



**H. 133 Testimony**  
**Sarah Robinson, Deputy Director**  
**House Judiciary Committee – February 9, 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 Vermont Network supports the purpose of H. 133 is to clarify and codify existing court practice. Across our state each day, survivors of domestic violence seek emergency protection through an ex-parte process to apply for relief from the court.

Currently, judges may and do include firearms-related conditions in emergency relief from abuse orders if they have a factual basis which indicates that a plaintiff may need protection from firearms-related violence. These facts are derived from the petition and affidavit submitted by the party seeking the

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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>



relief. Depending on the information provided by the plaintiff, this may include information about the defendant's possession of firearms or related threats.

### **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, the Vermont Attorney General's Office 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.

### **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 higher standard such as "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) also 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 emergency relief. (See attached chart)

### **Language Amendments**

In reflecting on Judge Grearson's testimony on February 4<sup>th</sup>, we would support any needed adjustments to the language as introduced which are brought forth by the Court to ensure that the bill does not expand *or* narrow the court's inherent authority to issue firearms-related conditions of emergency relief from abuse orders.

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.