

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 221
3 entitled “An act relating to establishing extreme risk protection orders”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

7 Sec. 1. 13 V.S.A. chapter 85 is amended to read:

8 CHAPTER 85. WEAPONS

9 Subchapter 1. Generally

10 * * *

11 Subchapter 2. Extreme Risk Protection Orders

12 § 4051. DEFINITIONS

13 As used in this subchapter:

14 (1) “Court” means the Family Division of the Superior Court.

15 (2) “Dangerous weapon” means an explosive or a firearm.

16 (3) “Explosive” means dynamite, or any explosive compound of which
17 nitroglycerin forms a part, or fulminate in bulk or dry condition, or blasting
18 caps, or detonating fuses, or blasting powder or any other similar explosive.
19 The term does not include a firearm or ammunition therefor or any components
20 of ammunition for a firearm including primers, smokeless powder or black
21 gunpowder.

1 (4) “Federally licensed firearms dealer” means a licensed importer,
2 licensed manufacturer, or licensed dealer required to conduct national instant
3 criminal background checks under 18 U.S.C. § 922(t).

4 (5) “Firearm” shall have the same meaning as in subsection 4017(d)
5 of this title.

6 (6) “Law enforcement agency” means the Vermont State Police, a
7 municipal police department, or a sheriff’s department.

8 § 4052. JURISDICTION AND VENUE

9 (a) The Family Division of the Superior Court shall have jurisdiction over
10 proceedings under this subchapter.

11 (b) Emergency orders under section 4054 of this title may be issued by a
12 judge of the Criminal, Civil, or Family Division of the Superior Court.

13 (c) Proceedings under this chapter shall be commenced in the county where
14 the law enforcement agency is located, the county where the respondent
15 resides, or the county where the events giving rise to the petition occur.

16 § 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

17 (a) A law enforcement officer State’s Attorney or the Office of the
18 Attorney General may file a petition requesting that the court issue an extreme
19 risk protection order prohibiting a person from purchasing, possessing, or
20 receiving a firearm dangerous weapon or having a firearm dangerous weapon

1 within the person’s custody or control. The petitioner shall submit an affidavit
2 in support of the petition.

3 (b) Except as provided in section 4054 of this title, the court shall grant
4 relief only after notice to the respondent and a hearing. The petitioner shall
5 have the burden of proof by clear and convincing evidence.

6 (c)(1) A petition filed pursuant to this section shall allege that the
7 respondent poses a significant danger of causing **injury harm** to himself or
8 herself or another person by purchasing, possessing, or receiving a **firearm**
9 **dangerous weapon** or by having a **firearm dangerous weapon** within the
10 respondent’s custody or control.

11 (2)(A) A danger of harm to others may be shown by establishing that:

12 (i) the respondent has inflicted or attempted to inflict bodily harm
13 on another; or

14 (ii) by his or her threats or actions the respondent has intended to
15 place others in reasonable fear of physical harm to themselves; or

16 (iii) by his or her actions or inactions the respondent has presented
17 a danger to persons in his or her care.

18 (B) A danger of harm to himself or herself may be shown by establishing
19 that the respondent has threatened or attempted suicide or serious bodily harm.

20 (3) The affidavit in support of the petition shall state:

21 (A) the specific facts supporting the allegations in the petition;

1 (B) the number, types, and locations of any firearms the petitioner
2 believes to be in the respondent's possession, custody, or control; and

3 (C) whether the petitioner knows of an existing order with respect to
4 the respondent under 15 V.S.A. chapter 21 (abuse prevention orders) or
5 12 V.S.A. chapter 178 (orders against stalking or sexual assault).

6 (d) The court shall hold a hearing within seven ten days after a petition is
7 filed under this section. Notice of the hearing shall be served pursuant to
8 section 4056 of this title concurrently with the petition and any ex parte order
9 issued under section 4054 of this title.

10 (e) The court may consider any relevant evidence in determining whether
11 to grant the petition, including:

12 (1) testimony from the petitioner, the respondent, and other relevant
13 witnesses;

14 (2) recent acts or threats of violence by the respondent against himself
15 or herself or another person;

16 (3) the respondent's criminal history;

17 (4) the respondent's history of use, attempted use, or threatened use of
18 physical force against another person;

19 (5) recent alcohol or drug abuse by the respondent;

20 (6) recent acquisition of firearms by the respondent;

1 (7) previous violations by the respondent of abuse prevention orders or
2 orders against stalking or harassment;

3 (8) previous unlawful or reckless use, display, or brandishing of a
4 firearm by the respondent; and

5 (9) previous extreme risk protection orders issued against the
6 respondent.

