

1 S.221

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedures; firearms; extreme risk protection orders

6 Statement of purpose of bill as introduced: This bill proposes to establish a  
7 procedure for a law enforcement officer to obtain an extreme risk protection  
8 order. The order would prohibit a person from possessing a firearm for up to  
9 one year if the Family Division of the Superior Court finds by clear and  
10 convincing evidence that the person poses a significant danger of causing  
11 injury to himself or herself or another person by purchasing, possessing, or  
12 receiving a firearm or by having a firearm within the person's custody or  
13 control.

14 An act relating to establishing extreme risk protection orders

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

16 Sec. 1. SHORT TITLE

17 This act shall be known as the Vermont Extreme Risk Protection Order Act.

18 Sec. 2. 13 V.S.A. chapter 85 is amended to read:

19 CHAPTER 85. WEAPONS

20 Subchapter 1. Generally

1 \* \* \*

2 Subchapter 2. Extreme Risk Protection Orders

3 § 4051. DEFINITIONS

4 As used in this subchapter:

5 (1) “Court” means the Family Division of the Superior Court.

6 (2) “Federally licensed firearms dealer” means a licensed importer,  
7 licensed manufacturer, or licensed dealer required to conduct national instant  
8 criminal background checks under 18 U.S.C. § 922(t).

9 (3) “Firearm” shall have the same meaning as in subsection 4017(d)  
10 of this title.

11 (4) “Law enforcement agency” means the Vermont State Police, a  
12 municipal police department, or a sheriff’s department.

13 § 4052. JURISDICTION AND VENUE

14 (a) The Family Division of the Superior Court shall have jurisdiction over  
15 proceedings under this subchapter.

16 (b) Emergency orders under section 4054 of this title may be issued by a  
17 judge of the Criminal, Civil, or Family Division of the Superior Court.

18 (c) Proceedings under this chapter shall be commenced in the county in  
19 which the law enforcement agency is located.

1     § 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

2           (a) A law enforcement officer may file a petition requesting that the court  
3     issue an extreme risk protection order prohibiting a person from purchasing,  
4     possessing, or receiving a firearm or having a firearm within the person's  
5     custody or control. The petitioner shall submit an affidavit in support of the  
6     petition.

7           (b) Except as provided in section 4054 of this title, the court shall grant  
8     relief only after notice to the respondent and a hearing. The petitioner shall  
9     have the burden of proof by clear and convincing evidence.

10          (c)(1) A petition filed pursuant to this section shall allege that the  
11     respondent poses a significant danger of causing injury to himself or herself or  
12     another person by purchasing, possessing, or receiving a firearm or by having a  
13     firearm within the respondent's custody or control.

14           (2) The affidavit in support of the petition shall state:

15                   (A) the specific facts supporting the allegations in the petition;

16                   (B) the number, types, and locations of any firearms the petitioner  
17     believes to be in the respondent's possession, custody, or control; and

18                   (C) whether the petitioner knows of an existing order with respect to  
19     the respondent under 15 V.S.A. chapter 21 (abuse prevention orders) or  
20     12 V.S.A. chapter 178 (orders against stalking or sexual assault).

1       (d) The court shall hold a hearing within seven days after a petition is filed  
2       under this section. Notice of the hearing shall be served pursuant to section  
3       4056 of this title concurrently with the petition and any ex parte order issued  
4       under section 4054 of this title.

5       (e) The court may consider any relevant evidence in determining whether  
6       to grant the petition, including:

7           (1) testimony from the petitioner, the respondent, and other relevant  
8           witnesses;

9           (2) recent acts or threats of violence by the respondent against himself  
10          or herself or another person;

11          (3) the respondent's criminal history;

12          (4) the respondent's history of use, attempted use, or threatened use of  
13          physical force against another person;

14          (5) recent alcohol or drug abuse by the respondent;

15          (6) recent acquisition of firearms by the respondent;

16          (7) previous violations by the respondent of abuse prevention orders or  
17          orders against stalking or harassment;

18          (8) previous unlawful or reckless use, display, or brandishing of a  
19          firearm by the respondent; and

20          (9) previous extreme risk protection orders issued against the  
21          respondent.

1       (f)(1) The court shall grant the petition and issue an extreme risk protection  
2       order if it finds by clear and convincing evidence that the respondent poses a  
3       significant danger of causing injury to himself or herself or another person by  
4       purchasing, possessing, or receiving a firearm or by having a firearm within  
5       the respondent's custody or control.

6       (2) An order issued under this subsection shall prohibit a person from  
7       purchasing, possessing, or receiving a firearm or having a firearm within the  
8       person's custody or control for a period of up to one year. The order shall be  
9       signed by the judge and include the following provisions:

10           (A) A statement of the grounds for issuance of the order.

11           (B) The name and address of the court where any filings should be  
12       made, the names of the parties, the date of the petition, the date and time of the  
13       order, and the date and time the order expires.

14           (C) A description of how to appeal the order.

15           (D) A description of the requirements for relinquishment of firearms  
16       under section 4059 of this title.

17           (E) A description of how to request termination of the order under  
18       section 4055 of this title. The court shall include with the order a form for a  
19       motion to terminate the order.

1           (F) A statement directing the law enforcement agency, approved  
2           federally licensed firearms dealer, or other person in possession of the firearms  
3           to release them to the owner upon expiration of the order.

4           (G) A statement in substantially the following form:

5           “To the subject of this protection order: This order shall be in effect until  
6           the date and time stated above. If you have not done so already, you are  
7           required to surrender all firearms in your custody, control, or possession to  
8           [insert name of law enforcement agency], a federally licensed firearms dealer,  
9           or a person approved by the court. While this order is in effect, you are not  
10           allowed to purchase, possess, or receive a firearm; attempt to purchase,  
11           possess, or receive a firearm; or have a firearm in your custody or control.  
12           You have the right to request one hearing to terminate this order during the  
13           period that this order is in effect, starting from the date of this order. You may  
14           seek the advice of an attorney regarding any matter connected with this order.”

15           (g) If the court denies a petition filed under this section, the court shall state  
16           the particular reasons for the denial in its decision.

17           (h) No filing fee shall be required for a petition filed under this section.

18           (i) Form petitions and form orders shall be provided by the Court  
19           Administrator and shall be maintained by the clerks of the courts.

20           (j) When findings are required under this section, the court shall make  
21           either written findings of fact or oral findings of fact on the record.

1       (k) Every final order issued under this section shall bear the following  
2       language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A  
3       TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY  
4       13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL  
5       CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

6       (l) Affidavit forms required pursuant to this section shall bear the following  
7       language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A  
8       CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR  
9       BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

10       § 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

11       (a) Concurrent with the filing of a petition under section 4053 of this title,  
12       the petitioner may file a motion requesting that the extreme risk protection  
13       order be issued ex parte, without notice to the respondent. The petitioner shall  
14       submit an affidavit in support of the motion alleging that the respondent poses  
15       an immediate and significant danger of causing injury to himself or herself or  
16       another person by purchasing, possessing, or receiving a firearm or by having a  
17       firearm within the respondent’s custody or control.

18       (b) The court shall hold a hearing on an ex parte motion filed pursuant to  
19       this section on the day the motion is filed or on the day immediately following  
20       the day the motion is filed. The court may consider any relevant evidence in

1 determining whether to grant the petition, including the evidence described in  
2 subsection 4053(e) of this title.

3 (c) The court shall grant the motion and issue a temporary ex parte extreme  
4 risk protection order if it finds by clear and convincing evidence that the  
5 respondent poses an immediate and significant danger of causing injury to  
6 himself or herself or another person by purchasing, possessing, or receiving a  
7 firearm or by having a firearm within the respondent's custody or control.

8 (d) As set forth in subsection 4053(d) of this title, the court shall hold a  
9 hearing within seven days after the issuance of a temporary ex parte extreme  
10 risk protection order to determine if a final extreme risk protection order  
11 should be issued. The temporary ex parte extreme risk protection order shall  
12 expire when the court grants or denies a motion for an extreme risk protection  
13 order under section 4053 of this title.

14 (e) An order issued under this section shall prohibit a person from  
15 purchasing, possessing, or receiving a firearm or having a firearm within the  
16 person's custody or control for a period of up to seven days. The order shall be  
17 signed by the judge and include the following provisions:

18 (1) A statement of the grounds for issuance of the order.

19 (2) The name and address of the court where any filings should be  
20 made, the names of the parties, the date of the petition, the date and time of the  
21 order, and the date and time the order expires.

1           (3) The date and time of the hearing when the respondent may appear to  
2           contest the order before the court. This opportunity to contest shall be  
3           scheduled as soon as reasonably possible, which in no event shall be more than  
4           seven days after the date of issuance of the order.

5           (4) A description of the requirements for relinquishment of firearms  
6           under section 4059 of this title.

