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H.610

Introduced by Representatives Grad of Moretown and LaLonde of South  
Burlington

Referred to Committee on

Date:

Subject: Firearms and domestic violence

Statement of purpose of bill as introduced: This bill proposes to: (1) eliminate the “default proceed” process created in Federal firearms background check law (commonly referred to as the “Charleston loophole”) by prohibiting the transfer of a firearm unless the National Instant Criminal Background Check System has affirmatively determined that the transferee is not prohibited from possessing firearms; (2) require that relief from abuse orders include provisions requiring the defendant to relinquish his or her firearms until the order expires, prohibiting the defendant from residing at a residence where firearms are present, and informing the defendant that he or she is prohibited from possessing firearms until the order expires; (3) permit the court, in connection with the issuance of a relief from abuse order, to issue a warrant for the seizure of any firearms that it finds probable cause to believe are in the defendant’s possession, custody, or control if the defendant has committed an act of abuse and seizure of the firearms is necessary to protect the life, health, or well-being of the victim; (4) require the court’s Complaint and Relief from

1 Abuse and supporting Affidavit to specifically include questions requiring the  
2 plaintiff to state with particularity the type and location of any firearm in the  
3 defendant's possession, ownership, or control; (5) make it a crime for a person  
4 to possess a firearm if the person is the subject of a relief from abuse order; (6)  
5 require law enforcement agencies to annually provide data to the Department  
6 of Public Safety identifying the numbers of temporary and final RFA orders  
7 served during the previous year, as well as the number of firearms collected  
8 pursuant to the orders; (7) permit a family or household member to file a  
9 petition for an Emergency Risk Protection Order; (8) authorize health care  
10 providers to inform a law enforcement officer when the health care provider  
11 reasonably believes that a patient poses an extreme risk of causing harm to  
12 himself or herself or another person by purchasing, possessing, or receiving a  
13 dangerous weapon or by having a dangerous weapon; and (9) clarify that a  
14 court may order, as a condition of release prior to trial, that a defendant not  
15 possess a firearm or other weapon.

16 An act relating to firearms and domestic violence

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

18 \* \* \* Background Checks \* \* \*

19 Sec. 1. 13 V.S.A. § 4019 is amended to read:

20 § 4019. FIREARMS TRANSFERS; BACKGROUND CHECKS

1 (a) As used in this section:

2 \* \* \*

3 (4) "Licensed dealer" means a person issued a license as a dealer in  
4 firearms pursuant to 18 U.S.C. § 923(a).

5 (5) "Proposed transferee" means an unlicensed person to whom a  
6 proposed transferor intends to transfer a firearm.

7 (6) "Proposed transferor" means an unlicensed person who intends to  
8 transfer a firearm to another unlicensed person.

9 (7) "Transfer" means to transfer ownership of a firearm by means of  
10 sale, trade, or gift.

11 (8) "Unlicensed person" means a person who has not been issued a  
12 license as a dealer, importer, or manufacturer in firearms pursuant to 18 U.S.C.  
13 § 923(a).

14 (b)(1) Except as provided in subsection (e) of this section, an unlicensed  
15 person shall not transfer a firearm to another unlicensed person unless:

16 (A) the proposed transferor and the proposed transferee physically  
17 appear together with the firearm before a licensed dealer and request that the  
18 licensed dealer facilitate the transfer; and

19 (B) the licensed dealer agrees to facilitate the transfer.

20 (2) A person shall not, in connection with the transfer or attempted  
21 transfer of a firearm pursuant to this section, knowingly make a false statement

1 or exhibit a false identification intended to deceive a licensed dealer with  
2 respect to any fact material to the transfer.

3 \* \* \*

4 (d) A person shall not transfer a firearm to another person if:

5 (1) the transfer requires a background check under this section or under  
6 Federal law; and

7 (2) the licensed dealer facilitating the transfer has not been provided  
8 with a unique identification number for the transfer by the National Instant  
9 Criminal Background Check System.

10 ~~(d)~~(e)(1) An unlicensed person who transfers a firearm to another  
11 unlicensed person in violation of subdivision (b)(1) of this section shall be  
12 imprisoned not more than one year or fined not more than \$500.00, or both.

