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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.

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

19 (2) A person who violates subdivision (b)(2) or subsection ~~(e)~~ (d) of this
20 section shall be imprisoned not more than one year or fined not more than
21 \$500.00, or both.

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

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

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

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

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

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

16 * * * Relief from Abuse Orders * * *

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

18 § 1103. REQUESTS FOR RELIEF

19 (a) Any family or household member may seek relief from abuse by
20 another family or household member on behalf of himself or herself or his or
21 her children by filing a complaint under this chapter. A minor 16 years of age

1 or older, or a minor of any age who is in a dating relationship as defined in
2 subdivision 1101(2) of this chapter, may file a complaint under this chapter
3 seeking relief on his or her own behalf. The plaintiff shall submit an affidavit
4 in support of the order.

5 * * *

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

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

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

15 * * *

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

17 (i) ~~Unless subdivision (4) of this subsection (c) applies,~~ require the
18 immediate relinquishment, until the expiration of the order, of all firearms that
19 are in the defendant's possession, ownership, or control or that another person
20 possesses, owns, or controls on behalf of the defendant, ~~unless the court~~

1 ~~makes a written finding that by clear and convincing evidence relinquishment~~

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

3 ~~(ii) prohibit the defendant from residing at a residence where~~
4 ~~firearms are present, unless the court makes a written finding that by clear~~
5 ~~and convincing evidence relinquishment is not required to protect the safety of~~
6 ~~the victim or the public;~~

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

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

12 ~~(B) The court may issue a warrant, to be served with the order, for~~
13 ~~seizure of firearms from the defendant if the court finds there is probable cause~~
14 ~~to believe:~~

15 ~~(i) there are firearms in the defendant's possession, ownership, or~~
16 ~~control at the time the order is issued or while it is in effect;~~

17 ~~(ii) the defendant has committed an act of abuse; and~~

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

20 ~~(C) Firearms relinquished or seized under this subdivision (3) shall~~
21 ~~be transported and stored pursuant to 20 V.S.A. § 2307.~~

1 ~~(D) A law enforcement agency shall be immune from civil or~~
2 ~~criminal liability for any damage or deterioration of firearms relinquished or~~
3 ~~seized pursuant to subdivision (A) or (B) of this subdivision (3). This~~
4 ~~subdivision (D) shall not apply if the damage or deterioration occurred as a~~
5 ~~result of recklessness, gross negligence, or intentional misconduct by the law~~
6 ~~enforcement agency.~~

7 ~~(4) At the final hearing, the court shall question the defendant under~~
8 ~~oath about any firearms that he or she possesses or controls. If the defendant~~
9 ~~testifies under oath that he or she does not possess or control any firearms, The~~
10 ~~final order shall not require the defendant to relinquish firearms pursuant to~~
11 ~~subdivision (3)(A)(i) of this subsection.~~

12 * * *

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

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

21 * * *

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

2 § 1104. EMERGENCY RELIEF

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

11 * * *

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

13 (i) require the immediate relinquishment, until the expiration of
14 the order, of all firearms that are in the defendant's possession, ownership, or
15 control or that another person possesses, owns, or controls on behalf of the
16 defendant, unless the court makes a written finding that by clear and
17 convincing evidence relinquishment is not required to protect the safety of the
18 victim or the public;

19 (ii) prohibit the defendant from residing at a residence where
20 firearms are present, unless the court makes a written finding that by clear and

1 convincing evidence such a prohibition is not required to protect the safety of
2 the victim or the public;

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

5 (iv) if the order requires relinquishment of firearms, include all
6 available information regarding the type and location of firearms subject to the
7 order.

8 (B) The court may issue a warrant, to be served with the order for
9 seizure of firearms from the defendant if the court finds there is probable cause
10 to believe:

11 (i) there are firearms in the defendant's possession, ownership, or
12 control at the time the order is issued or while it is in effect;

13 (ii) the defendant has committed an act of abuse; and

14 (iii) a search for and seizure of the firearms is necessary to protect
15 the life, health, or well being of a victim on whose behalf the relief is sought.

16 (C) Firearms relinquished or seized under this subdivision (4) shall
17 be relinquished, transported, and stored pursuant to 20 V.S.A. § 2307.