7           (5) A description of how to request termination of the order under  
8           section 4055 of this title. The court shall include with the order a form for a  
9           motion to terminate the order.

10          (6) A statement in substantially the following form:

11          “To the subject of this protection order: This order shall be in effect  
12          until the date and time stated above. If you have not done so already, you are  
13          required to surrender all firearms in your custody, control, or possession to  
14          [insert name of law enforcement agency], a federally licensed firearms dealer,  
15          or a person approved by the court. While this order is in effect, you are not  
16          allowed to purchase, possess, or receive a firearm; attempt to purchase,  
17          possess, or receive a firearm; or have a firearm in your custody or control. A  
18          hearing will be held on the date and time noted above to determine if a final  
19          extreme risk prevention order should be issued. Failure to appear at that  
20          hearing may result in a court making an order against you that is valid for up to

1 one year. You may seek the advice of an attorney regarding any matter  
2 connected with this order.”

3 (f) Form motions and form orders shall be provided by the Court  
4 Administrator and shall be maintained by the clerks of the courts.

5 (g) Every order issued under this section shall bear the following language:  
6 “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF  
7 IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A.  
8 § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT  
9 PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

10 (h) Affidavit forms required pursuant to this section shall bear the  
11 following language: “MAKING A FALSE STATEMENT IN THIS  
12 AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT  
13 OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

14 (i) If the court denies a petition filed under this section, the court shall state  
15 the particular reasons for the denial in its decision.

16 § 4055. TERMINATION AND RENEWAL MOTIONS

17 (a)(1) The respondent may file a motion to terminate an extreme risk  
18 protection order issued under section 4053 of this title or renewed under  
19 subsection (b) of this section. A motion to terminate shall not be filed more  
20 than once during the effective period of the order. The respondent shall have  
21 the burden of proof by clear and convincing evidence.

1           (2) The court shall grant the motion and terminate the extreme risk  
2           protection order if it finds by clear and convincing evidence that the  
3           respondent no longer poses a significant danger of causing injury to himself or  
4           herself or another person by purchasing, possessing, or receiving a firearm or  
5           by having a firearm within the respondent's custody or control.

6           (b)(1) A law enforcement officer may file a motion requesting that the  
7           court renew an extreme risk protection order issued under this section or  
8           section 4053 of this title for an additional period of up to one year. The motion  
9           shall be accompanied by an affidavit and shall be filed not more than 30 days  
10           and not less than 14 days before the expiration date of the order. The motion  
11           and affidavit shall comply with the requirements of section 4053(c) of this title,  
12           and the moving party shall have the burden of proof by clear and convincing  
13           evidence.

14           (2) The court shall grant the motion and renew the extreme risk  
15           protection order for an additional period of up to one year if it finds by clear  
16           and convincing evidence that the respondent continues to pose a significant  
17           danger of causing injury to himself or herself or another person by purchasing,  
18           possessing, or receiving a firearm or by having a firearm within the  
19           respondent's custody or control. The order shall comply with the requirements  
20           of subdivision 4053(f)(2) and subsections 4053(j) and (k) of this title.

1       (c) The court shall hold a hearing within 14 days after a motion to  
2       terminate or a motion to renew is filed under this section. Notice of the  
3       hearing shall be served pursuant to section 4056 of this title concurrently with  
4       the motion. The court may consider any relevant evidence in determining  
5       whether to grant the motion, including the evidence described in subsection  
6       4053(e) of this title.

7       (d) If the court denies a motion filed under this section, the court shall state  
8       the particular reasons for the denial in its decision.

9       (e) Form termination and form renewal motions shall be provided by the  
10       Court Administrator and shall be maintained by the clerks of the courts.

11       (f) When findings are required under this section, the court shall make  
12       either written findings of fact or oral findings of fact on the record.

13       § 4056. SERVICE

14       (a) A petition, ex parte temporary order, or final order issued under this  
15       subchapter shall be served in accordance with the Vermont Rules of Civil  
16       Procedure and may be served by any law enforcement officer. A court that  
17       issues an order under this chapter during court hours shall promptly transmit  
18       the order electronically or by other means to a law enforcement agency for  
19       service.

20       (b) A respondent who attends a hearing held under section 4053, 4054, or  
21       4055 of this title at which a temporary or final order under this subchapter is

1 issued and who receives notice from the court on the record that the order has  
2 been issued shall be deemed to have been served. A respondent notified by the  
3 court on the record shall be required to adhere immediately to the provisions of  
4 the order. However, even when the court has previously notified the  
5 respondent of the order, the court shall transmit the order for additional service  
6 by a law enforcement agency.

7 (c) Extreme risk protection orders shall be served by the law enforcement  
8 agency at the earliest possible time and shall take precedence over other  
9 summonses and orders. Orders shall be served in a manner calculated to  
10 ensure the safety of the parties. Methods of service that include advance  
11 notification to the respondent shall not be used. The person making service  
12 shall file a return of service with the court stating the date, time, and place at  
13 which the order was delivered personally to the respondent.

14 (d) If service of a notice of hearing issued under section 4053 or section  
15 4055 of this title cannot be made before the scheduled hearing, the court shall  
16 continue the hearing and extend the terms of the order upon request of the  
17 petitioner for such additional time as it deems necessary to achieve service on  
18 the respondent.

19 § 4057. PROCEDURE

20 (a) Except as otherwise specified, proceedings commenced under this  
21 subchapter shall be in accordance with the Vermont Rules for Family

1 Proceedings and shall be in addition to any other available civil or criminal  
2 remedies.

3 (b) The Court Administrator shall establish procedures to ensure access to  
4 relief after regular court hours or on weekends and holidays. The Court  
5 Administrator is authorized to contract with public or private agencies to assist  
6 petitioners to seek relief and to gain access to Superior Courts. Law  
7 enforcement agencies shall assist in carrying out the intent of this section.

8 (c) The Court Administrator shall ensure that the Superior Court has  
9 procedures in place so that the contents of orders and pendency of other  
10 proceedings can be known to all courts for cases in which an extreme risk  
11 protection order proceeding is related to a criminal proceeding.

12 § 4058. ENFORCEMENT; CRIMINAL PENALTIES

13 (a) Law enforcement officers are authorized to enforce orders issued under  
14 this chapter. Enforcement may include collecting and disposing of firearms  
15 pursuant to section 4059 of this title and making an arrest in accordance with  
16 the provisions of Rule 3 of the Vermont Rules of Criminal Procedure.

17 (b)(1) A person who intentionally commits an act prohibited by a court or  
18 fails to perform an act ordered by a court, in violation of an extreme risk  
19 protection order issued pursuant to section 4053, 4054, or 4055 of this title,  
20 after the person has been served with notice of the contents of the order as

1 provided for in this subchapter, shall be imprisoned not more than one year or  
2 fined not more than \$1,000.00, or both.

3 (2) A person who files a petition for an extreme risk protection order  
4 under this subchapter knowing that information in the petition is false or with  
5 the intent to harass the respondent shall be imprisoned not more than one year  
6 or fined not more than \$1,000.00, or both.

7 (c) In addition to the provisions of subsections (a) and (b) of this section,  
8 violation of an order issued under this subchapter may be prosecuted as  
9 criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure.  
10 The prosecution for criminal contempt may be initiated by the State's Attorney  
11 in the county in which the violation occurred. The maximum penalty that may  
12 be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment  
13 for six months, or both. A sentence of imprisonment upon conviction for  
14 criminal contempt may be stayed, in the discretion of the court, pending the  
15 expiration of the time allowed for filing notice of appeal or pending appeal if  
16 any appeal is taken.

17 § 4059. RELINQUISHMENT, STORAGE, AND RETURN OF FIREARMS

18 (a)(1) A person who is required to relinquish a firearm in the person's  
19 possession, custody, or control by an extreme risk protection order issued  
20 under section 4053, 4054, or 4055 of this title shall, unless the court orders an  
21 alternative relinquishment pursuant to subdivision (2) of this subsection, upon

1 service of the order immediately relinquish the firearm to a cooperating law  
2 enforcement agency or an approved federally licensed firearms dealer.

3 (2)(A) The court may order that the person relinquish the firearm to a  
4 person other than a cooperating law enforcement agency or an approved  
5 federally licensed firearms dealer unless the court finds that relinquishment to  
6 the other person will not adequately protect the safety of any person.

7 (B) A person to whom a firearm is relinquished pursuant to  
8 subdivision (A) of this subdivision (2) shall execute an affidavit on a form  
9 approved by the Court Administrator stating that the person:

10 (i) acknowledges receipt of the firearm;

11 (ii) assumes responsibility for storage of the firearm until further  
12 order of the court and specifies the manner in which he or she will provide  
13 secure storage;

14 (iii) is not prohibited from owning or possessing firearms under  
15 State or federal law; and

16 (iv) understands the obligations and requirements of the court  
17 order, including the potential for the person to be subject to civil contempt  
18 proceedings pursuant to subdivision (C) of this subdivision (2) if the person  
19 permits the firearm to be possessed, accessed, or used by the person who  
20 relinquished the item or by any other person not authorized by law to do so.

