

Interim Testimony
on
The Ever-Changing H.610
(Draft No. 5.1)
VTFSC - February 5th, 2020

My name is Chris Bradley, I am the President of the Vermont Federation of Sportsman's Clubs, and I am here representing that organization and its member clubs across the state of Vermont.

I begin by making sure that this Committee is aware that the numbers of Homicides as reported by the Domestic Violence Fatality Review Commission ("DV Commission") is usually at odds with the number of homicides reported in Vermont by other entities such as the CDC and FBI. A comparison of murders reported by the FBI UCR Data for Vermont versus the murders reported by the DVFRC for 2013-2017 is as follows:

	2013	2014	2015	2016	2017
Murders Reported by FBI UCR Data	10	10	10	14	14
Murders Reported by DVFRC Report	13	15	16	20	17

While the DV Commission is free to make their own classifications for DV incidents, we point out that by using numbers that are higher than what is "real", any corresponding percentages based on the inflated numbers will become skewed. We defer to the DV Commission to explain why they count such things as a suicide as a homicide, but your understanding that this occurs should be kept in mind when you hear any numbers or percentages from the DV Commission's reports regarding the homicide data they cite.

In past written testimony from the Vermont Network on Domestic Violence and Sexual Assault ("Vermont Network"), the statement was made, and I quote: "***Firearms are rarely used for self-defense in violence crimes such as domestic violence***".

Firearms are indeed used for self-defense, even in cases of Domestic Violence, you just never heard of them as these stories are not in line with the focus of today's media.

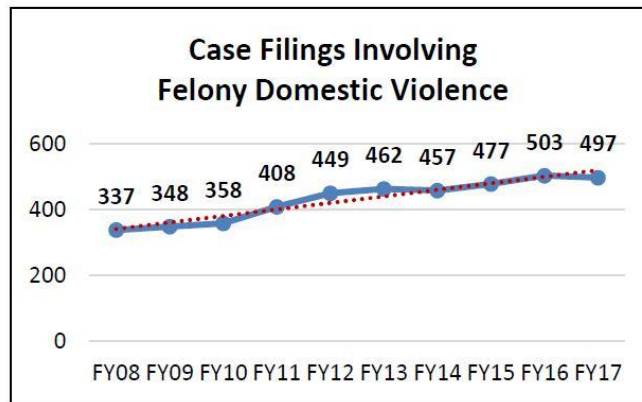
To underscore this point, you may recall that after the Sandy Hook massacre in Newtown CT, then President Obama issued a "Presidential Memorandum" / Executive Order" which directed the CDC to research the causes and prevention of gun violence. That study was then subcontracted out to the Institute Of Medicine and National Research Council. Specifically, that study found that the defensive use of firearms is "a common occurrence".

I quote from that study: "***Almost all national survey estimates indicate that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million per year, in the context of about 300,000 violent crimes involving firearms in 2008.***"

To suggest, let alone state as fact that firearms are rarely used in self-defense, is a rather severe misstatement, and on this point I would like to offer a sound bite.

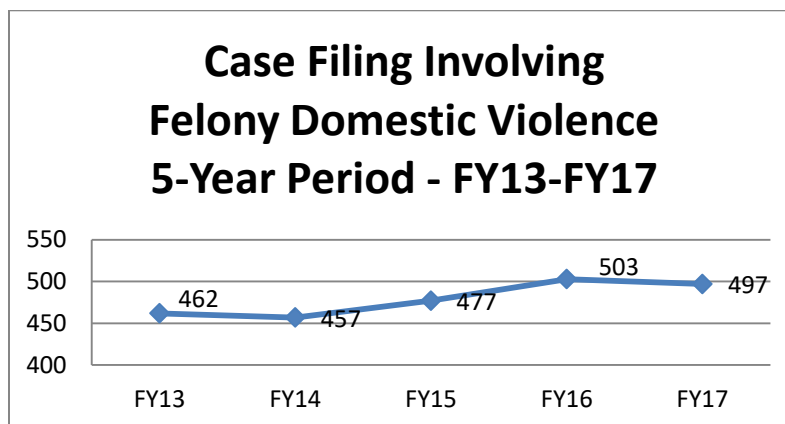
[Amy's story \(Video recording of a radio ad\)](#)

I'll come back to other spurious testimony before this Committee in a minute, but I first must make a diversion into the Vermont Judiciary Annual Statistical Report for 2017, and I'll refer to pages 27 and 28 from the 2017. As you can see, for 2017 there were 8 graphics representing data on Felonies and Misdemeanors. Now: Please note that all of these graphics reflect a 5-year period with the noted exception of one, that would be the one for Felony Domestic Violence which reflects 10 years of data as seen below.