7 (f)(1) The court shall grant the petition and issue an extreme risk protection
8 order if it finds by clear and convincing evidence that at the time of the hearing
9 the respondent poses a significant danger of causing injury harm to himself or
10 herself or another person by purchasing, possessing, or receiving a firearm
11 dangerous weapon or by having a firearm dangerous weapon within the
12 respondent's custody or control.

13 (2) An order issued under this subsection shall prohibit a person from
14 purchasing, possessing, or receiving a firearm dangerous weapon or having a
15 firearm dangerous weapon within the person's custody or control for a period
16 of up to one year sixty days. The order shall be signed by the judge and
17 include the following provisions:

18 (A) A statement of the grounds for issuance of the order.

19 (B) The name and address of the court where any filings should be
20 made, the names of the parties, the date of the petition, the date and time of the
21 order, and the date and time the order expires.

1 (C) A description of how to appeal the order.

2 (D) A description of the requirements for relinquishment of **firearms**
3 **dangerous weapons** under section 4059 of this title.

4 (E) A description of how to request termination of the order under
5 section 4055 of this title. The court shall include with the order a form for a
6 motion to terminate the order.

7 (F) A statement directing the law enforcement agency, approved
8 federally licensed firearms dealer, or other person in possession of the firearm
9 to release it to the owner upon expiration of the order.

10 (G) A statement in substantially the following form:

11 “To the subject of this protection order: This order shall be in effect until
12 the date and time stated above. If you have not done so already, you are
13 required to surrender all **firearm dangerous weapons** in your custody, control,
14 or possession to [insert name of law enforcement agency], a federally licensed
15 firearms dealer, or a person approved by the court. While this order is in
16 effect, you are not allowed to purchase, possess, or receive a **firearm dangerous**
17 **weapon**; attempt to purchase, possess, or receive a **firearm dangerous weapon**;
18 or have a **firearm dangerous weapon** in your custody or control. You have the
19 right to request one hearing to terminate this order during the period that this
20 order is in effect, starting from the date of this order. You may seek the advice
21 of an attorney regarding any matter connected with this order.”

1 (g) If the court denies a petition filed under this section, the court shall state
2 the particular reasons for the denial in its decision.

3 (h) No filing fee shall be required for a petition filed under this section.

4 (i) Form petitions and form orders shall be provided by the Court
5 Administrator and shall be maintained by the clerks of the courts.

6 (j) When findings are required under this section, the court shall make
7 either written findings of fact or oral findings of fact on the record.

8 (k) Every final order issued under this section shall bear the following
9 language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A
10 TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY
11 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL
12 CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

13 (l) Affidavit forms required pursuant to this section shall bear the following
14 language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A
15 CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR
16 BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

17 § 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

18 (a)(1) ~~Concurrent with the filing of a petition under section 4053 of this~~
19 ~~title, the petitioner~~ A law enforcement officer, a State’s Attorney or the Office
20 of the Attorney General may file a motion requesting that the court issue an
21 extreme risk protection order ex parte, without notice to the respondent. If the

1 petition is filed by a law enforcement officer, the officer shall as soon as
2 practicable notify the Office of the Attorney General or the State's Attorney in
3 the county where the petition is filed.

4 (2) The petitioner shall submit an affidavit in support of the motion
5 alleging that the respondent poses an immediate and significant imminent
6 danger of causing injury harm to himself or herself or another person by
7 purchasing, possessing, or receiving a firearm dangerous weapon or by having
8 a firearm dangerous weapon within the respondent's custody or control. The
9 affidavit shall state:

10 (A) the specific facts supporting the allegations in the motion,
11 including the imminent danger posed by the respondent; and

12 (B) the number, types, and locations of any firearms the petitioner
13 believes to be in the respondent's possession, custody, or control.

14 (b) The court shall hold a hearing on an ex parte motion filed pursuant to
15 this section on the day the motion is filed or on the day immediately following
16 the day the motion is filed. The court may consider any relevant evidence in
17 determining whether to grant the motion, including the evidence described in
18 subsection 4053(e) of this title.

19 (c)(1) The court shall grant the motion and issue a temporary ex parte
20 extreme risk protection order if it finds by clear and convincing evidence that
21 at the time the order is requested the respondent poses a an immediate and

1 significant imminent danger of causing injury harm to himself or herself or
2 another person by purchasing, possessing, or receiving a firearm dangerous
3 weapon or by having a firearm dangerous weapon within the respondent's
4 custody or control. The petitioner shall cause a copy of the order to be served
5 on the respondent pursuant to section 4056 of this title.