13 (2) A person who violates subdivision (b)(2) or subsection (c) of this  
14 section shall be imprisoned not more than one year or fined not more than  
15 \$500.00, or both.

16 ~~(e)~~(f) This section shall not apply to:

17 (1) the transfer of a firearm by or to a law enforcement agency;

18 (2) the transfer of a firearm by or to a law enforcement officer or  
19 member of the U.S. Armed Forces acting within the course of his or her  
20 official duties;



1 (c)(1) The court shall make such orders as it deems necessary to protect the  
2 plaintiff or the children, or both, if the court finds that the defendant has  
3 abused the plaintiff, and:

4 (A) there is a danger of further abuse; or

5 (B) the defendant is currently incarcerated and has been convicted of  
6 one of the following: murder, attempted murder, kidnapping, domestic assault,  
7 aggravated domestic assault, sexual assault, aggravated sexual assault,  
8 stalking, aggravated stalking, lewd or lascivious conduct with a child, use of a  
9 child in a sexual performance, or consenting to a sexual performance.

10 \* \* \*

11 (3)(A) The court order shall:

12 (i) Unless subdivision (4) of this subsection (c) applies, require the  
13 immediate relinquishment, until the expiration of the order, of all firearms that  
14 are in the defendant's possession, ownership, or control or that another person  
15 possesses, owns, or controls on behalf of the defendant;

16 (ii) prohibit the defendant from residing at a residence where  
17 firearms are present; and

18 (iii) inform the defendant that he or she is prohibited from  
19 possessing firearms until the expiration of the order.

1           (B) The court may issue a warrant, to be served with the order, for  
2           seizure of firearms from the defendant if the court finds there is probable cause  
3           to believe:

4                   (i) there are firearms in the defendant's possession, ownership, or  
5                   control at the time the order is issued or while it is in effect;

6                   (ii) the defendant has committed an act of abuse; and

7                   (iii) a search for and seizure of the firearms is necessary to protect  
8                   the life, health, or well-being of a victim on whose behalf the relief is sought.

9           (C) Firearms relinquished or seized under this subdivision (3) shall  
10           be transported and stored pursuant to 20 V.S.A. § 2307.

11           (D) A law enforcement agency shall be immune from civil or  
12           criminal liability for any damage or deterioration of firearms relinquished or  
13           seized pursuant to subdivision (A) or (B) of this subdivision (3). This  
14           subdivision (D) shall not apply if the damage or deterioration occurred as a  
15           result of recklessness, gross negligence, or intentional misconduct by the law  
16           enforcement agency.

17           (4) At the final hearing, the court shall question the defendant under  
18           oath about any firearms that he or she possesses or controls. If the defendant  
19           testifies under oath that he or she does not possess or control any firearms, the  
20           final order shall not require the defendant to relinquish firearms pursuant to  
21           subdivision (3)(A)(i) of this subsection.

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\* \* \*

(h)(1) Form complaints and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(2) The Complaint for Relief from Abuse and the Affidavit in Support of Relief From Abuse Complaint shall include specific provisions collecting information about the defendant’s firearms, including questions that require the plaintiff to state with particularity the type and location of any firearm in the defendant’s possession, ownership, or control or that another person possesses, owns, or controls on behalf of the defendant.

\* \* \*

Sec 3. 15 V.S.A. § 1104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the Vermont Rules of Civil Procedure, temporary orders under this chapter may be issued ex parte, without notice to the defendant, upon motion and findings by the court that the defendant has abused the plaintiff or the plaintiff’s children, or both. The plaintiff shall submit an affidavit in support of the order. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in subdivision 1101(2) of this chapter, may seek relief on his or her own behalf. Relief under this section shall be limited as follows:

\* \* \*



1           (4)(A) An order issued under this section shall:

2                   (i) require the immediate relinquishment, until the expiration of  
3 the order, of all firearms that are in the defendant's possession, ownership, or  
4 control or that another person possesses, owns, or controls on behalf of the  
5 defendant;

6                   (ii) prohibit the defendant from residing at a residence where  
7 firearms are present; and

8                   (iii) inform the defendant that he or she is prohibited from  
9 possessing firearms until the expiration of the order.

