VTFSC Testimony
H.610 - Ver 7.1
February 18th, 2020
Chris Bradley, President - VTFSC

For the record my name is Chris Bradley, I am the duly elected President of the Vermont Federation of Sportsmen's Clubs (VTFSC), and I am here today representing that organization.

In previous testimony, I took a great deal of time to point out to this committee some of the inaccuracies, misstatements and outright falsehoods given to this committee in writing by another entity who provided testimony. I am sure that I earned few friends by bringing those misstatements to light, but it was my thought that this committee sought truth and therefore the record needed to be corrected. On that note, I wish to convey that there has been no rebuttal I am aware of to my corrections, nor am I aware of any admonishments made against the entity which made those inaccurate and misleading statements.

Section 1 - Default Proceed

The NICS system works as designed to supply almost instant results, and this system is constantly being improved. If there are problems in determining the Prohibited status of an individual, then those problems are as a result of records that are not being properly handled by states and other entities which are responsible for insuring that data being entered is flagged correctly. However: It is our understanding that things like the Fix NICS Act of 2017 is underway now to correct errors such as this.

This begs the question however: Has a bill been created, or will a bill be created, that insures and mandates that Vermont is making sure it is updating NICS records properly, such that Vermont insured it's data is accurate, which is the true cause of Default Proceeds in the first place?

Or is our focus solely on firearms?

To review: This section was created by its authors under a false assumption, and it was created without the authors having any idea whatsoever of the scope of this supposed problem. That lack of information was in fact perpetuated for almost a month after its introduction until the testimony of Mr. Wallin, Director of the VCIC, who gave a verbal report on BATFE data on February 5th.

In his report, I believe Mr. Wallin testified that the BATFE informed him that there were exactly 9 Default Proceed transfers in Vermont for 2019. He then reported that 7 of those firearms had

already been recovered, and I believe he indicated that the remaining 2 *may* have already been recovered, or were otherwise in the process of being recovered.

If there were 9 problems, and all 9 were resolved by the FBI and ATF, what is the problem this bill is trying to handle?

We have no data that I am aware of that any of these Default Proceeds caused any criminal issue in Vermont. Without such data, how can this section even be justified?

In allowing the FBI/NICS and the BATFE to do their job, these case all become Federal cases, meaning Violations of Federal Law with Federal Prosecution in Federal Courts possibly resulting in Federal Penalties and time served in Federal Prisons.

If the issue here is that the GAO reports that "**Few Individuals Denied Firearms Purchases Are Prosecuted**" shown in its report dated September 2018 which has been entered in the record, then this section most assuredly does not address that issue at all. In fact, if this is indeed the crux of this issue, then this needs to be brought to our Federal Congressional Delegation for action, as this is what our Federal Tax Dollars are supposed to be paying for.

Remembering that annual firearm sales in Vermont was 35,843 for 2019: We again point out that through this section, the State of Vermont is inserting itself into an active and ongoing FBI investigation that apparently resulted in only 9 Default Proceed issues, and as the process is clearly self-correcting in these rare Default Proceed incidents, we see no need for this section of the bill.

We Oppose this section.

New Section 3 - Impeding Public Officers
After at least 6 previous versions of this bill, this is a new section that augments existing law.

Specifically, and as other sections of this bill will cause an unnecessary escalation between civilians and police over property rights by a significant factor, this section anticipates these volatile situations by attempting to give law enforcement more power to order compliance and have their instructions obeyed.

Whether the defendant is innocent or guilty of possibly being a threat, or whether the firearms they own are even a risk factor at all becomes irrelevant: This section allows law enforcement to order the defendant to temporarily vacate the premises, even if they are quietly watching law enforcement seize their firearms.

It further appears that if the law enforcement required that the defendant assist them in some way, and the defendant then opted to remain silent, this section would penalize the defendant for the act of remaining silent by threatening them with not more than 2 years in prison and/or a $500 fine. While I am by no means a Legal expert: This appears questionable in regards to Miranda rights.

While we have the utmost respect for law enforcement and the job they do, other sections of this bill are doing nothing but hugely multiplying the number of times law enforcement must deal with situations which are highly likely to become very ugly, where law-abiding citizens must be forcibly separated from their property with NO DUE PROCESS and NO EVIDENCE that these firearms or the defendant pose any threat whatsoever to anyone.