VT Judiciary Annual Statistical Report, 2017, page 27

In looking closer at the Felony Domestic Violence graph, and by using a 10-year period, the truthful claim can be made that we see a 47% increase in Felony Domestic Violence filings across that time span. If however we look at the same 5-year period that is applied to every other graphic in the Trends of the Vermont Judiciary Annual Statistical Report for 2017 (and 2018), we see something markedly different. We see a far more modest increase across 5 years, we see slight declines in FY14 and FY17, and overall there is the appearance that the trend is flattening and growth is slowing.



Corrected Annual Statistical Report, FY13-FY17

In considering the above graphic, and referring to the Domestic Violence Update testimony given to you on January 8th, is it really appropriate for the statement to be made that "**The**

number of felony cases in Vermont continues to grow" when we clearly see two instances where it recently declined? While it can be stated that "*Over the past ten years, felony domestic violence charges have increased 47%...*", would it not be as proper if not more so to show that for the same 5-year period that is applied to all other DV graphics, we only see an 8.1% increase for Felony Domestic Violence Filings, and note how the growth has slowed?

Concerning the section "Deadly Relationships between Firearms and Domestic Violence" from the Vermont Network, we see the statement being made of "*Firearms are the most commonly used weapons in domestic violence homicides in Vermont, and the majority of those homicides include use of a firearm.*"

Let's look at the first phrase of that statement, the part which reads "*Firearms are the most commonly used weapons in domestic violence homicides in Vermont.*" Turning to page 16 of the DVFRC report for 2018, and under the heading of "PART TWO: DOMESTIC VIOLENCE 2017 HOMICIDE DATA", we see the following graphic:

In 27% of the homicides and in one of the suicides, firearms were involved.

Cause of Death	#
Sharp Object Impact/Stabbing	4
Firearm	2
Strangulation	2
Neglect of Care	1
Blunt Force	1
Firearm and Stabbing	1

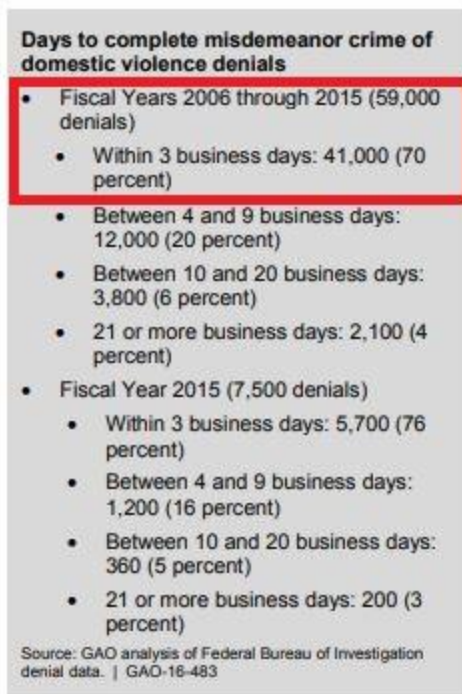
Based on the above, we see at most 3 homicides related to firearms, with 8 that do not. How then can the statement be made that "*Firearms are the most commonly used weapons in Domestic Violence related homicides*", even if the data is skewed?

For the Committee's reference, and per the FBI UCR, the following are the Murders by Weapon Type in Vermont for 2014-2018.

