



**H. 610 Draft 4.1– Firearms and Domestic Violence**  
**Sarah Robinson, Deputy Director**  
**House Judiciary Committee – January 29<sup>th</sup>, 2020**

Thank you for taking continued testimony on H. 610 and for considering the revised draft that you have before you today.

H. 610 is designed to provide critical protections to victims of domestic violence during the periods of time that well-established research indicates are most dangerous for victims. In-depth reviews of domestic violence homicides (such as the reviews conducted by Vermont’s Fatality Review Commission) often highlight that victims have accessed every available system of support prior to their death and law enforcement, the courts and advocates have all done their jobs by operating within existing frameworks and expectations set forth by law. **Despite these efforts, fatal yet fixable holes remain in the way that our system responds to the risk of lethality for victims of domestic violence.** Research indicates that, after previous incidents of domestic violence, the two leading risk factors for domestic violence homicide are the presence of firearms in a violent home and estrangement (leaving). This bill aims to address these two risk factors and works to address Vermont’s persistent and devastating problem of domestic violence homicide.

Since you received initial testimony on this bill, the Network has worked to respond to concerns raised by law enforcement and the courts, while maintaining the critical protections and safeguards in the bill.

**Sections 2 & 3: Relief from Abuse Orders**

There is considerable variability in the conditions ordered by Vermont courts in relief from abuse order proceedings. Though these conditions may vary case-to-case, they also vary county-to-county and judge-to-judge – creating areas in the state where the protections afforded to victims are dictated by geography. Sections 2 and 3 aim to create consistency by improving the firearms-related information available to the court and ensuring that this information is considered in the context of victim safety.

The current relief from abuse order affidavit form asks the plaintiff to disclose general weapons and to highlight the most recent and most severe incidents of abuse that have brought them to seek relief. Even if firearms are being used to threaten, coerce or control victims of domestic violence, often the most recent and severe incidents are not firearms-related. The proposed bill will allow plaintiffs to offer specific firearms-related information to the court for its deliberations. In addition, it creates a strong presumption that firearms will be ordered relinquished, and that a person subject to an order shall not reside in a residence where they have access to firearms. This presumption does allow for judicial



discretion in cases where there is not clear and convincing evidence that firearms relinquishment is in the interest of victim or public safety.

#### **Section 4: Prohibitions**

Federal law creates certain categories of persons who are prohibited from firearms possession, including people subject to qualifying protection orders, but the same protections do not exist under state law. This creates a troubling loophole from local oversight and means that these cases can only be prosecuted by the US Attorney. This section will allow State's Attorneys to prosecute these cases in Vermont if needed.

#### **Section 5: Service**

Section 5 includes two distinct, but important, provisions related to the service of relief from abuse orders. The first is subsection b(1) and b(2), which creates a 'once served, always served' process for law enforcement. This will serve a dual purpose of sharply reducing the number of orders which need to be personally served by law enforcement officers and creating a more efficient and safer process for officers serving final orders. In-person service is always required for temporary or ex-parte orders. Under current law, all final orders also have to be personally served. Even if a defendant appears at the final hearing, the order is considered in effect but still requires additional personal service by a law enforcement agent. If the defendant does not appear at the final hearing and an order is issued by the court, the order is not in effect until it is served. This creates a very dangerous window of time for victims. Defendants may intentionally evade service requiring additional capacity from law enforcement. The proposed language will ensure that orders are in effect upon issuance and that law enforcement is not utilizing limited resources to locate defendants who have already been noticed to appear at a hearing.

Section 5 also creates a compliance monitoring process for relief from abuse orders. This process serves as an assurance for survivors that, when they take the significant risk of seeking an order of protection, the system of response will help ensure the safety that is ordered by the court. One of the primary reasons why survivors seek a temporary order but do not pursue a final order is that the safety provisions ordered by the court are not upheld in the temporary period – especially as it relates to firearms relinquishment. This section creates a pathway for defendants to be given the opportunity to relinquish firearms upon service and, if they do not comply, for law enforcement to conduct an investigation and a warrant from the court.



A previous version of the bill included the ability of the court to issue warrants simultaneous to relief from abuse orders. The Vermont Network heard in testimony from law enforcement that they had concerns about their operational safety if warrants were issued without the benefit of a law enforcement investigation. The process in the current draft is intended to account for these concerns. If an officer serves an order and the defendant does not comply with the relinquishment condition, the officer can apply for a warrant and return it with the return of service form, a form and warrant process which is familiar and already exercised by law enforcement in the course of their current duties. If the officer does not have probable cause, they have a period of time to work to establish probable cause and apply for a warrant, or report to the court on their efforts. This process ensures that victim safety is prioritized in the critical time period between the temporary order. Critically, it also ensures information about the defendant's compliance is available to the court in advance of the final hearing.

H. 610 strengthens a critical path to safety for survivors of domestic violence. It targets systems interventions during the most dangerous time for survivors and is informed by evidence to address the leading risk factors for domestic violence homicide. Although you are considering detailed, procedural changes in the proposed language of the bill, these changes have a deep and real impact on the lives and safety of victims of domestic violence in every community in Vermont. Thank you for your consideration.