6 (2)(A) A danger of harm to others may be shown by establishing that:

7 (i) the respondent has inflicted or attempted to inflict bodily harm
8 on another; or

9 (ii) by his or her threats or actions the respondent has intended to
10 place others in reasonable fear of physical harm to themselves; or

11 (iii) by his or her actions or inactions the respondent has presented
12 a danger to persons in his or her care.

13 (B) A danger of harm to himself or herself may be shown by
14 establishing that the respondent has threatened or attempted suicide or serious
15 bodily harm.

16 (d)(1) As set forth in subsection 4053(d) of this title Unless the petition is
17 voluntarily dismissed pursuant to subdivision (2) of this subsection, the court
18 shall hold a hearing within seven ten days after the issuance of a temporary ex
19 parte extreme risk protection order to determine if a final extreme risk
20 protection order should be issued. If not voluntarily dismissed, the temporary
21 ex parte extreme risk protection order shall expire when the court grants or

1 denies a motion for an extreme risk protection order under section 4053 of this
2 title.

3 (2) The prosecutor may voluntarily dismiss a motion filed under this
4 section at any time prior to the hearing if the prosecutor determines that the
5 respondent no longer poses a danger of causing harm to himself or herself or
6 another person by purchasing, possessing, or receiving a dangerous weapon or
7 by having a dangerous weapon within the respondent's custody or control. If
8 the prosecutor voluntarily dismisses the motion pursuant to this subdivision,
9 the court shall vacate the temporary ex parte extreme risk protection order and
10 direct the person in possession of the dangerous weapon to return it to the
11 respondent consistent with section 4059 of this title.

12 (e)(1) An order issued under this section shall prohibit a person from
13 purchasing, possessing, or receiving a ~~firearm~~ dangerous weapon or having a
14 ~~firearm~~ dangerous weapon within the person's custody or control for a period
15 of up to ~~seven~~ ten days. The order shall be in writing and signed by the judge
16 and shall include the following provisions:

17 (A) A statement of the grounds for issuance of the order.

18 (B) The name and address of the court where any filings should be
19 made, the names of the parties, the date of the petition, the date and time of the
20 order, and the date and time the order expires.

1 (C) The date and time of the hearing when the respondent may
2 appear to contest the order before the court. This opportunity to contest shall
3 be scheduled as soon as reasonably possible, which in no event shall be more
4 than ~~seven~~ ~~ten~~ days after the date of issuance of the order.

5 (D) A description of the requirements for relinquishment of firearms
6 under section 4059 of this title.

7 ~~(5) A description of how to request termination of the order under~~
8 ~~section 4055 of this title. The court shall include with the order a form for a~~
9 ~~motion to terminate the order.~~

10 (E) A statement in substantially the following form:

11 “To the subject of this protection order: This order shall be in effect
12 until the date and time stated above. If you have not done so already, you are
13 required to surrender all ~~firearm~~ ~~dangerous~~ ~~weapon~~ in your custody, control, or
14 possession to [insert name of law enforcement agency], a federally licensed
15 firearms dealer, or a person approved by the court. While this order is in
16 effect, you are not allowed to purchase, possess, or receive a ~~firearm~~ ~~dangerous~~
17 ~~weapon~~; attempt to purchase, possess, or receive a ~~firearm~~ ~~dangerous~~ ~~weapon~~;
18 or have a ~~firearm~~ ~~dangerous~~ ~~weapon~~ in your custody or control. A hearing will
19 be held on the date and time noted above to determine if a final extreme risk
20 prevention order should be issued. Failure to appear at that hearing may result
21 in a court making an order against you that is valid for up to ~~one year~~ ~~sixty~~

1 days. You may seek the advice of an attorney regarding any matter connected
2 with this order.”

3 (2)(A) The court may issue an ex parte extreme risk protection order by
4 telephone or by reliable electronic means pursuant to this subdivision if
5 requested by the petitioner.

6 (B) Upon receipt of a request for electronic issuance of an ex parte
7 temporary relief from abuse order, the judicial officer shall inform the
8 petitioner that a signed or unsigned motion and affidavit may be submitted
9 electronically. The affidavit shall be sworn to or affirmed by administration of
10 the oath over the telephone to the petitioner by the judicial officer. The
11 administration of the oath need not be made part of the affidavit or recorded,
12 but the judicial officer shall note on the affidavit that the oath was
13 administered.