Mark our words: These situations will not go smoothly, and there will be good reason for it. This section of the bill INVITES and actually INSISTS that there will be ugly confrontations.

The Federation opposes this section.

Section 2 and Section 3

The VTFSC understands that the intent of this section is to try and reduce Domestic Violence as it relates to firearms.

Our over-arching concern with these sections is that the fundamental right of self-defense is being removed carte blanche from citizens, and by the purposeful removal of the court's discretion, the basic concept of Due Process is completely ignored.

We also believe that, just as with the new section 3, there are possible issues with Miranda rights. We are further concerned that, in considering situations where there was an order to vacate, how the State intends to insure that the defendant cannot access firearms in a residence that is a third party. How does the State intend to insure that the defendant does not have access to firearms there, or anywhere else for that matter? This is simply frivolous.

In previous testimony, and by referring to the Domestic Violence Fatality Review Commission Report for 2018 which details 2017 data, I have attempted to make the point that of the 17 homicides reported by the Commission; 11 homicides were apparently related in some way to Domestic Violence; 3 of those 11 homicides were related to the use of a firearm; but only 1 of those 11 had an active RFA.

While we do not know if that 1 homicide with an active RFA was related to the use of a firearm, as the intent of this bill is to effect RFAs, then we point out that the data quite painfully shows that attempting to control potential murder weapons through the RFS process will have, at best,

minimal effect on homicides related to Domestic Violence. Those are the facts.

Yet here we are, reviewing a bill that attempts to lock down RFAs, when the State's own data does not support this need. Only 1 death with an active RFA, when that one death had a 67% chance of being caused by methods OTHER THAN a firearm.

What WILL occur out of this section, is an intense escalation of situations where law enforcement will be tasked with confronting citizens and removing their property - when that defendant never was allowed to defend themselves in court, and then lose the ability to defend themselves, to hunt, or even to pursue legitimate recreation that involve firearms.

This section strips innocent people of their rights, and they will not be happy about this.

As I have stated previously: If this section was in effect in 2017, then firearms would have been removed from over 99% of defendants when there appears to be no valid reason to do so (I.E. we do not known if deaths resulted).

In order to understand what this section of the bill is intending to address, we find a rather sad lack of meaningful data. For example:

1. How many ex parte orders were handled?

2. How many Temporary and Final RFAs were issued with conditions that the defendant had to relinquish their firearms?

3. How many Temporary RFAs were issued that required the relinquishment of firearms, which were later withdrawn or Denied?

4. Of the Temporary and Final RFAs that were issued with conditions that removed firearms, how many of these cases later became an issue for law enforcement or were returned to court due to the defendant breaking the RFA's conditions on firearms?

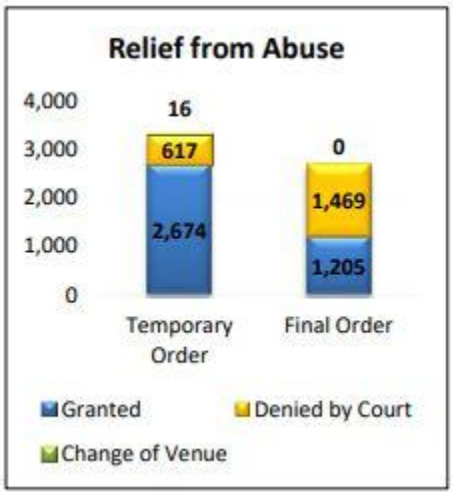
5. How many RFAs were there that were issued without conditions pertaining to firearms, but then later firearms became an issue?

It appears to us that these are some exceedingly basic questions about what this section of the bill is attempting to address, yet I am not sure there are any concrete answers to these questions. In fact, I do not think they exist at all - but I ask for clarification on this if this is not the case.

Now: We do understand that there is some overhaul of the Court's Reporting System currently underway, and that this effort may result in the ability to answer such necessary questions.

Today, courts have the discretion to remove firearms from a defendant, based on evidence before it that such extreme measures are possibly necessary.

Let's look at the data in front of us another way. Below we see the statistics for temporary and final RFAs as reported by the Vermont Judiciary Annual Statistical Report for FY19.



In the above graphic, taken from page 28 of the referenced report, we see that there were approximately 3,300 Temporary Orders filed. For 617 of these cases, almost 1 in 5 or 18.69%, were immediately denied.

Of the 2,674 Temporary Orders that were issued, we see that 1,469, or 54.93% were later DENIED or WITHDRAWN, with 1,205 having final orders given. This is not anomalous, because if we look at FY18 data, we see 2,580 Temporary Orders being granted when 1,355, or 52.51% were later WIHDRAWN or DENIED.

Looking at this another way: Of the 3,300 total cases filed: 2,095 or 64.5% were ultimately DENIED or WITHDRAWN, with only 36.5% becoming final orders.

Today, and due to a lack of meaningful data, we have no idea just how many of those 2,674 Temporary Orders involved situations where the court felt that the defendant had to be separated from his firearms. We have no idea whatsoever.

The odds are however that the vast majority of these defendants did not face that prospect, because the way things work today we have a process that generally conforms to the Constitutional Right of Due Process.

As opposed to law enforcement only having to deal with just those cases where there is evidence that the defendant has or will act inappropriately, this bill assume ALL will act inappropriately, and this law completely ignores the fact that a significant percentage of cases that are filed are later withdrawn or denied.

What we do know is that if H.610 becomes law, then Due Process in ALL of these cases goes right out the window, and law enforcement will be charged with going out to seize firearms over 2,500 times, when over half the time they will be going right back out in a very short period of time to return those firearms due to cases being withdrawn or denied.

How all that extra police work and court processing will be funded is not apparently a concern for this bill, but we suggest it is significant.

Per the Domestic Violence Network, one of the reasons they believe that this section is needed is that there "***is significant variations across the state in rates of orders granted and conditions included.***" Corresponding to this statement is a citation that "***rates of temporary orders granted range between 63% in Windham County to 96% in Essex County according to the 2018 Domestic Violence Fatality Review Commission Report.***"

One thing is certain in Domestic Violence situations: While there may be a high degree of commonality between many of these, every case is truly unique because the people involved are unique. Frankly, because of those facts, we would expect to see some significant variation from county to county, but the inference here is that the Domestic Violence Network apparently does not believe that the courts are capable in properly handling these cases at all.

Again, we apparently lack any meaningful data about the outcomes of this situations such as the questions I asked previously.

What we do see in the data is that while there are about 18% of Temporary Orders that are immediately denied, the court seems to be erring on the side of the plaintiff by granting a high percentage of orders, even though a majority of those orders are later denied or even withdrawn. Doesn't this show that the system is working?

I am going to take a different tack with this Committee in giving testimony, as through this testimony I intend to lay the groundwork for the lawsuit that will follow should this bill ever pass.

In considering the phrase "Due Process", our U.S. Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law."

The Fourteenth Amendment, ratified in 1868, uses the exact same eleven words, called the Due Process Clause, to describe the legal obligation of all states.

These words have as their central promise an assurance that ALL levels of American Government must operate within the law and provide fair procedures.

This section of H.610 does NOT do that.

In referring to Article 10 [**Rights of persons accused of crime; personal liberty; waiver of jury trial]** of our Vermont Constitution, we see the phrase: "***...; nor can any person be justly deprived of liberty, except by the laws of the land, or the judgment of the person's peers; ...***"

In the case of Article 10, the words "***justly deprived of liberty***" fully equates to stepping on a citizen's rights by seizing property and stripping them of their ability to defend themselves. The phrase "***except by the laws of the land***" specifically equates to the concept of Due Process.

And what of Article 4 [**Remedy at law secured to all**] to the Vermont Constitution? Article 4 states that "***Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial' promptly and without delay; comformably to the laws."***

Does this imply that when someone's rights are improperly taken away in a manner that is AGAINST the "law of the land", they can sue, either the state or the plaintiff?

Why doesn't these proposed changes in law provide for a severe penalty should a plaintiff just make things up in order to "get" the defendant? With such high numbers of cases being withdrawn or denied, it certainly seems plausible that such things occur, what is the appropriate penalty?

In §6 [**Legislative Powers**] of Chapter 2 of the Vermont Constitution, the legislature is denied any power to "***add to, alter, abolish or infringe any part of this constitution.***"

And what of § 71 [**Declaration of Rights Not to Be violated**]? This section is a single sentence that reads: "***The Declaration of the political Rights and privileges of the inhabitants of this***

state, is hereby declared to be part of the Constitution of this Commonwealth; and ought not to be violated on any pretence whatsoever."

I ask you. By voting for this bill, there can be no question that the inherent right of Due Process has been affected. By voting for this bill, there can be no question whatsoever that Vermont citizens will lose their right to defend themselves. Either one should be enough for this deliberative body to not support this bill, regardless of how well-intentioned it may be, but both together they should result in a solid thumbs down when considering this bill.

However, there is more to consider, and that is your oath of office as specified in § 16 of Chapter 2 of the Vermont Constitution.

I quote: "***You do solemnly swear (or affirm) that as a member of this Assembly, you will not propose, or assent to, any bill, vote or resolution, which shall appear to you to be injurious to the people, nor do nor consent to any act or thing whatsoever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State, but will, in all things, conduct yourself as a faithful, honest Representative and guardian of the people, according to the best of your judgment and ability. Under pains and penalties of perjury***."

Our U.S. and Vermont Constitutions both promise the concept Due Process. Our U.S. and Vermont Constitutions hold the right to keep and bear arms in exceptionally high regard. In considering whether or not this section has "***a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State*** ", this cannot even pass the straight-face test.

As we see it: A vote in support of this bill is a complete and total abrogation of the solemn oath you took.

As another consideration, we now look at 18 USC 922(d)(8), which relates what the Federal Law is in relation to RFA situations. Section (d)(8) reads as follows:

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

...

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child or such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph

shall only apply to a court order that --

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
(B)(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury

Today, the above Federal Law is ONLY triggered when a court, based on the evidence before it, issues a court order that separate the defendant from his firearms as in (B)(i) and (B)(ii); whereas what is now being proposed will ALWAYS trigger that section.

Something very interesting in the above Federal law however is the concept of "possession". Per Federal Law, a defendant cannot purchase or receive a firearm when under an RFA and the situation warrants it, yet this section of Federal Law is completely mute on any attempt to seize existing firearms that may already be in the defendants possession. Apparently, the law was designed to stop any new firearms from being obtained - but it apparently allowed existing firearms to be kept.

We cannot support this section of the bill, and in fact: We find it abhorrent.

Section 4
As written, this new statute apparently intends to provide a penalty for violating sections 2 or 3.

A question arises however regarding how fast the process should work to return firearms to an individual who had them taken away but due to subsequent to a dismissal or withdrawal, these firearms must be returned. What is the timeframe for that, and why has no time been spent on wording to return firearms to citizens who were stripped of them without Due Process, and should now have them back with the utmost speed and care.

This same concern exists against sections 2 and 3 as well; there is a great deal of verbiage that removed property and rights without Due Process, but almost nothing concerning reinstating those rights.

We strongly oppose this section of the bill.

Section 5

As written, this new statute attempts to handle the warrant processing for the RFA processing that occurs in section 2.

As we strongly object to that section, we likewise object to this section.

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 - 15
No objection

Summary
this is a poorly conceived bill is seriously flawed in regards to having any meaningful data upon which such drastic measures can be seen to be warranted; it disregards the court's critical ability to use discretion; which appears to be working well now; it ignores Constitutional Protections, and there can be no question that it steps on Constitutional Rights. For those reasons alone, this bill should be put on the wall and left there to slowly wither and die, as we do not believe that a conscientious Representative who takes his/her Oath of Office seriously could ever vote for it given these flaws.

We further object to being disregarded as legitimate "stakeholders" on this bill simply because we do not agree with it, setting aside completely our very legitimate reasons for our objections. We are as much a stakeholder in this process as anyone else, and to be ostracized from internal discussions because we have legitimate Constitutional concerns is simply not right or proper.

To date, and across what is now 7 different versions of this abomination of a "committee" bill, we do not believe there has been a single vote on any portion by this committee, and an inordinate amount of very precious time has been consumed in trying to put lipstick on a pig. The advocates and proponents of this bill are given every courtesy, including behind the scenes

collaboration which purposefully excludes ANY dissenting opinions, no matter how legitimate those dissenting options may be.

This is NOT the deliberative process that Vermonters expect from their legislature. We will oppose this bill at every turn, and should this ever pass into law, which we are confident it will not in anything close to its present form, it can be expected to be legally challenged on some very solid constitutional grounds.

Thank you for your time.