1           (C) A person to whom a firearm is relinquished pursuant to  
2           subdivision (A) of this subdivision (2) shall be subject to civil contempt  
3           proceedings under 12 V.S.A. chapter 5 if the person permits the firearm to be  
4           possessed, accessed, or used by the person who relinquished the item or by any  
5           other person not authorized by law to do so. In the event that the person  
6           required to relinquish the firearm or any other person not authorized by law to  
7           possess the relinquished item obtains access to, possession of, or use of a  
8           relinquished item, all relinquished items shall be immediately transferred to the  
9           possession of a law enforcement agency or approved federally licensed  
10           firearms dealer pursuant to subdivision (b)(1) of this section.

11           (b) A law enforcement agency or an approved federally licensed firearms  
12           dealer that takes possession of a firearm pursuant to subdivision (a)(1) of this  
13           section shall photograph, catalogue, and store the item in accordance with  
14           standards and guidelines established by the Department of Public Safety  
15           pursuant to 20 V.S.A. § 2307(i)(3). A firearm shall not be taken into  
16           possession pursuant to this section if it is being or may be used as evidence in a  
17           pending criminal matter.

18           (c) Nothing in this section shall be construed to prohibit the lawful sale of  
19           firearms or other items.

20           (d) An extreme risk protection order issued pursuant to section 4053 of this  
21           title or renewed pursuant to section 4055 of this title shall direct the law

1 enforcement agency, approved federally licensed firearms dealer, or other  
2 person in possession of the firearm under subsection (a) of this section to  
3 release it to the owner upon expiration of the order.

4 (e)(1) A law enforcement agency, an approved federally licensed firearms  
5 dealer, or any other person who takes possession of a firearm for storage  
6 purposes pursuant to this section shall not release it to the owner without a  
7 court order unless the firearm is to be sold pursuant to subdivision (2)(A) of  
8 this subsection. If a court orders the release of a firearm stored under this  
9 section, the law enforcement agency or firearms dealer in possession of the  
10 firearm shall make it available to the owner within three business days after  
11 receipt of the order and in a manner consistent with federal law.

12 (2)(A)(i) If the owner fails to retrieve the firearm within 90 days after  
13 the court order releasing it, the firearm may be sold for fair market value. Title  
14 to the firearm shall pass to the law enforcement agency or firearms dealer for  
15 the purpose of transferring ownership.

16 (ii) The law enforcement agency or firearms dealer shall make a  
17 reasonable effort to notify the owner of the sale before it occurs. In no event  
18 shall the sale occur until after the court issues a final extreme risk protection  
19 order pursuant to section 4053 of this title.

1                   (iii) As used in this subdivision (2)(A), “reasonable effort” shall  
2                   mean notice shall be served as provided for by Rule 4 of the Vermont Rules of  
3                   Civil Procedure.

4                   (B) Proceeds from the sale of a firearm pursuant to subdivision (A) of  
5                   this subdivision (2) shall be apportioned as follows:

6                   (i) associated costs, including the costs of sale and of locating and  
7                   servicing the owner, shall be paid to the law enforcement agency or firearms  
8                   dealer that incurred the cost; and

9                   (ii) any proceeds remaining after payment is made to the law  
10                  enforcement agency or firearms dealer pursuant to subdivision (i) of this  
11                  subdivision (2)(B) shall be paid to the original owner.

12                  (f) A law enforcement agency shall be immune from civil or criminal  
13                  liability for any damage or deterioration of a firearm stored or transported  
14                  pursuant to this section. This subsection shall not apply if the damage or  
15                  deterioration occurred as a result of recklessness, gross negligence, or  
16                  intentional misconduct by the law enforcement agency.

17                  (g) This section shall be implemented consistent with the standards and  
18                  guidelines established by the Department of Public Safety under 20 V.S.A.  
19                  § 2307(i).

1     § 4060. APPEALS

2             An extreme risk protection order issued by the court under section 4053 or  
3     section 4055 of this title shall be treated as a final order for the purposes of  
4     appeal. Appeal may be taken by either party to the Supreme Court under the  
5     Vermont Rules of Appellate Procedure, and the appeal shall be determined  
6     forthwith.

7     Sec. 3. EFFECTIVE DATE

8             This act shall take effect on July 1, 2018.