



**H. 133 Testimony**  
**Sarah Robinson, Deputy Director**  
**House Judiciary Committee – February 4, 2021**

Thank you for the invitation to provide testimony on H. 133. On behalf of the 15 Member Organizations of the Vermont Network and the survivors of domestic and sexual violence they serve, we strongly support H. 133.

**Civil Relief from Abuse (RFA) Orders**

Civil relief from abuse (RFA) orders are one of the most important legal options available for people who experience domestic violence. Both emergency (ex-parte) and final relief from abuse orders are essential and time-limited safety tools for survivors. RFAs can provide safety mechanisms, such as limitations on contact, temporary custody arrangements, financial support and firearms surrender conditions. Each relief from abuse order is tailored to match the circumstances of the abuse. Importantly, RFAs are a civil legal tool and provide an opportunity for survivors to seek legal protection, without involving the criminal system.

Seeking court or legal relief from domestic violence is inherently dangerous for survivors. Victims of domestic violence are at the highest risk of being killed by an abusive intimate partner when they leave an abusive situation. Unfortunately, domestic violence homicide remains a persistent problem in Vermont. Since 1994, over half of all homicides in Vermont have been domestic violence related. Of those crimes, 55% were committed with firearms and 77% of the suicides associated with domestic violence homicides (murder/suicides) were committed with firearms, according to the most recent report available from the Vermont Fatality Review Commission.<sup>1</sup> Because domestic violence can pose dire consequences for survivors, families, and communities across Vermont, it is essential that tailored emergency relief provides protection for victims when they need it the most.

**Existing Court Practice**

The purpose of H. 133 is to clarify and codify existing court practice. This bill does not expand or narrow the court's inherent authority to issue firearms-related conditions of emergency relief from abuse orders. Across our state each day, survivors of domestic violence seek emergency protection through an ex-parte process to apply for relief from the court.

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<sup>1</sup> 2018 Vermont Fatality Review Commission Report, Page 2. Retrieved from: <https://ago.vermont.gov/wp-content/uploads/2018/10/2018-Final-DV-Report.pdf>



Currently, judges may include firearms-related conditions if they have a factual basis which indicates that a plaintiff may need protection from firearms-related violence. This includes information about the defendant's possession of firearms or related threats.

In order to ensure that the language of the bill accurately reflects current judicial practice, the Vermont Network makes the following language proposal for the bill<sup>2</sup>:

*(4) An order issued under this section may, if the plaintiff's complaint or affidavit includes information that the defendant possesses, owns, or controls firearms, **or threatened to use a firearm**, and the court finds it necessary to protect the plaintiff or the plaintiff's children, require the immediate relinquishment, until the expiration of the order, of all firearms that are in the defendant's possession, ownership, or control or that another person possesses or controls on behalf of the defendant.*

#### **Family Court System's Response to Domestic Violence**

H. 133 will improve the family court system's response to domestic violence in three significant ways:

- **Improve Geographic Justice.** The court *already* has inherent authority through well-established law to include firearms surrender conditions in emergency relief from abuse orders. While this authority already exists and is exercised, it is exercised inconsistently from judge-to-judge – and therefore county-to-county. Whether or not a survivor is able to access this important and time sensitive relief should not be dictated simply by which county you live in. Access to justice should be equally available to all across the state.
- **Integrate with New and Improved Court Forms.** In 2019, Vermont was awarded a Firearms Technical Assistance Grant (FTAP) by the U.S. Department of Justice. This effort has brought expertise from the National Council of Juvenile and Family Court Judges, among others, to Vermont to improve the way our state responds to the intersection of domestic violence and firearms. As part of this project, Vermont's Family Court Oversight Committee is currently revising the relief from abuse order petition and affidavit forms to collect more detailed information from plaintiffs about the abuse they are experiencing and the extent to which firearms are part of that abuse. H. 133 will align these efforts to ensure that orders are tailored to the specific relief requested by plaintiffs in each situation.
- **Provides Clarity to All Parties.** While this bill does not enhance the authority of the court to include firearms-related conditions in emergency (ex-parte) relief from abuse orders, it clarifies the circumstances under which such a condition may be issued. This will provide clarity to all parties (plaintiffs, defendants and judges) in regard to these conditions.

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<sup>2</sup> This proposal has been vetted and is supported by the Office of the Vermont Attorney General and Hon. Brian Grearson, Chief Superior Judge, Vermont Judiciary.



### **Preponderance of the Evidence Standard**

It is essential that this bill does not enhance the evidentiary or criminal liability burdens on survivors when they are seeking emergency relief at an important and dangerous moment. 15 V.S.A. 1103 and 1104 have always used a “preponderance of the evidence” standard for the orders and related conditions. Elevating the evidentiary burden to a “clear and convincing” standard would have the impact of rendering this relief effectively impossible in the emergency setting. The vast majority of plaintiffs seeking relief from abuse orders are pro se. In order to meet a “clear and convincing” standard, unrepresented victims who are in the midst of leaving an abusive situation would be expected to introduce significant evidence, and the court would need an extended period of time to weigh such evidence.

On numerous occasions, the legislature has affirmed the importance of a preponderance standard in emergency ex-parte proceedings, because of the exigent circumstances that are involved. Every recent occasion that 15 V.S.A. 1104 has been amended, the preponderance standard has been retained and affirmed. Sexual violence and stalking orders (which are separate and distinct orders) use a preponderance of the evidence standard. Furthermore, in 2018, when the legislature created Extreme Risk Protection Orders which *solely* address firearms, a preponderance standard was used in the ex-parte setting. Elevating the evidentiary burden would not be in alignment with the current statutory scheme or the legislative history of this important relief.

### **Statements under Penalty of Perjury**

Under existing law, plaintiffs are required to provide a statement under the penalties of perjury. It is important that there are no additional and unnecessary enhancements to potential criminal liability for survivors seeking emergency relief. Each affidavit form includes the following language: “Making false statements in this affidavit is a crime subject to a term of imprisonment or a fine, or both, as provided by in 13 V.S.A. § 2904.” Increasing the potential criminal liability for survivors will only serve to discourage survivors from applying for this important relief when it is needed most.

Thank you for your consideration of H. 133 today. This bill will make a significant difference in the lives of victims of domestic and sexual violence in Vermont.