18 (D) A law enforcement agency shall be immune from civil or
19 criminal liability for any damage or deterioration of firearms relinquished
20 pursuant to subdivision (A) of this subdivision (4). This subdivision (D) shall

1 ~~not apply if the damage or deterioration occurred as a result of recklessness,~~
2 ~~gross negligence, or intentional misconduct by the law enforcement agency.~~

3 * * *

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

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

13 * * *

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

15 § 4017a. PERSONS SUBJECT TO RELIEF FROM ABUSE ORDERS;

16 PROHIBITION ON POSSESSION OF FIREARMS

17 (a) A person shall not possess, ship, transport, or receive a firearm if the
18 person is the subject of an emergency relief from abuse order issued pursuant
19 to 15 V.S.A. § 1103 or a final relief from abuse order issued pursuant to
20 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 served the order by first class mail to the defendant's last
19 known address.

20 (2)(A) 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 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

19 shall indicate with specificity whether firearms were relinquished by the
20 defendant.

Commented [EN1]:

Commented [EN2]: The officer cannot report with certainty that all firearms subject to the order of relinquishment were in fact all relinquished. The officer may or may not have knowledge that some of all of the firearms were relinquished if the firearms were relinquished prior to officer's involvement. The officer can report service of the Order.

If a Search ensues pursuant to V.R.Cr.P. 41 (Search Warrants) the officer is required to provide a return of service itemizing the items seized.

Listing each firearm seized at this time could be time consuming if the person has many firearms and would delay return of service as the firearms would have to be individually logged at the station.

I am unsure why this is valuable to the Court since no one fully knows if the if the subject of the Order relinquished all firearms in his/her possession or control except that the subject of the order.

1 (2) If

2
3 the law enforcement officer has probable cause to believe the

4 defendant possesses, owns, or controls firearms, the officer may submit

5 an affidavit requesting that

6 a warrant for seizure of the firearms be issued pursuant to V.R.Cr. P. 41.

7 ~~return of service and the affidavit shall be filed with the court at the earliest~~

8

9 (3) If the

10 law enforcement officer has

11 defendant possesses, owns, or controls firearms, the officer shall investigate

12 the matter within 48 hours, or as soon as practicable. If the officer determines

13 probable cause to believe the defendant possesses, owns, or

14 controls firearms, the officer shall submit the return of service form pursuant to

15 V.R.Cr.P. 41 and provide a copy to the Court

16 issuing the order pursuant to this section

17 ~~probable cause exists, the return of service shall include a statement describing~~

18

19 (4) The court shall issue a warrant under this subsection for seizure of

20 firearms from the defendant if the court finds the warrant satisfies the

21 requirements of V.R.Cr.P. 41 and finds there is probable cause to believe:

Commented [EN3]: Under 15 VSA 1105 the officer must provide the court with Return of Service of the Order at the earliest possible time which shall take precedence over other summonses and orders. Providing the Court with the Return of Service is simple and not time consuming. Preparing a warrant is not as simple. Some will be time consuming. Rule 41 governs search warrants.

Commented [EN4]: Officers understand they have authority to investigate and we do not recommend compelling an investigation or setting time frames for commencing that investigation. The LEA may use a different officer or the matter may be transferred to a different agency.

Commented [EN5]: Rule 41 governs Search Warrants.

Commented [EN6]: This ensures the court issuing the RFA gets the return of service of the SW.

1 (A) there are firearms in the defendant's possession, ownership, or

2 control while the order is in effect; and

3 (B) a search for and seizure of the firearms is necessary to protect the

4 life, health, or well-being of a victim on whose behalf the relief is sought.

5 (5) A law enforcement agency and officer shall be immune from civil or

6 criminal liability for failing to learn of, locate, or seize a firearm while

7 executing a warrant issued pursuant to this subsection, for returning a seized

8 weapon to its owner if the owner is not prohibited from owning or possessing

9 firearms under state or Federal law and for an arrest based on probable cause,

10 enforcement in good faith of a court order, search warrant or search and

11 seizure pursuant to a lawfully recognized exception warrant requirements or

12 any other act or omission in good faith under this act.

13
14 (6)(A) Firearms relinquished or seized pursuant to this subsection or

15 subsections 1103(c) or 1104(a) of this title shall be relinquished, transported,

16 and stored pursuant to 20 V.S.A. § 2307.

17 (B) A law enforcement agency shall be immune from civil or

18 criminal liability for any damage or deterioration of firearms relinquished

19 pursuant to this subsection or subsections 1103(c) or 1104(a) of this title. This

20 subdivision (B) shall not apply if the damage or deterioration occurred as a

1 result of recklessness, gross negligence, or intentional misconduct by the law
2 enforcement agency.

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

6 (A) the total number of temporary orders the agency served during
7 the previous year;

8 (B) the total number of final orders the agency served during the
9 previous year; and

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

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

16 (f) On or before January 31 of each year, the Supreme Court shall report to
17 the House and Senate Committees on Judiciary the number of show cause
18 hearings held during the previous 12 months as a result of compliance or
19 noncompliance with a temporary or final order issued pursuant to this chapter.

20 * * *

1 Sec. 6. Relinquishment of Firearms, Search and Seizure of Firearms, Storage
2 and Return of Firearm, 20 V.S.A. § 2307

3 20 V.S.A. is amended to read:

4 (j) The Department of Public Safety and the Department of Buildings Grounds
5 and General Services shall be solely responsible for the execution of the
6 requirements of this section and 15 V.S.A. § 1105 including responsibility for
7 the preparation and execution of warrants, search and seizure of firearms,
8 storage and return of relinquished or seized firearms, subject to the exceptions
9 in this subsection. Nothing herein prevents the departments from entering into
10 mutual cooperation agreements with Vermont law enforcement agencies.

11 Nothing herein, including the absence of agreement with the departments,
12 prevents a Vermont law enforcement agency or law enforcement officer from
13 voluntarily assisting or enforcing the provisions of 15 V.S.A. § 1105 including
14 assuming responsibility for the preparation and execution of warrants, search
15 and seizure of firearms, storage and return of relinquished or seized firearms.
16 In the event a law enforcement agency or law enforcement officer assists,
17 undertakes or takes any action pursuant to 15 V.S.A. § 1105 and this section.

1 the law enforcement agency and officer shall be entitled to the protections of
2 subsection (h) of this section and 15 V.S.A. § 1105 (e)(5).

3 * * * Extreme Risk Protection Orders * * *

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

5 § 4051. DEFINITIONS

6 As used in this subchapter:

7 * * *

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

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

10 § 4052. JURISDICTION AND VENUE: **FILING**

11 * * *

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

16 **(d) A petition or motion filed by a family or household member pursuant to**
17 **subsection 4053(a) or 4054(a) of this title shall be filed during the court’s**
18 **regular business hours only.**

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

20 § 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

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

7 * * *

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

9 § 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

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

16 * * *

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

18 § 4055. TERMINATION AND RENEWAL MOTIONS

19 * * *

20 (b)(1) A State's Attorney ~~or~~ the Office of the Attorney General, or a
21 family or household member may file a motion requesting that the court renew

1 an extreme risk protection order issued under this section or section 4053 of
2 this title for an additional period of up to six months. The motion shall be
3 accompanied by an affidavit and shall be filed not more than 30 days and not
4 less than 14 days before the expiration date of the order. The motion and
5 affidavit shall comply with the requirements of subsection 4053(c) of this title,
6 and the moving party shall have the burden of proof by clear and convincing
7 evidence.

8 * * *

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

10 § 4057. PROCEDURE

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

15 * * *

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

20 (2) As used in this subsection:

1 (A) “Health care provider” has the same meaning as in 18 V.S.A.
2 § 9432.

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

9 * * * Conditions of Release Prior to Trial * * *

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

11 § 7554. RELEASE PRIOR TO TRIAL

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

16 * * *

17 (2) If the judicial officer determines that conditions of release imposed
18 to ensure appearance will not reasonably protect the public, the judicial officer
19 may impose in addition the least restrictive of the following conditions or the
20 least restrictive combination of the following conditions that will reasonably
21 ensure protection of the public:

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* * *

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

* * *

* * * Effective Date * * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.

Commented [EN7]: This should be discussed as to whether there is a need for some internal training and interagency discussion as to execution.

VPA DRAFT