FBI: UCR, Murder by Weapon, Vermont, 2014-18

Weapon Type	2014	2015	2016	2017	2018	5-Year Total
Shotgun	0	0	1	0	0	1
Firearms, type not stated	1	2	1	5	0	9
Handguns	3	2	2	1	3	11
Rifles	2	4	2	0	0	8
Other Guns	0	0	0	0	0	0
Other weapons or weapons not stated	1	1	6	1	6	15
Knives / Cutting Instruments	1	0	2	6	0	9
Personal weapons (hands, fists, etc)	2	1	0	1	2	6
Blunt Objects	0	0	0	0	0	0
Narcotics	0	0	0	0	0	0
Poison	0	0	0	0	0	0
Drowning	0	0	0	0	0	0
Strangulation	0	0	0	0	0	0
Fire	0	0	0	0	0	0
Explosives	0	0	0	0	0	0
Asphyxiation	0	0	0	0	0	0
Overall Totals	10	10	14	14	11	59
Total By Gun	6	8	6	6	3	29
Total by Other Means	4	2	8	8	8	30

Referring now to testimony given to this Committee on 1/9, I refer to a statement relating to Section 1 of H.610 where the Vermont Network stated the following: *"According to a study conducted by the Government Accountability Office, in approximately 30% of cases where there was an existing domestic violence records, background checks were not completed within the current 30 day window."* We believe that this statistic comes from a graphic on page 26 of the referenced GAO report as follows:



However, let's read the rest of that graphic, the part highlighted below:



Using a 10-year window obviously skews this data, and it does not accurately reflect where we are now. By looking at just 2015, we see a 6% reduction from 30% down to only 24% of DV-related background checks that went beyond 3 days. We conjecture that this percentage has dropped much lower as NICS has concentrated over the past 4 years to vastly improve its immediacy and accuracy with such initiatives as 2017 Fix NICS.

Continuing to examine the testimony from the Vermont Network, we see the statement that ***"Thirty other states prohibit all people subject to a final relief from abuse orders from possessing or purchasing firearms, and ten other states prohibit all people subject to temporary (ex-parte) orders from possessing or purchasing firearms."***

In reading the first clause of that statement, "***Thirty other states prohibit all people subject to a final relief from abuse orders from possessing or purchasing firearms***", one gets the idea that "**all people**" mean that all defendants lose their right to possess or purchase; that there is no conditioning or discretion given.

In examining the referenced source (lawcenter.giffords.org), we are a bit confused in trying to relate the first clause of the above statement made to the published "facts" by a group that is known for its anti-firearm stances.

1st Reference to 30 states:

Thirty states and the District of Columbia also prohibit purchase or possession of firearms or ammunition by at least some people convicted of misdemeanor domestic violence offenses:²⁸

2nd reference to 30 states:

States that prohibit subjects of domestic violence orders issued after notice and a hearing from purchasing or possessing firearms:

States in this list may require a finding that the respondent poses a credible or imminent threat to the petitioner for the firearm prohibition to apply

In reading through both references, we see conditioning and discretion being applied. In the first we see the 30 states listed are being conditioned with the phrase "***by at least some***". In the second we see that some unknown number of those states "***may require the respondent must pose a credible or imminent threat.***" How can either reference be suggested to be "***all people***" as the testimony clearly states? This is blatantly incorrect as best.

So what about the trailing phrase of the above quote, the part which reads: "***... and ten other states prohibit all people subject to temporary (ex-parte) orders from possessing or purchasing firearms.***"

For this statement, we refer to the following from the provided reference:

States that prohibit the possession or purchase of firearms by all people subject to ex parte orders:

California¹²⁶

Colorado¹²⁷

Connecticut¹²⁸

Hawaii¹²⁹

Illinois¹³⁰

Massachusetts¹³¹

New Jersey¹³²

New York¹³³ (subject to conditions)

North Carolina¹³⁴ (Subject to conditions)

West Virginia¹³⁵

From the above, it appears that 2 states of those 10 states are "*subject to conditions*", which we again must assume cannot mean "*all people*" either.

In testimony regarding the Vermont Network' supports for Section 4, the entire section appears to have been misstated.

"Federal law creates certain categories of persons who are prohibited from firearms possession, including people subject to qualifying protection orders, but the same protections does not exist under state law. If an order does not specifically list firearms surrender as a condition, the possession or purchase of a firearms by someone subject to a relief from abuse order cannot be prosecuted under state law as a violation of that protective order. The person may still be prohibited from possession under federal law, but that can only be prosecuted by the US Attorney. While we are extremely grateful for the US Attorney's willing cooperation, we would like state law to more closely mirror the federal law, prohibiting possession by all persons subject to a relief from abuse order thereby allowing States Attorneys to prosecute these violations."

We believe this whole argument to be completely incorrect. We have a Prohibited Person Statutes [13 VSA § 4017\(d\)\(3\)\(A\)\(i\)](#), which then refers then refers to our Victims statute [13 VSA § 5301\(7\)\(V\)](#) with violation of abuse prevention orders being listed.

VTFSC Response to Section 1

This section of Vermont Statutes was changed, after much acrimonious debate, and went into effect on passage in 2018 with the passage of S.55 which then became Act 94. Since the provisions of that law have been in place, we are not aware of any data or statistics to evaluate its effectiveness. Now, this committee has drafted a new piece of legislation, H. 610, expanding the reach of this recently passed law with no evidence that it is necessary.

I'd like to stress this point. To the best of my knowledge, the following basic questions cannot be answered about the need for section 1:

- The number of Default Proceeds that occur in Vermont
- The number of Default Proceeds that occur in Vermont that allowed a Prohibited Person to unlawfully purchase a firearm
- The number of firearms that were recovered by ATF in Vermont after a Default Proceed allowed a Prohibited Person to obtain a firearm, and
- The number of crimes committed by Prohibited Person who obtained their firearm after a Default Proceed in Vermont

These appear to us to be some really, really basic facts. Facts so critical to the creation of a bill that I am frankly amazed that it was submitted WITHOUT such rather crucial information.

However, as those number apparently are not available, we do know that at least one of the Sponsors, and possibly both, were operating under the misunderstanding that the shooter in Charleston was able to buy a firearm when we was not supposed to. The plain truth however was that he wasn't a Prohibited Person; there was no valid reason for that individual to be denied.

From the NICS report, we learn that in 2018 there were 4,240 firearm transactions that were believed to have been transferred due to Default Proceed that *may* have been transferred to Prohibited Persons. Just as a matter of record those 4,240 transactions were 0.0162% of the 26,181,936 total transactions handled. Also for the record Vermont had 41,550 background checks in 2018 and 35,843 background checks in 2019.

For situations where NICS is not able to return an immediate result due to record problems, the FBI continues to investigate the person's background for 3 months, with the FBI being recognized as one of the premier law enforcement agencies in the world.

What is proposed to occur with Section 1 of H.610 is nothing less than the State of Vermont interjecting itself into what **MUST** be seen as an **ACTIVE** and **ONGOING** FBI investigation. The FBI is on the case, and if the FBI determines that the final result should be a denial: The FBI immediately turns that information over to the BATFE. The BATFE takes this matter extremely seriously and they then immediately go out and separate the firearm from the Prohibited person. When that occurs, the ATF can then presumably charge the offender under

Federal Law, either for lying on the Federal Form 4473, and/or charge them with being a Prohibited Person in possession of a firearm.

As of yesterday, I checked with Mike Bailey to see if Jeffrey Wallin, Director of Vermont Information Crime Center (VCIC) had been able to assist this committee with obtaining some of the missing numbers as he suggested he would do when he testified on January 30th. We have not apparently heard back yet from him. I myself have previously made several calls to the ATF Burlington Office to attempt to get this data, but they are not very forthcoming at least to me as a lowly citizen.

For the committee's reference, I provide the following information as distilled from NICS Operations Reports for 2014-2018.

Data Point	2014	2015	2016	2017	2018
Total NICS Checks	20,968,547	23,141,970	27,538,673	25,235,215	26,181,936
NICS Referrals to ATF	2,511	3,648	4,170	6,004	4,240
Percent of Referrals	0.0120	0.0158	0.0151	0.0238	0.0162

While I am hesitant to do so, especially since what follows can be generally referred to as SWAGs, I submit them because this committee apparently is considering this section with no numbers to go on whatsoever as to what this bill will attempt to address.

As noted above, there were 4,240 Default Proceed Referrals from NICS to the ATF across the entire country in 2018.

- **SWAG #1**
Vermont population (616,592) is 0.18% of the US Population (327.2 Million)
0.18% of 4,240 would be an estimated **7.6** Prohibited VT Transfers
- **SWAG #2**
Default Proceeds (4,240) is 0.0162% of Total Background Checks (26,191,936)
0.0162% of the 41,550 would be an estimated **6.7** Prohibited VT Transfers

Using the above SWAGs as the only apparent measure available for us to gauge what section 1 attempts to address, we suggest that these are very. very small numbers. If indeed these numbers are reflective of the actual numbers, then it would appear that these retrievals would not unduly burden the ATF.

Federal law, due to the weighty consideration of stepping on a person's rights, errs on the side of the allowing Right after a 3-day delay, while vigorously looking for anything wrong. This bill errs on the side of stepping on people's Rights, and assumes that this is proper.

As there appear to be no examples data or proof that this is even a problem in Vermont, we strongly oppose this section of the Bill.

Section 2

In the current draft 5.1, we see that the language has returned to be an egregious affront to the basic concept of Due Process by completely removing the discretion of the court in weighing available evidence.

The 2018 Domestic Violence Fatality Review Commission Report shows that there were 17 Homicides in Vermont in 2017, and we know that this number is in some way exaggerated.

We further see that 11 of those deaths were "Domestic Violence-related" as determined by the DVFRC.

3 of those 11 deaths involved the use of a firearm.

We also see in this report that only one of those 11 deaths had an RFA in effect at the time, but unfortunately it does NOT tell us whether or not that 1 death with an active RFA occurred with a firearm, as opposed to a Sharp Object Impact / Stabbing, or Strangulation, or Neglect of Care, or Blunt force which accounted for 73% of the DV-related deaths.

From the 2017 Vermont Judiciary Annual Statistical Report, we see that there were 3,125 RFA filings.

"Worst" case: If that 1 DV-related death with an active RFA **WAS NOT** related to the use of a firearm and this law was in effect for 2017, then all 3,125 citizens, ***100% of them***, would have had their unalienable right of self-defense stripped away without any Due Process whatsoever.

"Best" case: If that 1 DV-related death with the active RFA **WAS** related to the use of a firearm and this law was in effect for 2017, then only 99.968% that they would lose their rights for no reason; their unalienable right of self-defense stripped away without any Due Process whatsoever.

Right now, a court makes a determination, based on the evidence in front of it, as to whether or not the defendant should relinquish their firearms.

We also still see that a defendant cannot stay at any residence where firearms "can be accessed by the defendant". Who makes the determination as to whether or not "firearms can be accessed"? Does this involve a warrantless search?

The court already has all the discretion it needs, we see no point in burdening the court needlessly, and we strongly oppose this section of the bill.

Section 3

Similar to what we see in Section 2, we again see that all court's discretion, I.E. Due Process, is once again being completely disregarded.

We also still see the requirement that a defendant cannot stay at a residence where "firearms" can be accessed". We again raise the same concerns as to who makes the determination as to whether or not "firearms can be accessed"?

The court already has all the discretion it needs, we see no point in burdening the court needlessly, and we strongly oppose this section of the bill as it again harshly disregards Due Process and unalienable rights.

Section 4

As written, this new statute apparently intends to provide a penalty for violating sections 2 or 3.

We strongly oppose this section of the bill.

Section 5

No objection.

Section 6-10

Given the dynamics that can occur in many families, we have grave concerns about allowing a family member or household member to initiate an ERPO without Law Enforcement involvement, which should be easily and readily accessible to either a family member or household member.

Unsettledness in a family is not a new concept, and we believe that many of these situations can become extremely bitter and nasty. As originally envisioned, some level of investigation would occur by LE prior to an ERPO request being referred to the State's Attorney or the Office of Attorney General. While we understand the urgency which may require an ERPO, LE involvement should be the first step, not only to provide immediate attention to the situation, but also to provide a solid footing for any subsequent action. LE is readily available, it is responsive as best as can be expected given their duties, and this should be a necessary step.

We strongly oppose these sections of the bill.

Section 11

No objection.

Section 12

No objection.

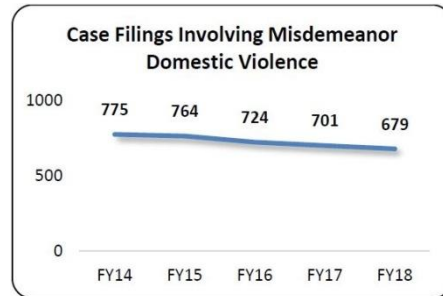
Why Do We Need this Bill?

From the Vermont Judiciary Annual Statistical Report, we see that ERPO law is being used, and we see that there were 8 cases Added with 6 cases Disposed in 2018.

From the VNDVSA, we learn that there Member Organizations answered almost 19,000 hotline calls in 2019, which was an increase of over 1,000 calls from 2018. We learned that these member organizations provided in-person help to 8,760 individuals in 2019, which was also an increase over 2018.

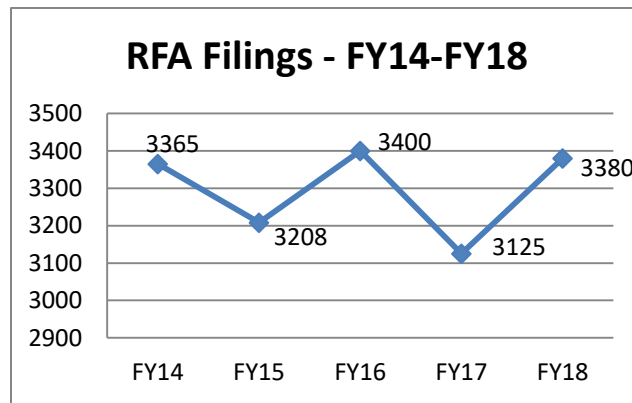
When these Member Organizations are handling these contacts, which is an invaluable service that is clearly addressing a huge need, we must assume that information is being shared about the availability of Law Enforcement; about how protection orders can be obtained, and about how ERPOs are available.

From both the 2017 and 2018 Vermont Judicial Annual Statistical report, we see that filings involving Misdemeanor Domestic Violence are steadily dropping across the 5-year span of FY13-FY17 as well as FY14-FY18, with the graph from the 2018 report shown below.



VT Annual Statistical Report, 2018, Page 30

Referring to the Vermont Judiciary Annual Statistical Report for 2018, we see that while there are fluctuations in RFA Filings, we have seen two noticeable declines in FY15 and FY17.



Vermont Judiciary Annual Statistical Report - 2018, Page 17

After years of steady increase, the above seems to indicate that something is apparently working to slow DV - a scourge which we must realize can never be completely eradicated.

On April 11, 2018, Act 97 (S.221) was signed into law which established [13 VSA § 4051](#). This act establishes a procedure for a State’s Attorney or the Attorney General to obtain a court order, called an Extreme Risk Protection Order (ERPO) that prohibits a person from possessing a firearm or explosive for up to six months if the court finds that the person’s possession of the weapons poses an extreme risk of harm to the person or other people. The court may issue an ex-parte order that lasts for up to 14 days if it finds that the person possessing the weapons poses an imminent and extreme risk of causing harm to himself or herself, or another person, by having a dangerous weapon.

At the same time, [13 VSA § 4019](#) became law, a statute which expanded background checks.

The debate surrounding these pieces of legislation were painful and acrimonious for all concerned, with this occurring one year and 8 months ago this past January.

In those rare situations where rights came into conflict, the court was determined to be the appropriate place to resolve a given situation, based on the evidence presented by the police and reviewed by the state attorney's office to determine the content and scope of the order.

There has not been one shred of evidence presented by witnesses before this committee or by the committee itself on the success or failure of this new enacted law. Are you saying it has failed?

If it hasn't failed, which we believe is the case, why are we spending all this time on H. 610?

Our membership looks to this Legislature, to this Committee, to this political process founded on constitutional principles, in the belief of due process and transparency to resolve these difficult issues.

I respectfully but forcefully state that with the handling of this bill; its language that assaults Constitutional Rights such as Due Process and the Right to defend one's life, home, family, friends and community; it's complete lack of any meaningful data that would support such an affront, the process is failing before our eyes and the eyes of the citizens of this state.

Thank You