

H.422

An act relating to removal of firearms from a person arrested or cited for domestic assault

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds:

(1) The State of Vermont has a compelling interest in preventing domestic abuse.

(2) Domestic violence is often volatile, escalates rapidly, and is possibly fatal. The victim has a substantial interest in obtaining immediate relief because any delay may result in further injury or death. The State's compelling interest in protecting domestic violence victims from actual or threatened harm and safeguarding children from the effects of exposure to domestic violence justifies providing law enforcement officers with the authority to undertake immediate measures to stop the violence. For these reasons the State has a special need to remove firearms from a home where law enforcement has probable cause to believe domestic violence has occurred.

(3) The General Assembly recognizes that it is current practice for law enforcement to remove firearms from a domestic violence scene if the firearms are contraband or evidence of the offense. However, given the potential harm of delay during a domestic violence incident, this legislation authorizes law

enforcement officers to temporarily remove other dangerous firearms from persons arrested or cited for domestic violence, while protecting rights guaranteed by the Vermont and U.S. Constitutions, and insuring that those firearms are returned to the owner as soon as doing so would be safe and lawful.

Sec. 2. 13 V.S.A. § 1048 is added to read:

§ 1048. REMOVAL OF FIREARMS

(a) When a law enforcement officer arrests or cites a person for domestic assault in violation of this subchapter, the officer may remove any firearm obtained pursuant to a search warrant or a judicially recognized exception to the warrant requirement if the removal is necessary for the protection of the officer or any other person.

(b)(1) The law enforcement agency in possession of a firearm removed pursuant to his section shall return it to the person from whom it was removed or to any other person whom the agency reasonably believes is an owner of the firearm within five days after removal if the person requests that the firearm be returned, unless:

(A) the firearm is being or may be used as evidence in a pending criminal or civil proceeding;

(B) a court orders relinquishment of the firearm pursuant to 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law

consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to 20 V.S.A. § 2307; or

(C) the person requesting the return is prohibited by law from possessing a firearm.

(2) A law enforcement officer who removes a firearm pursuant to this section shall provide notice of the procedure to obtain return of the firearm to the person from whom it was removed.

(c) This section shall not be construed to permit conduct by a law enforcement officer that violates the U.S. or Vermont Constitution.

(d)(1) A law enforcement officer shall not be subject to civil or criminal liability for acts or omissions made in reliance on the provisions of this section. This section shall not be construed to create a legal duty to a victim or to any other person, and no action may be filed based upon a claim that a law enforcement officer removed or did not remove a firearm as authorized by this section.

(2) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms removed, stored, or transported pursuant to this section. This subdivision shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(3) This section shall not be construed to limit the authority of a law enforcement agency to take any necessary and appropriate action, including disciplinary action, regarding an officer's performance in connection with this section.

Sec. 3. EFFECTIVE DATE

This act shall take effect on September 1, 2017.