14 (C) The judicial officer shall decide whether to grant or deny the
15 motion and issue the order solely on the basis of the contents of the motion and
16 the affidavit or affidavits provided. If the motion is granted, the judicial officer
17 shall immediately sign the original order, enter on its face the exact date and
18 time it is issued, and transmit a copy to the petitioner by reliable electronic
19 means. The petitioner shall cause a copy of the order to be served on the
20 respondent pursuant to section 4056 of this title.

1 (D) On or before the next business day after the order is issued, the
2 judicial officer shall file the signed order, the motion, and the affidavit with the
3 clerk. The clerk shall enter the documents on the docket immediately after
4 filing.

5 (f) Form motions and form orders shall be provided by the Court
6 Administrator and shall be maintained by the clerks of the courts.

7 (g) Every order issued under this section shall bear the following language:
8 “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF
9 IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A.
10 § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT
11 PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

12 (h) Affidavit forms required pursuant to this section shall bear the
13 following language: “MAKING A FALSE STATEMENT IN THIS
14 AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT
15 OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

16 (i) If the court denies a petition filed under this section, the court shall state
17 the particular reasons for the denial in its decision.

18 § 4055. TERMINATION AND RENEWAL MOTIONS

19 (a)(1) The respondent may file a motion to terminate an extreme risk
20 protection order issued under section 4053 of this title or renewed under
21 subsection (b) of this section. A motion to terminate shall not be filed more

1 than once during the effective period of the order. The respondent State shall
2 have the burden of proof by clear and convincing evidence.

3 (2) The court shall grant the motion and terminate the extreme risk
4 protection order if unless it finds by clear and convincing evidence that the
5 respondent no longer poses continues to pose a significant danger of causing
6 injury harm to himself or herself or another person by purchasing, possessing,
7 or receiving a firearm dangerous weapon or by having a firearm dangerous
8 weapon within the respondent's custody or control.

9 (b)(1) A law enforcement officer State's Attorney or the Office of the
10 Attorney General may file a motion requesting that the court renew an extreme
11 risk protection order issued under this section or section 4053 of this title for
12 an additional period of up to one year sixty days. The motion shall be
13 accompanied by an affidavit and shall be filed not more than 30 days and not
14 less than 14 days before the expiration date of the order. The motion and
15 affidavit shall comply with the requirements of section 4053(c) of this title, and
16 the moving party shall have the burden of proof by clear and convincing
17 evidence.

18 (2) The court shall grant the motion and renew the extreme risk
19 protection order for an additional period of up to one year sixty days if it finds
20 by clear and convincing evidence that the respondent continues to pose a
21 significant danger of causing injury harm to himself or herself or another

1 person by purchasing, possessing, or receiving a **firearm dangerous weapon** or
2 by having a **firearm dangerous weapon** within the respondent's custody or
3 control. The order shall comply with the requirements of subdivision
4 4053(f)(2) and subsections 4053(j) and (k) of this title.

5 (c) The court shall hold a hearing within 14 days after a motion to
6 terminate or a motion to renew is filed under this section. Notice of the
7 hearing shall be served pursuant to section 4056 of this title concurrently with
8 the motion. The court may consider any relevant evidence in determining
9 whether to grant the motion, including the evidence described in subsection
10 4053(e) of this title.

11 (d) If the court denies a motion filed under this section, the court shall state
12 the particular reasons for the denial in its decision.

13 (e) Form termination and form renewal motions shall be provided by the
14 Court Administrator and shall be maintained by the clerks of the courts.

15 (f) When findings are required under this section, the court shall make
16 either written findings of fact or oral findings of fact on the record.

17 § 4056. SERVICE

18 (a) A petition, ex parte temporary order, or final order issued under this
19 subchapter shall be served in accordance with the Vermont Rules of Civil
20 Procedure and may be served by any law enforcement officer. A court that
21 issues an order under this chapter during court hours shall promptly transmit

1 the order electronically or by other means to a law enforcement agency for
2 service.

3 (b) A respondent who attends a hearing held under section 4053, 4054, or
4 4055 of this title at which a temporary or final order under this subchapter is
5 issued and who receives notice from the court on the record that the order has
6 been issued shall be deemed to have been served. A respondent notified by the
7 court on the record shall be required to adhere immediately to the provisions of
8 the order. However, even when the court has previously notified the
9 respondent of the order, the court shall transmit the order for additional service
10 by a law enforcement agency.

