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H.610

Representatives Grad of Moretown and LaLonde of South Burlington move that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4019 is amended to read:

§ 4019. FIREARMS TRANSFERS; BACKGROUND CHECKS

(a) As used in this section:

* * *

(4) “Licensed dealer” means a person issued a license as a dealer in firearms pursuant to 18 U.S.C. § 923(a).

(5) “Proposed transferee” means an unlicensed person to whom a proposed transferor intends to transfer a firearm.

(6) “Proposed transferor” means an unlicensed person who intends to transfer a firearm to another unlicensed person.

(7) “Transfer” means to transfer ownership of a firearm by means of sale, trade, or gift.

(8) “Unlicensed person” means a person who has not been issued a license as a dealer, importer, or manufacturer in firearms pursuant to 18 U.S.C. § 923(a).

(b)(1) Except as provided in subsection (e) of this section, an unlicensed person shall not transfer a firearm to another unlicensed person unless:

1 (A) the proposed transferor and the proposed transferee physically
2 appear together with the firearm before a licensed dealer and request that the
3 licensed dealer facilitate the transfer; and

4 (B) the licensed dealer agrees to facilitate the transfer.

5 (2) A person shall not, in connection with the transfer or attempted
6 transfer of a firearm pursuant to this section, knowingly make a false statement
7 or exhibit a false identification intended to deceive a licensed dealer with
8 respect to any fact material to the transfer.

9 * * *

10 (d) A person shall not transfer a firearm to another person if:

11 (1) the transfer requires a background check under this section or under
12 Federal law; and

13 (2) the licensed dealer facilitating the transfer has not been provided
14 with a unique identification number for the transfer by the National Instant
15 Criminal Background Check System, provided that if the identification number
16 has not been provided within 90 30 days then the transfer may proceed.

17 ~~(d)~~(e)(1) An unlicensed person who transfers a firearm to another
18 unlicensed person in violation of subdivision (b)(1) of this section shall be
19 imprisoned not more than one year or fined not more than \$500.00, or both.

1 (2) A person who violates subdivision (b)(2) or subsection (d) of this
2 section shall be imprisoned not more than one year or fined not more than
3 \$500.00, or both.

4 ~~(e)~~(f) This section shall not apply to:

5 (1) the transfer of a firearm by or to a law enforcement agency;

6 (2) the transfer of a firearm by or to a law enforcement officer or
7 member of the U.S. Armed Forces acting within the course of his or her
8 official duties;

9 (3) the transfer of a firearm from one immediate family member to
10 another immediate family member; or

11 (4) a person who transfers the firearm to another person in order to
12 prevent imminent harm to any person, provided that this subdivision shall only
13 apply while the risk of imminent harm exists.

14 ~~(f)~~(g) A licensed dealer who facilitates a firearm transfer pursuant to this
15 section shall be immune from any civil or criminal liability for any actions
16 taken or omissions made when facilitating the transfer in reliance on the
17 provisions of this section. This subsection shall not apply to reckless or
18 intentional misconduct by a licensed dealer.

19 * * * Relief from Abuse Orders * * *

20 Sec. 2. 15 V.S.A. § 1103 is amended to read:

21 § 1103. REQUESTS FOR RELIEF

1 (a) Any family or household member may seek relief from abuse by
2 another family or household member on behalf of himself or herself or his or
3 her children by filing a complaint under this chapter. A minor 16 years of age
4 or older, or a minor of any age who is in a dating relationship as defined in
5 subdivision 1101(2) of this chapter, may file a complaint under this chapter
6 seeking relief on his or her own behalf. The plaintiff shall submit an affidavit
7 in support of the order.

8 * * *

9 (c)(1) The court shall make such orders as it deems necessary to protect the
10 plaintiff or the children, or both, if the court finds that the defendant has
11 abused the plaintiff, and:

12 (A) there is a danger of further abuse; or

13 (B) the defendant is currently incarcerated and has been convicted of
14 one of the following: murder, attempted murder, kidnapping, domestic assault,
15 aggravated domestic assault, sexual assault, aggravated sexual assault,
16 stalking, aggravated stalking, lewd or lascivious conduct with a child, use of a
17 child in a sexual performance, or consenting to a sexual performance.

18 * * *

19 (3)(A) The court order shall:

20 (i) if there is evidence that the defendant is in possession of or has
21 access to firearms, require the immediate relinquishment, until the expiration

1 of the order, of all firearms that are in the defendant’s possession, ownership,
2 or control or that another person possesses, owns, or controls on behalf of the
3 defendant, unless the court makes a written finding by clear and convincing
4 evidence relinquishment is not required to protect the safety of the victim or
5 the public;

6 (ii) if the order includes a requirement to vacate, prohibit the
7 defendant from residing at a residence where firearms are present can be
8 accessed by the defendant, unless the court makes a written finding by clear
9 and convincing evidence relinquishment is not required to protect the safety of
10 the victim or the public;

11 (iii) inform the defendant that he or she is prohibited from
12 possessing firearms until the expiration of the order; and

13 (iv) if the order requires relinquishment of firearms, include all
14 available information regarding the type and location of firearms subject to the
15 order.

16 * * *

17 (h)(1) Form complaints and form orders shall be provided by the Court
18 Administrator and shall be maintained by the clerks of the courts.

19 (2) The Complaint for Relief from Abuse and the Affidavit in Support
20 of Relief From Abuse Complaint shall include specific provisions collecting
21 information about the defendant’s firearms, including questions that permit the

1 plaintiff to state with particularity the type and location of any firearm in the
2 defendant’s possession, ownership, or control or that another person possesses,
3 owns, or controls on behalf of the defendant.

4 * * *

5 Sec 3. 15 V.S.A. § 1104 is amended to read:

6 § 1104. EMERGENCY RELIEF

7 (a) In accordance with the Vermont Rules of Civil Procedure, temporary
8 orders under this chapter may be issued ex parte, without notice to the
9 defendant, upon motion and findings by the court that the defendant has abused
10 the plaintiff or the plaintiff’s children, or both. The plaintiff shall submit an
11 affidavit in support of the order. A minor 16 years of age or older, or a minor
12 of any age who is in a dating relationship as defined in subdivision 1101(2) of
13 this chapter, may seek relief on his or her own behalf. Relief under this section
14 shall be limited as follows:

15 * * *

16 (4)(A) An order issued under this section shall:

17 (i) if the plaintiff’s complaint or affidavit indicates includes
18 information that the defendant is in possession of or has access to firearms,
19 require the immediate relinquishment, until the expiration of the order, of all
20 firearms that are in the defendant’s possession, ownership, or control or that
21 another person possesses, owns, or controls on behalf of the defendant, unless

1 the court makes a written finding by clear and convincing evidence

2 relinquishment is not required to protect the safety of the victim or the public;

3 (ii) if the order includes a requirement to vacate, prohibit the
4 defendant from residing at a residence where firearms are present can be

5 accessed by the defendant, unless the court makes a written finding by clear

6 and convincing evidence relinquishment is not required to protect the safety of
7 the victim or the public;

8 (iii) inform the defendant that he or she is prohibited from
9 possessing firearms until the expiration of the order;

10 (iv) if the order requires relinquishment of firearms, include all
11 available information regarding the type and location of firearms subject to the
12 order;

13 (v) notify the defendant that after having been served with a
14 temporary order issued pursuant to this section, the defendant shall be required
15 to adhere to the provisions of any subsequent order immediately upon issuance
16 of the subsequent order;

17 (vi) notify the defendant that subsequent orders may be served by
18 first class mail; and

19 (vii) inform the defendant that third party storage of firearms is not
20 permitted unless the court has made the findings required by 20 V.S.A.

21 § 2307(b)(2).

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(c)(1) Form complaints, ~~and~~ form orders, and return of service forms shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(2)(A) The Complaint for Relief from Abuse and the Affidavit in Support of Relief From Abuse Complaint shall include specific provisions collecting information about the defendant’s firearms, including questions that permit the plaintiff to state with particularity the type and location of any firearm in the defendant’s possession, ownership, or control or that another person possesses, owns, or controls on behalf of the defendant.

(B) The Return of Service shall include provisions permitting the law enforcement officer to make the indications required by subdivision 1105(e)(1)(A) of this title.

* * *

Sec. 4. 13 V.S.A. § 4017a is added to read:

§ 4017a. PERSONS SUBJECT TO RELIEF FROM ABUSE ORDERS;
PROHIBITION ON POSSESSION OF FIREARMS

(a) A person shall not possess, ship, transport, or receive a firearm if the person is the subject of an emergency relief from abuse order issued pursuant to 15 V.S.A. § 1103 or a final relief from abuse order issued pursuant to 15 V.S.A. § 1104.

1 (b) A person who violates this section shall be imprisoned not more than
2 two years or fined not more than \$1,000.00, or both.

3 Sec. 5. 15 V.S.A. § 1105 is amended to read:

4 § 1105. SERVICE; WARRANTS

5 (a) A complaint or ex parte temporary order or final order issued under this
6 chapter shall be served in accordance with the Vermont Rules of Civil
7 Procedure and may be served by any law enforcement officer. A court that
8 issues an order under this chapter during court hours shall promptly transmit
9 the order electronically or by other means to a law enforcement agency for
10 service.

11 (b)(1) A defendant who attends a hearing held under section 1103 ~~or 1104~~
12 of this title at which a ~~temporary or~~ final order under this chapter is issued and
13 who receives notice from the court on the record that the order has been issued
14 shall be deemed to have been served. A defendant notified by the court on the
15 record shall be required to adhere immediately to the provisions of the order.
16 However, even when the court has previously notified the defendant of the
17 order, the court shall transmit the order for additional service by a law
18 enforcement agency or serve the order by first class mail to the defendant's last
19 known address.

20 (2) A defendant who has been served with a temporary order issued
21 under section 1103 of this title may be served with all subsequent orders in the

1 case by first class mail to the defendant’s last known address. The defendant
2 shall inform the court of any changes to the defendant’s address. The
3 subsequent order, including any changes made to the temporary order, shall be
4 effective when the subsequent order is issued.

5 (c) Abuse orders shall be served by the law enforcement agency at the
6 earliest possible time and shall take precedence over other summonses and
7 orders. Orders shall be served in a manner calculated to ensure **the safety of the**
8 **plaintiff**. Methods of service that include advance notification to the defendant
9 shall not be used. The person making service shall file a return of service with
10 the court stating the date, time, and place at which the order was delivered
11 personally to the defendant.

12 (d) If service of a notice of hearing issued under section 1103 or 1104 of
13 this title cannot be made before the scheduled hearing, the court shall continue
14 the hearing and extend the terms of the order upon request of the plaintiff for
15 such additional time as it deems necessary to achieve service on the defendant.

16 (e)(1)(A) A complaint or ex parte temporary order or final order requiring
17 relinquishment of firearms that is served pursuant to this section shall be
18 accompanied by a return of service form on which the law enforcement officer
19 shall indicate **with specificity**:

20 (i) whether **and how many** firearms were relinquished by the
21 defendant; and

1 ~~(ii) whether a warrant is being sought; and~~

2 ~~(ii) if obtainable with reasonable effort, the defendant's mailing~~
3 ~~address for service of future orders.~~

4 ~~(B) The court shall provide a copy of the return of service to the~~
5 ~~plaintiff.~~

6 ~~(C)The return of service and the affidavit shall be filed with the court~~
7 ~~at the earliest possible time and shall take precedence over other summonses~~
8 ~~and orders.~~

9 ~~(2) If the defendant does not relinquish firearms upon service of the~~
10 ~~order in a timely manner, and the law enforcement officer has probable cause~~
11 ~~to believe the defendant possesses, owns, or controls firearms, the officer shall~~
12 ~~unless a judicially recognized exception to the warrant requirement applies,~~
13 ~~submit the return of service form to the court along with file with the court an~~
14 ~~affidavit and an application for requesting that a warrant for seizure of the~~
15 ~~firearms be issued pursuant to Vermont Rule of Criminal Procedure 41.~~

16 ~~(3) If the defendant does not relinquish firearms upon service of the~~
17 ~~order, and the law enforcement officer has a reasonable suspicion that the~~
18 ~~defendant possesses, owns, or controls firearms, the officer shall investigate~~
19 ~~the matter within 48 hours, or as soon as practicable. If the officer determines~~
20 ~~that there is probable cause to believe the defendant possesses, owns, or~~
21 ~~controls firearms, the officer shall submit the return of service form pursuant to~~

1 ~~subdivision (2) of this subsection. If the officer does not determine that~~
2 ~~probable cause exists, the return of service shall include a statement describing~~
3 ~~the efforts that were made to establish probable cause during the investigation.~~

4 (2)(A) The court ~~shall~~ may issue a warrant under this subsection for
5 seizure of firearms from the defendant if the court finds, in response to an
6 application for a warrant filed by a law enforcement officer pursuant to Rule
7 41 of the Vermont Rules of Criminal Procedure, that there is probable cause to
8 believe:

9 (i) there are firearms in the defendant's possession, ownership, or
10 control while ~~the an~~ order with a firearms relinquishment condition is in effect;
11 and

12 (ii) a search for and seizure of the firearms is necessary to protect
13 the life, health, or well-being of a victim on whose behalf the relief is sought.

14 (B) This subdivision shall not be construed to prevent the court from
15 issuing a warrant for search and seizure related to a different abuse prevention
16 order violation.

17 (3) A law enforcement officer acting on behalf of the law enforcement
18 agency that served the order shall attempt to contact the plaintiff after firearms
19 are relinquished by or seized from the defendant in connection with an order
20 served pursuant to this section.

1 (4) Law enforcement agencies and law enforcement officers shall be
2 immune from civil or criminal liability for any act undertaken or omission
3 made in good faith reliance on the provisions of this section, including:

4 (A) failing to learn of, or locate, or seize a firearm while executing a
5 warrant issued pursuant to this subsection, or for;

6 (B) returning a seized weapon to its owner if the owner is not
7 prohibited from owing or possessing firearms under state or Federal law;

8 (C) causing damage to any property, including a safe damaged while
9 accessing firearms;

10 (D) enforcing a court order or search warrant; or

11 (E) conducting a search or seizure pursuant to a judicially recognized
12 exception to the warrant requirement.

13 (6)(A) Non-evidentiary firearms relinquished or seized pursuant to this
14 subsection or subsections 1103(c) or 1104(a) of this title shall be relinquished,
15 transported, and stored pursuant to 20 V.S.A. § 2307.

16 (B) A law enforcement agency shall be immune from civil or
17 criminal liability for any damage or deterioration of firearms relinquished
18 pursuant to this subsection or subsections 1103(c) or 1104(a) of this title. This
19 subdivision (B) shall not apply if the damage or deterioration occurred as a
20 result of recklessness, gross negligence, or intentional misconduct by the law
21 enforcement agency.

1 ~~(f)(1) On or before January 1 of each year, any law enforcement agency~~
2 ~~that has within the previous year served a temporary or final order pursuant to~~
3 ~~this chapter shall report to the Department of Public Safety:~~

4 ~~(A) the total number of temporary orders the agency served during~~
5 ~~the previous year;~~

6 ~~(B) the total number of final orders the agency served during the~~
7 ~~previous year; and~~

8 ~~(C) the number of nonevidentiary firearms the agency collected~~
9 ~~during the previous year while serving a temporary or final order pursuant to~~
10 ~~this chapter.~~

11 ~~(2) On or before January 31 of each year, the Department of Public~~
12 ~~Safety shall report the data it has received pursuant to this subsection to the~~
13 ~~House and Senate Committees on Judiciary.~~

14 * * *

15 * * * Extreme Risk Protection Orders * * *

16 Sec. 6. 13 V.S.A. § 4051 is amended to read:

17 § 4051. DEFINITIONS

18 As used in this subchapter:

19 * * *

20 (7) “Household member” has the same meaning as in 15 V.S.A. § 1101.

21 Sec. 7. 13 V.S.A. § 4052 is amended to read:

1 § 4052. JURISDICTION AND VENUE; FILING

2 * * *

3 (c) Proceedings under this chapter shall be commenced in the county where
4 the law enforcement agency is located, the county where the family or
5 household member or the respondent resides, or the county where the events
6 giving rise to the petition occur.

7 (d) A petition or motion filed by a family or household member pursuant to
8 subsection 4053(a) or 4054(a) of this title shall be filed during the court's
9 regular business hours only.

10 Sec. 8. 13 V.S.A. § 4053 is amended to read:

11 § 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

12 (a) A State's Attorney ~~or~~, the Office of the Attorney General, or a family or
13 household member may file a petition requesting that the court issue an
14 extreme risk protection order prohibiting a person from purchasing, possessing,
15 or receiving a dangerous weapon or having a dangerous weapon within the
16 person's custody or control. The petitioner shall submit an affidavit in support
17 of the petition.

18 * * *

19 Sec. 9. 13 V.S.A. § 4054 is amended to read:

20 § 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

1 (a)(1) A State’s Attorney ~~or~~ the Office of the Attorney General, or a family
2 or household member may file a motion requesting that the court issue an
3 extreme risk protection order ex parte, without notice to the respondent. A law
4 enforcement officer may notify the court that an ex parte extreme risk
5 protection order is being requested pursuant to this section, but the court shall
6 not issue the order until after the motion is submitted.

7 * * *

8 Sec. 10. 13 V.S.A. § 4055 is amended to read:

9 § 4055. TERMINATION AND RENEWAL MOTIONS

10 * * *

11 (b)(1) A State’s Attorney ~~or~~ the Office of the Attorney General, or a
12 family or household member may file a motion requesting that the court renew
13 an extreme risk protection order issued under this section or section 4053 of
14 this title for an additional period of up to six months. The motion shall be
15 accompanied by an affidavit and shall be filed not more than 30 days and not
16 less than 14 days before the expiration date of the order. The motion and
17 affidavit shall comply with the requirements of subsection 4053(c) of this title,
18 and the moving party shall have the burden of proof by clear and convincing
19 evidence.

20 * * *

21 Sec. 11. 13 V.S.A. § 4057 is amended to read:

1 § 4057. PROCEDURE

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

6 * * *

7 (d)(1) For purposes of a petition filed pursuant to this subchapter, a health
8 care provider may notify a law enforcement officer when the provider believes
9 in good faith that disclosure of the information is necessary to prevent or lessen
10 a serious and imminent threat to the health or safety of a person or the public.

11 (2) As used in this subsection:

12 (A) “Health care provider” has the same meaning as in 18 V.S.A.
13 § 9432.

14 (B) “Necessary to prevent or lessen a serious and imminent threat to
15 the health or safety of a person or the public” includes circumstances when the
16 health care provider reasonably believes that the patient poses an extreme risk
17 of causing harm to himself or herself or another person by purchasing,
18 possessing, or receiving a dangerous weapon or by having a dangerous weapon
19 within his or her custody or control.

20 * * * Conditions of Release Prior to Trial * * *

21 Sec. 12. 13 V.S.A. § 7554 is amended to read:

1 § 7554. RELEASE PRIOR TO TRIAL

2 (a) Release; conditions of release. Any person charged with an offense,
3 other than a person held without bail under section 7553 or 7553a of this title,
4 shall at his or her appearance before a judicial officer be ordered released
5 pending trial in accordance with this section.

6 * * *

7 (2) If the judicial officer determines that conditions of release imposed
8 to ensure appearance will not reasonably protect the public, the judicial officer
9 may impose in addition the least restrictive of the following conditions or the
10 least restrictive combination of the following conditions that will reasonably
11 ensure protection of the public:

12 * * *

13 (G) Require a defendant not to possess firearms or other weapons.

14 * * *

15 * * * Reports * * *

16 **Sec. 13. DEPARTMENT OF PUBLIC SAFETY REPORT**

17 On or before December 15, 2020 2021, the Department of Public Safety
18 shall report to inform the House and Senate Committees on Judiciary on the
19 progress of its modernization reform program, including data collection and
20 reporting, and the steps it has taken to provide assistance to local law
21 enforcement agencies in seizing and storing relinquished firearms.

1 **Sec. 14. ATTORNEY GENERAL REPORT**

2 On or before December 15, ~~2020~~ 2021, the Attorney General's Office shall
3 report to the House and Senate Committees on Judiciary on the progress of the
4 Firearms Technical Assistance Project ~~in implementing this Act,~~ including any
5 remaining barriers to ~~implementation~~ implementing this Act.

6 * * * Effective Date * * *

7 **Sec. 15. EFFECTIVE DATE**

8 This act shall take effect on ~~passage~~ July 1, 2020.

9