

Vermont Police Association
Submitted to House Judiciary 02/12/2020
Version 6.1 H. 610

The VPA supports the proposed revisions to Version 6.1 set forth in the Consensus Draft submitted to the committee on 02/11/2020.

Unresolved Safety Concerns: Safe removal/receipt of relinquished firearms at an unfamiliar location, with unknown number of occupants and under circumstances the officer has limited or no control.

Relinquishment

Relinquishment to a law enforcement officer or to a law enforcement agency must be pursuant to the instructions of the law enforcement officer. The **goal** is to remove firearms in a safe and orderly process without harm to anyone, including officers. The obligation to relinquish arises “immediately” (page 4, line 21 and page 7 line 15) upon service of the order by a LEO. From an officer perspective, a LEO must “immediately” be prepared to manage and accept relinquished firearms. Relinquishment will occur in all hours of the day/night where back up support may be 1-2 hours away.

During relinquishment LEOs it is imperative that officers be provided full discretion and a variety of options and tools to assist the LEO in controlling the relinquishment process: a highly dangerous process with everchanging circumstances.

The safest way to quickly remove relinquished firearms while serving a temporary or final order:

- Ensure the location is free of all occupants with no opportunity for people to arrive at or enter the residence during removal.
- Deploy special equipment, such as U Hauls, and additional officers in anticipation of the worst case scenario which may include:
 1. Lots of firearms and locked gun safes.
 2. People on scene who are young, old, agitated, under the influence, armed, dangerous, limited mental capacity or mental health issues.
 3. Dangerous or agitated defendant with access to firearms.

4. Aggressive dogs.

The vast majority of VT LEAs do not have the law enforcement personnel capacity and resources to serve temporary and final orders with a SWAT team and trucks 24 hrs. a day/7 days per week.

You cannot resolve the resource or cost issue.

However, there are some changes you can make to this bill that that maximizes the likelihood that officers will have:

- Unimpeded and immediate access to firearms.
- Authority to control the presence and/or movement of **all people** at the location including authority to order them to vacate. (See Impeding § 3001).
- Authority to arrest/detain a non-cooperating person failing to follow an officer's instructions during relinquishment and removal. (See Relinquishment §1049).
- Ability to remove firearms without harm to any person and damage to property.

Proposed Revisions to H. 610 Version 6.1 Addressing Concerns

1. Embed in every order where firearms are to be relinquished involving an LEA (i.e. not a third party) a requirement that the defendant follow the officer's instructions. **These instructions, like other authority granted to law enforcement officers are always subject to constitutional restraints.** This gives officers the authority, within constitutional constraints, to control defendant's movements and location and the process for relinquishment. For example:
 - a. Officer instructs the defendant to stay outside the house or leave the premises until, following relinquishment, officer notifies defendant to return.
 - b. The officer instructs the defendant to remain present if the LEOs needs to ask the defendant for assistance in accessing and removing firearms such as: providing keys, geographic directions, location and number of firearms.
 - c. It would not authorize an officer to search and seize without a warrant or other recognized exception to the warrant requirement.

Because the provision is embedded in an order, a violation is enforceable through arrest pursuant to the crime of Violation of an Abuse Prevention Order (VAPO).

2. Define “relinquishment” to mean fully cooperate with law enforcements efforts to access firearms by providing, upon request of a law enforcement officer, information or keys to locks, including, but not limited to:

- i. location of firearms, production or location of keys, combinations to locks for firearms, safes and doors;
- ii. time, place, manner and conditions of relinquishment; or
- iii. any other information that will assist the officer in the expedited access, retrieval or delivery of firearms subject to relinquishment.”

3. Add a new crime: 13 V.S.A. § 1049. Relinquishment of Firearms

A person subject to an order of relinquishment of firearms pursuant to 15 V.S.A. § 1103 and 15 V.S.A. § 1104 shall abide by the lawful requests and instructions of law enforcement officer regarding firearms including but not limited to the:

- iv. location of firearms, production or location of keys, combinations to locks for firearms, safes and doors;
- v. time, place, manner and conditions of relinquishment; or
- vi. any other information that will assist the officer in the expedited access, retrieval or delivery of firearms subject to relinquishment.

Nothing in this section authorizes a law enforcement officer to conduct or compel an unlawful search and seizure.

A person who violates this section shall be imprisoned not more than two years or fined not more than \$500.00, or both.

4. Grant enforceable authority to LEOs to control all people at the scene. Officers have no authority to control the movement of those present during a relinquishment. If you add a new crime by amending **Impeding a Police Officer to 13 V.S.A. § 3001**, officers can order a person to remain in place or leave the residence until relinquishment is completed or arrest them (hopefully the threat is sufficient to gain compliance) if they do not comply:

Impeding a Police Officer to 13 V.S.A. § 3001

* * *

(b) A person who is present at a location during the lawful search or seizure of a firearm or removal of a relinquished firearm under 15 V.S.A. § 1103 and 15 V.S.A. § 1104 shall abide by the instructions given by a law enforcement officer to ensure the safe removal of firearms or to protect the officer's safety and safety of those present. Under this subsection (b), the term "ensure the safe removal of firearms or to protect the officer's safety and safety of those present" shall include instructions requiring a person to temporarily vacate a location until a law enforcement officer determines the firearms have been removed from the premises.

~~(b)~~ (c) As used in this section, "weapon" means any device, instrument, material, or substance, whether animate or inanimate, excluding a firearm as defined in section 3019 of this title, which, in the manner it is used or is intended to be used, is known to be capable of producing death, serious bodily injury, or temporary

disability. (Amended 1971, No. 199 (Adj. Sess.), § 15; 1979, No. 111 (Adj. Sess.); 1999, No. 149 (Adj. Sess.), § 2.)

Conclusion:

The VPA will support this bill if its safety concerns are met. We cannot unnecessarily sacrifice officer safety when we have solutions to minimize the risk.