

House Judiciary Committee Testimony - 02/04/2021

H. 133, This bill proposes to clarify that a court issuing an emergency relief from abuse order has the authority to require relinquishment of the defendant's firearms.

Chairperson Grad, Committee Members,

To all of your membership, congratulations on your election/re-elections, especially my local House Rep. Kate Donnelly. I appreciate the need for our current process under Zoom. However, I must stress that a thorough and robust process is necessary for even the most basic legislation. That said, I join you all in looking forward, hopeful and grateful, that we will return to the statehouse and be able to engage in "human scale democracy" that makes the Vermont "citizen" legislature such a rare and dignified community. I miss the place but not wearing a tie.

I anticipate submitting questions regarding evidentiary standards for relinquishment of firearms, Due Process for return of property at termination of any RFAs, and serious concerns that the codification of the practice will make it standard operating procedure. This may in fact result in an increase in "prophylactic" firearms relinquishment orders, stemming from the Court checking off the boxes at the Affidavit and Ex Parte Appearance stages. We should have statistics on relinquishment frequency, length of duration and timelines for Return of this property from the Court. Perhaps Judge Grearson can anticipate the information request and put together some broad statistics? As a courtesy, I have Cc'd both he and Defender General Matt Valerio on this testimony.

As a final important point, Vermont Traditions Coalition requests a reconsideration of the access to legal counsel currently absent in the RFA procedures. Other than Ex Parte orders without firearms relinquishment, all RFA requests that specify Relinquishment of Firearms should be based on VT Rules of Criminal Procedure and allow for Court appointment of Counsel for indigent, otherwise eligible criminal Defendants. Section 1903 Vermont Rules of Family Proceedings are not sufficient where Relinquishment Orders are at issue.

As we support a much higher evidentiary standard for Relinquishment than that accepted for RFAs other conditions, and the Constitutional Right is affirmed by precedent of the VT Supreme Court as an individual liberty, the standard of evidence should be at least equal to a search warrant specified in Rule 41 (link below). All conditions and practices of that Rule assure a minimum of substance and procedure, including denial of requests and applicability in future proceedings.

The denial of any individual Liberty should require at least the minimum criminal standard of evidence and, due to the serious nature of separation from a civil liberty, I would submit that the nature of the RFA with Relinquishment constitutes a new criminal offense. Firearms ownership is a Right enshrined in Article 16 of our Vermont Constitution and set firmly by Vermont Supreme Court precedent as equally precious as others we use everyday such as Speech, Association, the Press and Due Process of Law in all criminal proceedings (See bottom two case citations below citations below).

To quote a recent decision we all are familiar with (State v. Brigham, 166 Vt. 246):

"The contention that the framers intended these fundamental freedoms to be mere aspirational ideals rather than binding and enforceable obligations upon the State cannot be seriously maintained." December 1996

Below are Links to VT Rules of Criminal Procedure #41 and #44. Search and Seizure is covered in 41, while Right To Assignment of Counsel is covered in 44. Also links below are included for two Family Court Rules on Abuse Prevention and Appearances and Withdrawals of Attorneys. I have asked Mike Bailey to post these on todays page so you can review them while on Zoom.

I look forward to helping answer any questions Representatives may have of my community as well.

In Liberty,

William R. Moore

Vermont Traditions Coalition

vermonttraditions.org

<https://casetext.com/rule/vermont-court-rules/vermont-rules-of-criminal-procedure/ix-supplementary-and-special-proceedings/rule-41-search-and-seizure>

<https://casetext.com/rule/vermont-court-rules/vermont-rules-of-criminal-procedure/ix-supplementary-and-special-proceedings/rule-44-right-to-and-assignment-of-counsel>

<https://casetext.com/rule/vermont-court-rules/vermont-rules-for-family-proceedings>

<https://casetext.com/rule/vermont-court-rules/vermont-rules-for-family-proceedings/rule-9-abuse-prevention>

<https://casetext.com/rule/vermont-court-rules/vermont-rules-for-family-proceedings/rule-15-appearance-and-withdrawal-of-attorneys>

<https://handgunlaw.us/documents/agopinions/VTSupCtCarryingFirearms.pdf>

<https://guncite.com/court/state/48vt636.html#fnb242.1>