

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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18           (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE