



**Testimony on H.422 – Senate Judiciary Committee
March 14, 2018
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Policy Director**

Thank you for inviting me to speak to you about H.422. Before I begin I would like to take a moment to remember Wanda Sanville of Royalton, Vermont who was shot and killed by her estranged husband last Sunday. I want to thank you all for your hard work on firearms legislation already this session – including your work on S.55 and S.221. I know your work is not easy and you bear a huge responsibility when dealing with matters of life and death – and the Network thanks you for your focus on victim safety.

To begin, I would like to state clearly why I am here today and what I would like to comment upon. I am here representing our membership and the victims with whom they work. Our membership consists of advocates across Vermont at 15 programs, working to serve victims of domestic and sexual violence, dating violence and stalking. Last year alone (2017) our 15 member programs served more than 7,000 victims and responded to more than 17,000 hotline calls. In 2016, 79 police officers responded to 3,491 incidents involving domestic violence. It is my hope that my testimony today will be heard as a plea to assist the victims in Vermont whose lives are deeply affected by the presence of firearms in their households.

While Vermont has a long history of responsible gun ownership and a proud tradition of hunting, we must call attention to the disproportionate effects of firearms in domestic violence related homicides in Vermont. Between 1994 and 2016: 58% of all domestic violence-related homicides were committed with firearms. 137 homicides were committed and 80 of them were committed with firearms.ⁱ It is important to note that these numbers do not include the abuse, control, and torture suffered by victims of abusers who use firearms to threaten their partners.

Protecting domestic violence victims from abusers with firearms

In Vermont, current law allows for the confiscation of firearms at two points in a domestic violence situation: (1) when the court orders the removal at the point of a final relief from abuse order between intimate partners (as mandated by federal law) or (2) following a conviction of a violent crime (13 V.S.A. § 4017).

Adding a law that allows law enforcement to remove firearms at the scene of a domestic assault is necessary because the most dangerous time for a victim is when she reaches out for help. There is a toxic question that surrounds abused women: “Why didn’t she just leave him?” The answer, too often, is that many women who do leave – or attempt to leave - get killed. Research indicates that the most dangerous time for a battered woman is when she attempts to end the relationship. A call for help can often place the victim and the victim’s children in grave danger. Statistics show that women who leave their batterers are at a 75% greater risk of being killed by their batterers than those who stay.

Furthermore, In Vermont, if a perpetrator of domestic assault is arrested and lodged a judge may issue no bail. If the judge issues bail, it is generally low enough that the person can post bail. In these instances, a perpetrator could be out in an hour or two. H.422 offers a measure of protection for the victim during that short time period before arraignment.



Risk of firearms in the household where there is domestic violence

When a gun is present in a domestic violence situation, it increases the risk of homicide for women fivefold.ⁱⁱ

A recent survey of female domestic violence shelter residents in California found that more than one third (36.7%) reported having been threatened or harmed with a firearm.ⁱⁱⁱ In nearly two thirds (64.5%) of the households that contained a firearm, the intimate partner had used the firearm against the victim, usually threatening to shoot or kill the victim.^{iv}

In January of this year, this committee heard from a number of victims and survivors of firearm violence. Stella Gravel, the mother of Rhonda Gray who was shot and killed by her then husband (who then also shot and killed himself), testified that had a law like H.422 been in place when her daughter had been alive, she might still be here today. From 1994 through 2016, 83 Vermonters have been killed by firearms in domestic violence related cases. It is imperative that as responsible and caring individuals interested in protecting the safety of Vermonters, we work together to pass laws that may prevent another domestic violence homicide.

H.422 Language:

The Network supports the language that will be proposed by the Attorney General's office (see below) and will defer to the Attorney General's office for more detailed commentary on how the language works and whether/how it is constitutionally defensible.

I simply would like to draw the committee's attention to the following:

Many states have similar laws

There are currently 18 states with laws governing the removal of firearms at the scene of a domestic violence incident.^v 13 of those states, including neighboring New Hampshire, have statutes which direct that law enforcement officers shall remove weapons from the scene when there is probable cause to believe a domestic assault has occurred.

Other states have similar laws to both S.221 and H.422

Yes, Connecticut^{vi}, California^{vii}, and Indiana^{viii} all have BOTH an extreme risk prevention order law (like S.221) AND a law that allows removal of firearms at the scene of a domestic violence incident (like H.422).

No cases have been found where this kind of firearms seizure has been held unconstitutional

In fact, a 2016 case decided in the New Jersey Supreme Court involved a police officer whose personal firearm was seized and forfeited under the New Jersey Domestic Violence law. The Court held that the forfeiture of firearms was constitutional and exercised its original jurisdiction to find that defendant was unsafe to possess a firearm, requiring forfeiture of the gun and the firearms ID card (required to purchase a firearm).^{ix}

Search and Seizure:

Re: Fourth Amendment to the U.S. Constitution:



The State’s compelling interest in protecting domestic violence victims from actual or threatened harm and safeguarding children from the effects of exposure to domestic violence justifies providing law enforcement officers with the authority to undertake immediate measures to stop the violence. For these reasons the State has a special need to remove firearms from a home where law enforcement has probable cause to believe domestic violence has occurred.^x

‘The Supreme Court has emphasized that Fourth Amendment searches require adherence to judicial processes (i.e., prior approval by judge or magistrate) and that searches conducted outside those processes are per se unreasonable—subject only to a few exceptions. These exceptions include: searches incident to arrest, protective sweeps, searches under exigent circumstances, discovery of items based on plain perception, the automobile exception, Terry stops, and most recently, special needs. The “special needs” doctrine, allows warrantless searches in “those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable....”^{xxi}

RE: 11th Article of the Vermont Constitution:

In a 2004 court decision, the Vermont Supreme Court found that a warrantless seizure is justified under exigent circumstances.^{xii} The trial court found that Meacham (ACHS) had a good faith belief that Paka (horse) was in imminent danger and thus was authorized to conduct a warrantless seizure. The Supreme Court agreed and found that a predeprivation hearing is not required in all cases and that a post-deprivation hearing will satisfy due process when the circumstances necessitate quick action.

PROPOSED REVISED LANGUAGE FOR H.422:

FINDINGS:

The General Assembly finds:

- (1) The State of Vermont has a compelling interest in preventing domestic abuse.
- (2) Domestic violence is often volatile, escalates rapidly, and is possibly fatal. The victim has a substantial interest in obtaining immediate relief because any delay may result in further injury or death. The State’s compelling interest in protecting domestic violence victims from actual or threatened harm and safeguarding children from the effects of exposure to domestic violence justifies providing law enforcement officers with the authority to undertake immediate measures to stop the violence. For these reasons the State has a special need to remove firearms from a home where law enforcement has probable cause to believe domestic violence has occurred.
- (3) The General Assembly recognizes that it is current practice for law enforcement to remove firearms from a domestic violence scene if the firearms are contraband or evidence of the offense. However, given the potential harm of delay during a domestic violence incident, this legislation authorizes law enforcement officers to temporarily remove other dangerous firearms from persons arrested or cited for domestic violence, while protecting rights guaranteed by the Vermont and U.S. Constitutions, and insuring that those firearms are returned to the owner as soon as doing so would be safe and lawful.



§ 1048. REMOVAL OF FIREARMS

(a)(1) When a law enforcement officer arrests, cites, or obtains an arrest warrant for a person for domestic assault in violation of this subchapter, the officer may remove any firearm that is in the immediate possession or control of the person being arrested or cited, in plain view of the officer at the scene of the alleged domestic assault, or discovered during a consensual search if the removal is necessary for the protection of the officer or any other person.

(b) A person cited or arrested for domestic assault shall be arraigned on the next business day after the citation is issued or the arrest occurs except for good cause shown.

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

- (A) the firearm is being or may be used as evidence in a pending criminal or civil proceeding;
- (B) a court orders relinquishment of the firearm pursuant to 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to 20 V.S.A. § 2307;
- (C) the person requesting the return is prohibited by law from possessing a firearm; or
- (D) the court imposes a condition requiring the defendant not to possess a firearm.

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

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

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

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

(e) This chapter shall not be construed to prevent a court from prohibiting a person from possessing firearms under any other provision of law, nor shall it be construed to prevent law enforcement from searching for and seizing firearms in accordance with any other provision of law.

The Vermont Network strongly encourages you to support passage of H.422 as written above and would recommend that the committee take this opportunity to further protect victims of domestic and sexual violence and stalking by requiring the relinquishment of firearms upon the issuance of protective orders.



RELIEF FROM ABUSE ORDERS:

In 1996, Congress amended 18 U.S.C. § 921 in what has become known as the Lautenberg Amendment which prohibits anyone convicted of a felony and anyone subject to a domestic violence protective order from possessing a firearm. The amendment passed with almost unanimous support and represents Congress's recognition that "anyone who attempts or threatens violence against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms." *Congressional Record*, p. S11878, September 30, 1996.

In Vermont, our State statutes do not require people served with relief from abuse orders to relinquish their firearms. Yet, it is known that rates of intimate-partner homicide are lower in states that require people served with domestic-violence restraining orders to surrender their guns.^{xiii} In a 2017 study, researchers at five different institutions found that intimate-partner homicide rates are 9.7 percent lower on average in the 14 states with gun-surrender laws than in the other 36 states. Firearm-specific homicide rates are 14 percent lower in those states.^{xiv}

In keeping with the Governor's stated desire to reduce the connection between guns and domestic violence in Vermont, the Network would recommend the following changes to our relief from abuse statutes:

RECOMMENDED LANGUAGE FOR AMENDMENT (similar to N.H. Rev. Stat. §§ 173-B:1, 173:B4, 173:B5):

Add –

15 V.S.A. § 1103 Requests for relief

(c)(3) The court shall order the defendant to relinquish all deadly weapons, or any license to carry any deadly weapons, that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant, for the duration of the protective order. No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearms and ammunition and specified deadly weapons held by a law enforcement agency, so long as due care is used.

15 V.S.A. § 1104 Emergency relief

(f) An order issued under this section shall include an order that the defendant relinquish all deadly weapons, or any license to carry any deadly weapons, that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant, for the duration of the protective order. No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearms and ammunition and specified deadly weapons held by a law enforcement agency, so long as due care is used.

ⁱ State of Vermont Domestic Violence Fatality Review Commission, *2017 Report*, p. 13.

ⁱⁱ J.C. Campbell, S.W. Webster, J.Koziol-McLain, et al., Risk factors for femicide within physically abusive intimate relationships: results from a multi-state case control study, 93 *Amer. J. of Public Health* 1089-97 (2003).

ⁱⁱⁱ Susan B. Sorenson et al., *Weapons in the Lives of Battered Women*, 94 *Am. J. Pub. Health* 1412, 1413 (2004)

^{iv} *Id.* at 1414.



^v Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Maryland, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, West Virginia.

^{vi} Connecticut Gen. Stat. § 46b-38b(a); Connecticut Gen. Stat. Title 29 § 29-38C (2011)

^{vii} California Penal Code §12028.5(b); California AB 1014 (2014)

^{viii} Indiana Code Ann. § 35-33-1-1.5; Indiana Code Ann. § 35-47-14-2

^{ix} In re: Forfeiture of Personal Weapons and Firearms..., Supreme Court of New Jersey 225 N.J. 487 (2016)

^x Testimony, John Treadwell, Vermont Office of Attorney General, House Judiciary Committee, March, 2017.

^{xi} Schmidt, Mickey, The Federal Lawyer, "The Special Needs Doctrine and Reduced Expectations of Privacy Under the Fourth Amendment", July 2016, pg 43.

^{xii} 176 Vt. 405 Supreme Court of Vermont. *Hegarty v. Addison County Humane Society*, No. 02-385, April 2, 2004.

^{xiii} Elizabeth R. Vigdor et al., *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 *Evaluation Rev.* 313, 332 (June 2006).

^{xiv} Díez, Carolina, et al, *State Intimate Partner Violence–Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, *Ann Intern Med.* 2017;167(8):536-543 (2017).