



H. 610 Draft 6.1– Firearms and Domestic Violence
Sarah Robinson, Deputy Director
House Judiciary Committee – February 12th, 2020

Thank you for taking continued testimony on H. 610 and for considering the revised draft 6.1 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 fulfilled their obligations by operating within existing frameworks and expectations set forth by current law. **Despite these efforts, fatal, though fixable, holes remain in the way that our system responds to the risk of lethality for victims of domestic violence.**

Research indicates that two leading risk factors for domestic violence homicide are the presence of firearms in a violent home and estrangement (leaving). This bill is an evidence-informed approach to address domestic violence homicide. A meta-analysis of studies examining domestic violence homicide published in 2018 found that “the perpetrator’s direct access to guns was the risk factor that increased the likelihood of Intimate Partner Homicide (IPH) by the highest percent.”¹ Additionally, “the increased risk of an occurrence of Intimate Partner Homicide (IPH) is for the time period shortly after the separation”, and the highest risk period extends through the first three months.² A study published by the Annals of Internal Medicine in 2017 looked at the impact of state laws requiring the relinquishment of firearms through the relief from abuse order process. This study found that “state laws that both prohibited the possession of firearms by persons subject to an intimate partner violence-related restraining order and required these persons to surrender their firearms were associated with firearm-related Intimate Partner Homicide rates that were 14% lower than in states without these laws.”³ The draft bill you have in front of you today does exactly this.

¹ Spencer, C. M., & Stith, S. M. (2018). Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide: A Meta-Analysis. *Trauma, Violence & Abuse*, p. 11.

² Spencer, C. M., & Stith, S. M. (2018). Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide: A Meta-Analysis. *Trauma, Violence & Abuse*, p. 3.

³ Siegel, M. (2016). State Intimate Partner Violence–Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015. *Annals of Internal Medicine*, (167), p. 541.



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. The draft 6.1 that you have before you today, together with the memo from the Attorney General's Office, Department of Public Safety and the Vermont Police Association represent a strong bill with language and proposals that have been carefully vetted by stakeholders.

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 may be dictated by geography. Sections 2 and 3 aim to create increased consistency by improving the firearms-related information available to the court in the application for relief and ensuring that this information is directly related to the conditions in the order.

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 present in a violent home or 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 to inform its consideration of the facts in an application for relief.

H.610 proposes that if evidence about the defendant's possession of, or access to, firearms is available to the court, a relinquishment condition is included in the relief from abuse order. This aims to address the Judiciary's concern that conditions in relief from abuse orders ought to respond to the specific facts available to the court. Equally important is the provision that if an order includes a vacate condition, the individual cannot reside at a residence where they have access to firearms.

Section 4: Prohibitions

Federal law creates certain categories of persons who are prohibited from firearms possession, including people subject to qualifying protection orders. The same protections do not exist under state law. This creates a troubling loophole from local oversight if an order of protection doesn't include a specific firearms relinquishment condition. This section will allow State's Attorneys to prosecute these cases in Vermont, if needed, rather than relying solely on federal authorities.



Section 5: Service

Section 5 includes two distinct, but important, provisions related to the service of relief from abuse orders.

The first provision is in subsection (b)(1) and (2), which creates a ‘once served, always served’ process for law enforcement. This will serve a dual purpose of 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. The proposed language allows the court discretion to serve the final order by mail. A ‘once served, always served’ process will reduce the time and labor spent on service of these orders by law enforcement.

In addition, the proposed draft creates a process for informing defendants that following a temporary order, any final orders will be effective immediately upon issuance. Currently, 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. Even if the temporary order has not yet expired, this creates a very dangerous window of time for victims because conditions may have changed between the temporary and final orders. Defendants may intentionally evade service, requiring additional capacity from law enforcement. The proposed language will help ensure that law enforcement is not utilizing limited resources to locate defendants following the issuance of final orders.

The second provision in Section 5, creates the foundation for a compliance monitoring process for relief from abuse orders. Compliance monitoring functions as a cornerstone of effective statutory schemes and practices related to relief from abuse orders. Compliance monitoring of firearms relinquishment is a longtime and well-established recommendation of the National Council of Juvenile and Family Court Judges⁴. 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 has been ordered by the court. One of the primary reasons we hear 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. Section 5 creates mechanisms to collect

⁴ National Council of Juvenile and Family Court Judges. *A Guide for Effective Issuance and Enforcement of Protection Orders*, p. 73.



initial information about compliance with a firearms relinquishment condition and for a plaintiff to be informed about firearms relinquishment by a law enforcement officer following service.

The bill as introduced 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 current draft removes any warrant requirement completely. The draft clarifies that the court may issue a warrant as the result of an application pursuant to Rule 41 of Vermont Criminal Procedure.

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.