11 (c) Extreme risk protection orders shall be served by the law enforcement
12 agency at the earliest possible time and shall take precedence over other
13 summonses and orders. Orders shall be served in a manner calculated to
14 ensure the safety of the parties. Methods of service that include advance
15 notification to the respondent shall not be used. The person making service
16 shall file a return of service with the court stating the date, time, and place at
17 which the order was delivered personally to the respondent.

18 (d) If service of a notice of hearing issued under section 4053 or section
19 4055 of this title cannot be made before the scheduled hearing, the court shall
20 continue the hearing and extend the terms of the order upon request of the

1 petitioner for such additional time as it deems necessary to achieve service on
2 the respondent.

3 § 4057. PROCEDURE

4 (a) Except as otherwise specified, proceedings commenced under this
5 subchapter shall be in accordance with the Vermont Rules for Family
6 Proceedings and shall be in addition to any other available civil or criminal
7 remedies.

8 (b) The Court Administrator shall establish procedures to ensure access to
9 relief after regular court hours or on weekends and holidays. The Court
10 Administrator is authorized to contract with public or private agencies to assist
11 petitioners to seek relief and to gain access to Superior Courts. Law
12 enforcement agencies shall assist in carrying out the intent of this section.

13 (c) The Court Administrator shall ensure that the Superior Court has
14 procedures in place so that the contents of orders and pendency of other
15 proceedings can be known to all courts for cases in which an extreme risk
16 protection order proceeding is related to a criminal proceeding.

17 § 4058. ENFORCEMENT; CRIMINAL PENALTIES

18 (a) Law enforcement officers are authorized to enforce orders issued under
19 this chapter. Enforcement may include collecting and disposing of **firearms**
20 **dangerous weapons** pursuant to section 4059 of this title and making an arrest

1 in accordance with the provisions of Rule 3 of the Vermont Rules of Criminal
2 Procedure.

3 (b)(1) A person who intentionally commits an act prohibited by a court or
4 fails to perform an act ordered by a court, in violation of an extreme risk
5 protection order issued pursuant to section 4053, 4054, or 4055 of this title,
6 after the person has been served with notice of the contents of the order as
7 provided for in this subchapter, shall be imprisoned not more than one year or
8 fined not more than \$1,000.00, or both.

9 (2) A person who files a petition for an extreme risk protection order
10 under this subchapter knowing that information in the petition is false or with
11 the intent to harass the respondent shall be imprisoned not more than one year
12 or fined not more than \$1,000.00, or both.

13 (c) In addition to the provisions of subsections (a) and (b) of this section,
14 violation of an order issued under this subchapter may be prosecuted as
15 criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure.
16 The prosecution for criminal contempt may be initiated by the State's Attorney
17 in the county in which the violation occurred. The maximum penalty that may
18 be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment
19 for six months, or both. A sentence of imprisonment upon conviction for
20 criminal contempt may be stayed, in the discretion of the court, pending the

1 expiration of the time allowed for filing notice of appeal or pending appeal if
2 any appeal is taken.

3 § 4059. RELINQUISHMENT, STORAGE, AND RETURN OF FIREARMS

4 (a) A person who is required to relinquish a dangerous weapon other than a
5 firearm in the person's possession, custody, or control by an extreme risk
6 protection order issued under section 4053, 4054, or 4055 of this title shall
7 upon service of the order immediately relinquish the dangerous weapon to a
8 cooperating law enforcement agency. The law enforcement agency shall
9 transfer the weapon to the Bureau of Alcohol, Tobacco, Firearms, and
10 Explosives for proper disposition.

11 (b)(1) A person who is required to relinquish a firearm in the person's
12 possession, custody, or control by an extreme risk protection order issued
13 under section 4053, 4054, or 4055 of this title shall, unless the court orders an
14 alternative relinquishment pursuant to subdivision (2) of this subsection, upon
15 service of the order immediately relinquish the firearm to a cooperating law
16 enforcement agency or an approved federally licensed firearms dealer.

17 (2)(A) The court may order that the person relinquish a firearm to a
18 person other than a cooperating law enforcement agency or an approved
19 federally licensed firearms dealer unless the court finds that relinquishment to
20 the other person will not adequately protect the safety of any person.

