



H. 610 – Firearms and Domestic Violence
Sarah Robinson, Deputy Director
House Judiciary Committee – January 9th, 2020

Thank you for taking testimony today on H. 610, an act relating to firearms and domestic violence. The Vermont Network Against Domestic and Sexual Violence represents 15 independent Member Organizations across Vermont which provide direct services to victims of domestic and sexual violence. On behalf of our members and the victims and survivors we serve, the Vermont Network strongly supports H. 610.

As this committee heard in testimony yesterday, domestic violence homicide is a significant issue in Vermont. Although Vermont has a low overall violent crime rate, victims of domestic violence do not enjoy the relative safety our state offers. Half of all homicides in Vermont are related to domestic violence, and 55% of those homicides are committed with firearms. The relationship between domestic violence homicide and firearms is well established in the scientific literature. Research indicates that access to firearms is one of the primary risk factors for domestic violence lethality. Access to a firearm by an abusive partner increase the risk of death for victims of domestic violence by 500%.¹

Behind each of these numbers there is a Vermonter who was victim of domestic violence homicide by firearm – like Molly McClain, a 27-year old from Maidstone, Vermont, who was at home when she was shot and subsequently killed by her estranged husband who was subject to a protection order. Molly's story is only one of many in Vermont - and is not dissimilar from Rhonda Gray in Fairlee, Wanda Sanville in Windsor, Anako Lumumba in South Burlington, Aaron Allen in Danby and many more. And for each story, there is a family that is devastated, and communities asking what more can be done.

In 2018 the General Assembly passed Act 92, which aimed to address the issue of domestic violence homicide. Act 92 made important progress by allowing law enforcement officers to remove firearms from the scene of a domestic violence incident. However, Act 92 only addressed cases of domestic violence involving law enforcement response. Left unaddressed was protection for victims who access safety through the civil court system by seeking a relief from abuse order. Since Act 92 was passed, we have also learned valuable lessons about the gaps that remain in our system of response, especially how these vary across the state. H. 610 aims to address domestic violence homicide by addressing firearms within the civil protection order process, as well as other key protections for victims of domestic

¹ Campbell JC, Webster D, Koziol-McLain J, et al. Risk factors for femicide in abusive relationships: results from a multisite case control study. *American Journal of Public Health*. 2003;93(7):1089-1097.



violence, including background check provisions and strengthening the Extreme Risk Protection Order process.

Section 1: Charleston Loophole

Ensuring that firearms transfers subject to existing background checks are only finalized once the background check has been completed (the so-called “Charleston Loophole”) is relevant and important to victims of domestic violence. Transferring a weapon to a buyer prior to a background check being complete threatens both public and victim safety. One of the primary reasons that there may be a delay on the completion of a background check is the presence of an existing domestic violence record - most often either a misdemeanor domestic violence conviction or a final protection order. One in nine unlawful gun buyers thwarted by the federal background check system is someone with a domestic violence record². According to a study conducted by the Governmental Accountability Office, in approximately 30% of cases where there was an existing domestic violence record, background checks were not completed within the current 3-day window.³

Sections 2 and 3: Relief from Abuse Orders

Civil relief from abuse orders are a critical and primary safety tool for many survivors of domestic violence and are particularly helpful for individuals who don’t seek to immediately involve law enforcement or the criminal legal system in their case. Seeking a protection order is also a significant risk for survivors. The six months immediately following separation is the time period of highest lethality risk for victims of domestic violence, though this risk diminishes significantly after one year of separation. If granted, protection orders are effective at keeping survivors safe over time. A meta-analysis of studies conducted on protection orders published in 2010 indicated that protection orders lead to long-term reductions in police reported violence.⁴ In FY 2017, there were 3,125 relief from abuse orders applied for and granted in Vermont, and 3,156 orders ended or expired and disposed of by the court⁵. Both temporary (ex-parte) and final relief from abuse orders are essential and time limited safety tools for survivors and can provide comprehensive safety mechanisms such as limitations on contact, temporary custody arrangements, financial support and firearms surrender.

Although this court-ordered relief can be life-saving for victims, it is essential that our system of response include targeted interventions that address lethality risk factors and ensure that the conditions of orders are enforced. Currently, there is significant variation across the state in the rates of orders

² United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Publications & products: Background Checks for Firearm Transfers.

³ U.S. Government Accountability Office, Analyzing Available Data Could Help Improve Background Checks Involving Domestic Violence Records (2016). Retrieved from: <https://www.gao.gov/products/GAO-16-483>

⁴ Journal of the American Academy of Psychiatry and the Law, Volume 38, Issue 3, September 2010

⁵ Vermont Fatality Review Commission Report, 2018



granted and conditions included.⁶ Because firearms are a well-established risk factor for lethality, firearms ought to be addressed in each relief from abuse order proceeding - starting with the collection of information from both plaintiffs and defendants about the firearms accessible to the defendant.⁷ There is variation across Vermont related to how often or whether firearms are ordered surrendered as part of relief from abuse orders. Recognizing the risks inherent in this geographic variation, many other states have uniform responses to firearms in protection order proceedings. Thirty other states prohibit all people subject to 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.⁸ In addition, there have been several homicides in Vermont where firearms have been ordered surrendered, but the defendant resides at an alternate location with ready access to a firearm. H. 610 seeks to address this key issue.

In addition to ordering surrender in civil orders of protection, it is equally important that when the order is served the conditions are enforced. Once an order has been issued by the court, law enforcement is tasked with serving the order. We have heard from law enforcement that they lack the tools needed to ensure that firearms surrender provisions can be enforced. H. 610 attempts to address this concern by creating a process through which warrants and orders may be issued simultaneously when probable cause is present.

Section 4: Prohibited Persons

Federal law creates certain categories of persons who are prohibited from firearms possession, including people subject to qualifying protection orders, but the same protection does not exist under state law. This creates a troubling loophole from local oversight. If an order does not specifically list firearms surrender as a condition, the possession or purchase of a firearm by someone subject to a relief from abuse order cannot be prosecuted under state law as a violation of that protection 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.

Section 5: Data Collection

⁶ Rates of temporary orders granted range from 63% in Windham County to 96% in Essex County according to the 2018 Domestic Violence Fatality Review Commission Report.

⁷ The Vermont Fatality Review Commission made this recommendation to the Judiciary for implementation in their 2015 report. This reference can be found in the 2015 report on page 15. Retrieved from:

<https://vtnetwork.org/wp-content/uploads/2017/01/2015-DV-Fatality-Report.pdf>

⁸ Giffords Law Center, Domestic Violence and Firearms. Retrieved from: <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/>



Since the passage of Act 92, its implementation has been widely varied across the state. The data collection requirements included in Section 5 will assist in efforts to ensure equitable geographic access to justice, and to the safety measures afforded by the act. In addition, the law enforcement field has indicated that challenges remain related to storage capacity on the local level for non-evidentiary firearms. Collecting data on the number of weapons stored by law enforcement agencies pursuant to this bill will assist in defining the scope and extent of storage limitations.

Sections 6-11: Extreme Risk Protection Orders

The Vermont Network is supportive of efforts to allow family members and medical professionals to apply for Extreme Risk Protection Orders. We believe that these changes will create an important pathway for individuals with knowledge about imminent risks to personal and community safety to seek relief from the court.

Section 12: Conditions of Release

The Vermont Network supports language clarifying that criminal conditions of release may include orders not to possess firearms. We hope that this may lead to increased geographic consistency across the state.

Proposed Changes to H. 610 As Introduced

The Vermont Network proposes three changes to H. 610 as introduced:

- **Section 2** - 15 V.S.A. § 1103 (c)4: We propose to amend the language “If the defendant testifies under oath” to “If the defendant testifies credibly under oath”.
- **Section 3** - 15 V.S.A. § 1104 (c)2: Currently, language in the bill requires “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” as part of the petition for emergency relief. While we strongly support the court inquiring of the plaintiff about firearms in the emergency petition, we do not believe that plaintiffs should be required to answer this question. Such a requirement could jeopardize a survivor’s self-determination and safety.
- The current bill does not include any **mechanism for monitoring** by the court to ensure that the firearms surrender has been completed by the defendant. In many other states, there are systems for monitoring compliance that do not result in burdensome requirements for the court system. The Vermont Network recommends that language is added to require the defendant to submit an affidavit of compliance the next business day after the order is in effect. If an affidavit of compliance is not filed, the court shall set a show-cause hearing for the following day (as is required for domestic assault arraignments).