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:
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1 (A) the proposed transferor and the proposed transferee physically
appear together with the firearm before a licensed dealer and request that the
licensed dealer facilitate the transfer; and
2
3 (B) the licensed dealer agrees to facilitate the transfer.
4
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
12 (1) the transfer requires a background check under this section or under
13 Federal law; and
14
15 (2) the licensed dealer facilitating the transfer has not been provided
16 with a unique identification number for the transfer by the National Instant
17 Criminal Background Check System.
18
19 An unlicensed person who transfers a firearm to another
20 unlicensed person in violation of subdivision (b)(1) of this section shall be
21 imprisoned not more than one year or fined not more than $500.00, or both.
22
23 (2) A person who violates subdivision (b)(2) of this
24 subsection or subsection (d) of this section shall be imprisoned not more than one year or fined not more than
25 $500.00, or both.
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(e)(f) This section shall not apply to:

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

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

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

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

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

* * * Relief from Abuse Orders * * *

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

§ 1103. REQUESTS FOR RELIEF

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

* * *

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

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

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

* * *

(3)(A) The court order shall:

(i) Unless subdivision (4) of this subsection (c) applies, require the immediate relinquishment, until the expiration of the order, of all firearms that are in the defendant’s possession, ownership, or control or that another person possesses, owns, or controls on behalf of the defendant, unless the court
makes a written finding that by clear and convincing evidence relinquishment
is not required to protect the safety of the victim or the public;

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

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

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

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

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

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

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

(C) Firearms relinquished or seized under this subdivision (3) shall
be transported and stored pursuant to 20 V.S.A. § 2307.
(D) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms relinquished or seized pursuant to subdivision (A) or (B) of this subdivision (3). This subdivision (D) shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

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

* * *

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

(2) 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 require 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.

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

§ 1104. EMERGENCY RELIEF

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

* * *

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

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

(ii) prohibit the defendant from residing at a residence where firearms are present, unless the court makes a written finding that by clear and convincing
convincing evidence such a prohibition is not required to protect the safety of

the victim or the public;

(iii) inform the defendant that he or she is prohibited from

possessing firearms until the expiration of the order; and

(iv) if the order requires relinquishment of firearms, include all

available information regarding the type and location of firearms subject to the

order.

(B) The court may issue a warrant, to be served with the order for

seizure of firearms from the defendant if the court finds there is probable cause

to believe:

(i) there are firearms in the defendant’s possession, ownership, or

control at the time the order is issued or while it is in effect;

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

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

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

(C) Firearms relinquished or seized under this subdivision (A) shall

be relinquished, transported, and stored pursuant to 20 V.S.A. § 2307.

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

criminal liability for any damage or deterioration of firearms relinquished

pursuant to subdivision (A) of this subdivision (4). This subdivision (D) shall
not apply if the damage or deterioration occurred as a result of recklessness,
gross negligence, or intentional misconduct by the law enforcement agency.

* * *

(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) 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 require 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.

* * *

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

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

§ 1105. SERVICE; WARRANTS

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

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

(2)(A) A defendant who has been served with a temporary order issued under section 1103 of this title may be served with all subsequent orders in the
case by first class mail to the defendant’s last known address. The defendant shall inform the court of any changes to the defendant’s address. The subsequent order, including any changes made to the temporary order, shall be effective when the subsequent order is issued.

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

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

(e)(1) A complaint or ex parte temporary order or final order requiring relinquishment of firearms that is served pursuant to this section shall be accompanied by a return of service form on which the law enforcement officer shall indicate with specificity whether firearms were relinquished by the defendant.
(2) If the defendant does not relinquish firearms upon service of the order, and the law enforcement officer has probable cause to believe the defendant possesses, owns, or controls firearms, the officer shall submit the return of service form to the court along with an affidavit requesting that a warrant for seizure of the firearms be issued. The return of service and the affidavit shall be filed with the court at the earliest possible time and shall take precedence over other summonses and orders.

(3) If the defendant does not relinquish firearms upon service of the order, and the law enforcement officer has a reasonable suspicion that the defendant possesses, owns, or controls firearms, the officer shall investigate the matter within 48 hours, or as soon as practicable. If the officer determines that there is probable cause to believe the defendant possesses, owns, or controls firearms, the officer shall submit the return of service form pursuant to subdivision (2) of this subsection. If the officer does not determine that probable cause exists, the return of service shall include a statement describing the efforts that were made to establish probable cause during the investigation.

(4) The court shall issue a warrant under this subsection for seizure of firearms from the defendant if the court finds there is probable cause to believe:

(A) there are firearms in the defendant’s possession, ownership, or control while the order is in effect; and
(B) a search for and seizure of the firearms is necessary to protect the life, health, or well-being of a victim on whose behalf the relief is sought.

(5) A law enforcement agency shall be immune from civil or criminal liability for failing to learn of, locate, or seize a firearm while executing a warrant issued pursuant to this subsection, or for returning a seized weapon to its owner if the owner is not prohibited from owning or possessing firearms under state or Federal law.

(6)(A) Firearms relinquished or seized pursuant to this subsection or subsections 1103(c) or 1104(a) of this title shall be relinquished, transported, and stored pursuant to 20 V.S.A. § 2307.

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

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

(A) the total number of temporary orders the agency served during the previous year:
(B) the total number of final orders the agency served during the

previous year; and

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

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

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

* * *

* * * Extreme Risk Protection Orders * * *

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

§ 4051. DEFINITIONS

As used in this subchapter:

* * *

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

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

§ 4052. JURISDICTION AND VENUE: FILING
Proceedings under this chapter shall be commenced in the county where
the law enforcement agency is located, the county where the family or
household member or the respondent resides, or the county where the events
giving rise to the petition occur.

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

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

§ 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

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

* * *

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

§ 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

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

* * *

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

§ 4055. TERMINATION AND RENEWAL MOTIONS

* * *

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

* * *

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

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

* * *

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

(2) As used in this subsection:

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

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

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

Sec. 12. 13 V.S.A. § 7554 is amended to read:
§ 7554. RELEASE PRIOR TO TRIAL

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

* * * 

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

* * *

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

* * *

*** Effective Date ***

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.