1 (B) A person to whom a firearm is relinquished pursuant to
2 subdivision (A) of this subdivision (2) shall execute an affidavit on a form
3 approved by the Court Administrator stating that the person:

4 (i) acknowledges receipt of the firearm;

5 (ii) assumes responsibility for storage of the firearm until further
6 order of the court and specifies the manner in which he or she will provide
7 secure storage;

8 (iii) is not prohibited from owning or possessing firearms under
9 State or federal law; and

10 (iv) understands the obligations and requirements of the court
11 order, including the potential for the person to be subject to civil contempt
12 proceedings pursuant to subdivision (C) of this subdivision (2) if the person
13 permits the firearm to be possessed, accessed, or used by the person who
14 relinquished the item or by any other person not authorized by law to do so.

15 (C) A person to whom a firearm is relinquished pursuant to
16 subdivision (A) of this subdivision (2) shall be subject to civil contempt
17 proceedings under 12 V.S.A. chapter 5 if the person permits the firearm to be
18 possessed, accessed, or used by the person who relinquished the item or by any
19 other person not authorized by law to do so. In the event that the person
20 required to relinquish the firearm or any other person not authorized by law to
21 possess the relinquished item obtains access to, possession of, or use of a

1 relinquished item, all relinquished items shall be immediately transferred to the
2 possession of a law enforcement agency or approved federally licensed
3 firearms dealer pursuant to subdivision (b)(1) of this section.

4 (b) A law enforcement agency or an approved federally licensed firearms
5 dealer that takes possession of a firearm pursuant to subdivision (b)(1) of this
6 section shall photograph, catalogue, and store the item in accordance with
7 standards and guidelines established by the Department of Public Safety
8 pursuant to 20 V.S.A. § 2307(i)(3).

9 (c) Nothing in this section shall be construed to prohibit the lawful sale of
10 firearms or other items.

11 (d) An extreme risk protection order issued pursuant to section 4053 of this
12 title or renewed pursuant to section 4055 of this title shall direct the law
13 enforcement agency, approved federally licensed firearms dealer, or other
14 person in possession of a firearm under subsection (b) of this section to release
15 it to the owner upon expiration of the order.

16 (e)(1) A law enforcement agency, an approved federally licensed firearms
17 dealer, or any other person who takes possession of a firearm for storage
18 purposes pursuant to this section shall not release it to the owner without a
19 court order unless the firearm is to be sold pursuant to subdivision (2)(A) of
20 this subsection. If a court orders the release of a firearm stored under this
21 section, the law enforcement agency or firearms dealer in possession of the

1 firearm shall make it available to the owner within three business days after
2 receipt of the order and in a manner consistent with federal law.

3 (2)(A)(i) If the owner fails to retrieve the firearm within 90 days after
4 the court order releasing it, the firearm may be sold for fair market value. Title
5 to the firearm shall pass to the law enforcement agency or firearms dealer for
6 the purpose of transferring ownership.

7 (ii) The law enforcement agency or firearms dealer shall make a
8 reasonable effort to notify the owner of the sale before it occurs. In no event
9 shall the sale occur until after the court issues a final extreme risk protection
10 order pursuant to section 4053 of this title.

11 (iii) As used in this subdivision (2)(A), “reasonable effort” shall
12 mean notice shall be served as provided for by Rule 4 of the Vermont Rules of
13 Civil Procedure.

14 (B) Proceeds from the sale of a firearm pursuant to subdivision (A) of
15 this subdivision (2) shall be apportioned as follows:

16 (i) associated costs, including the costs of sale and of locating and
17 servicing the owner, shall be paid to the law enforcement agency or firearms
18 dealer that incurred the cost; and

19 (ii) any proceeds remaining after payment is made to the law
20 enforcement agency or firearms dealer pursuant to subdivision (i) of this
21 subdivision (2)(B) shall be paid to the original owner.

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

6 (g) This section shall be implemented consistent with the standards and
7 guidelines established by the Department of Public Safety under 20 V.S.A.
8 § 2307(i).

9 (h) Notwithstanding any other provision of this chapter:

10 (1) A dangerous weapon shall not be returned to the respondent if the
11 respondent's possession of the weapon would be prohibited by state or federal
12 law.

13 (2) A firearm dangerous weapon shall not be taken into possession
14 pursuant to this section if it is being or may be used as evidence in a pending
15 criminal matter.

16 § 4060. APPEALS

17 An extreme risk protection order issued by the court under section 4053 or
18 section 4055 of this title shall be treated as a final order for the purposes of
19 appeal. Appeal may be taken by either party to the Supreme Court under the
20 Vermont Rules of Appellate Procedure, and the appeal shall be determined
21 forthwith.

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2018 passage.

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9 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE