows, one-half of these deaths were by means other than Firearms.

However, if we now look at the number of homicides being reported for 2016 by the FBI in their Uniform Crime Reporting (UCR), we see that there are only 14 homicides in Vermont.

The reason for this discrepancy can be found on page 1 of the Domestic Violence Fatality Review Commission Report which indicates that there are apparently at least 9 criteria that is used to determine whether any given death should be categorized as being "Domestic Violence Related" or not:

1. The responsible party killed a household member of an estranged intimate partner,
2. The responsible party killed a current partner's estranged household member,
3. The responsible party killed a family member's current or estranged household member,
4. The responsible party killed a bystander while attempting to harm a family or household member,
5. When law enforcement-related death where the officer is forced to kill in the line of duty when responding to a domestic violence incident,
6. When a law enforcement officer is killed in the line of duty while responding to a domestic violence incident,
7. Domestic violence-related deaths that are ruled justifiable homicide,
8. Fatalities that result from a murder/suicide involving family or household members,
9. Suicides where there is a documented history of domestic violence

In consider this list, we see that a suicide can be counted as a "Domestic Violence" so long as there is some documentable history - however old - of DV in the past.

As a layman, and in considering the above list of what constitutes a DV incident, to my eye only the first three criteria really fit what constitutes a DV death, I.E. when the responsible party kills (1) a household member or an estranged intimate partner, (2) a current partner's estranged household member, or (3) a family member's current or estranged household member. The remaining 6 criteria appear to be deaths that may have some linkage to a DV

incident, but it appears to be a stretch to include suicides, what appears to be accidental deaths, and justifiable homicides.

Especially when considering that most suicides are done with firearms, including suicides in with homicides must and will have the effect of increasing the number of DV deaths that are then linkable to firearms. I further point out that since this report uses unique criteria for establishing what a DV-related death may be, using percentages from inflated numbers to represent what is really occurring state-wide seems questionable.

I now reflect on the intent behind that portion of 13 VSA §1042, Domestic Assault which states: ***“or willfully causes a family or household member to fear imminent serious bodily injury shall be imprisoned not more than 18 months or fined not more than \$5,000.00 or both.”***

I then consider the wording of 13 VSA §1702, Criminal Threatening, which states that ***“a person shall not by words or conduct knowingly (1) threaten another person, and (2) as a result of the threat, place the other person in reasonable apprehension of death or serious bodily injury...shall be imprisoned not more than one year or fined not more than \$1,000, or both.”***

I consider these two statutes which speak to the same sort of situation being acted upon by H.422, I.E. a perceived threat to one person by another, and I see a consistent consequence: If someone’s behavior is threatening to another, then the consequence is to be arrested and jailed.

I then consider the situation in which an officer finds himself at the point in time that portion of §1048(a)(1)/H.422 which reads ***“...if the removal is necessary for the protection of the officer or any other person.”***

In both of the prior listed statutes, we have a clear course of action to prevent a DV-related death in the critical period after they have been arrested. This, to me, seems like a more appropriate course of action, and I wonder about the discussion which must have occurred for 13 VSA §1042 and 13 VSA §1702 concerning when these two separate statutes should

be applied - especially since 13 VSA §1042 is specifically a DV-related statute. Certainly, if either of these statutes were applied, the responsible person would be removed from acting out or possibly killing their DV partner.

The Federation believes that the passage of what was S.221, as it left the Senate Chamber on a 30-0 vote, would be more useful to Law Enforcement in the type of situation that is being considered with H.422.

Despite what other states may or may not have done, and whether what those states passed occurred before or after the SCOTUS decision with Heller and MacDonald, this bill requires strict scrutiny when it comes to Constitutional Rights. Passing this bill can only be done by conscientiously setting aside Constitutional concerns, and because it specifically has the effect of disarming victims, we respectfully ask that this bill be voted down.

Thank You

## Excerpts from 2017 Domestic Violence Fatality Review Commission Report

### **Methods (Page 1, Second Paragraph):**

The Commission considers a homicide to be domestic violence-related if it involves family or household members as defined by Vermont law. The Commission would also include homicides in which (1) the responsible party killed a household member of an estranged intimate partner; (2) the responsible party killed a current partner's estranged household member; (3) the responsible party killed a family member's current or estranged household member; (4) the responsible party killed a bystander while attempting to harm a family or household member. It would also include a law enforcement-related death where the officer is forced to kill in the line of duty when responding to a domestic violence incident or when a law enforcement officer is killed in the line of duty while responding to a domestic violence incident. It also includes domestic violence-related deaths that are ruled justifiable homicide. It also includes fatalities that result from a murder/suicide involving family or household members and suicides where there is a documented history of domestic violence.

### **Half of DV-related homicides were committed using firearms (Page 3)**

Manner of Death	#
Firearm	3
Stabbing	1
Blunt Trauma	1
Neglect of Care	1

## FBI Uniform Crime Statistics

**Table 3**

**Crime in the United States**  
by State, 2016

State	Area	Population	Murder and nonnegligent manslaughter
<b>VERMONT</b>	Metropolitan Statistical Area	217,636	
	Area actually reporting	100.0%	7
	Cities outside metropolitan areas	203,654	
	Area actually reporting	100.0%	1
	Nonmetropolitan counties	203,304	
	Area actually reporting	100.0%	6
	<b>State Total</b>	<b>624,594</b>	<b>14</b>
	Rate per 100,000 inhabitants		2.2

<https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-3>

**Table 12**

**Murder**  
by State, Types of Weapons, 2016

State	Total murders <sup>1</sup>	Total firearm	Handgun	Rifle	Shotgun	Firearms unknown	Knives or cutting instrument	Other weapon	Hands, fists, feet, etc. <sup>2</sup>
Vermont	14	6	2	2	1	1	2	6	0

<sup>1</sup> Total number of murders for which supplemental homicide data were received.

<sup>2</sup> Pushed is included in hands, fists, feet, etc.

<https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-12>

## Existing State Statute

### 13 VSA § 1042. Domestic assault

Any person who attempts to cause or wilfully or recklessly causes bodily injury to a family or household member, **or wilfully causes a family or household member to fear imminent serious bodily injury** shall be imprisoned not more than 18 months or fined not more than \$5,000.00, or both.

### 13 VSA § 1702. Criminal threatening

(a) A person shall not by words or conduct knowingly:

(1) threaten another person; and

(2) as a result of the threat, place the other person in reasonable apprehension of death or serious bodily injury.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) A person who violates subsection (a) of this section with the intent to prevent another person from reporting to the Department for Children and Families the suspected abuse or neglect of a child shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(d) As used in this section:

(1) "Serious bodily injury" shall have the same meaning as in section 1021 of this title.

(2) "Threat" and "threaten" shall not include constitutionally protected activity.

(e) Any person charged under this section who is under 18 years of age shall be adjudicated as a juvenile delinquent.

(f) It shall be an affirmative defense to a charge under this section that the person did not have the ability to carry out the threat. The burden shall be on the defendant to prove the affirmative defense by a preponderance of the evidence. (Added 2015, No. 162 (Adj. Sess.), § 6b.)