10           (B) The court may issue a warrant, to be served with the order, for  
11 seizure of firearms from the defendant if the court finds there is probable cause  
12 to believe:

13                   (i) there are firearms in the defendant's possession, ownership, or  
14 control at the time the order is issued or while it is in effect;

15                   (ii) the defendant has committed an act of abuse; and

16                   (iii) a search for and seizure of the firearms is necessary to protect  
17 the life, health, or well-being of a victim on whose behalf the relief is sought.

18           (C) Firearms relinquished or seized under this subdivision (4) shall  
19 be relinquished, transported, and stored pursuant to 20 V.S.A. § 2307.

20           (D) A law enforcement agency shall be immune from civil or  
21 criminal liability for any damage or deterioration of firearms relinquished

1 pursuant to subdivision (A) of this subdivision (4). This subdivision (D) shall  
2 not apply if the damage or deterioration occurred as a result of recklessness,  
3 gross negligence, or intentional misconduct by the law enforcement agency.

4 \* \* \*

5 (c)(1) Form complaints and form orders shall be provided by the Court  
6 Administrator and shall be maintained by the clerks of the courts.

7 (2) The Complaint for Relief from Abuse and the Affidavit in Support  
8 of Relief From Abuse Complaint shall include specific provisions collecting  
9 information about the defendant's firearms, including questions that require the  
10 plaintiff to state with particularity the type and location of any firearm in the  
11 defendant's possession, ownership, or control or that another person possesses,  
12 owns, or controls on behalf of the defendant.

13 \* \* \*

14 Sec. 4. 13 V.S.A. § 4017a is added to read:

15 § 4017a. PERSONS SUBJECT TO RELIEF FROM ABUSE ORDERS:

16 PROHIBITION ON POSSESSION OF FIREARMS

17 (a) A person shall not possess, ship, transport, or receive a firearm if the  
18 person is the subject of an emergency relief from abuse order issued pursuant  
19 to 15 V.S.A. § 1103 or a final relief from abuse order issued pursuant to  
20 15 V.S.A. § 1104.



1           (2) On or before January 31 of each year, the Department of Public  
2           Safety shall report the data it has received pursuant to this subsection to the  
3           House and Senate Committees on Judiciary.

4           (f) On or before January 31 of each year, the Supreme Court shall report to  
5           the House and Senate Committees on Judiciary the number of show cause  
6           hearings held during the previous 12 months as a result of compliance or  
7           noncompliance with a temporary or final order issued pursuant to this chapter.

8                                                   \* \* \*

9                                           \* \* \* Extreme Risk Protection Orders \* \* \*

10          Sec. 6. 13 V.S.A. § 4051 is amended to read:

11          § 4051. DEFINITIONS

12                As used in this subchapter:

13                                                   \* \* \*

14                (7) “Household member” has the same meaning as in 15 V.S.A. § 1101.

15          Sec. 7. 13 V.S.A. § 4052 is amended to read:

16          § 4052. JURISDICTION AND VENUE

17                                                   \* \* \*

18                (c) Proceedings under this chapter shall be commenced in the county where  
19                the law enforcement agency is located, the county where the family or  
20                household member or the respondent resides, or the county where the events  
21                giving rise to the petition occur.

1 Sec. 8. 13 V.S.A. § 4053 is amended to read:

2 § 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

3 (a) A State's Attorney ~~or~~, the Office of the Attorney General, or a family or  
4 household member may file a petition requesting that the court issue an  
5 extreme risk protection order prohibiting a person from purchasing, possessing,  
6 or receiving a dangerous weapon or having a dangerous weapon within the  
7 person's custody or control. The petitioner shall submit an affidavit in support  
8 of the petition.

9 \* \* \*

10 Sec. 9. 13 V.S.A. § 4054 is amended to read:

11 § 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

12 (a)(1) A State's Attorney ~~or~~, the Office of the Attorney General, or a family  
13 or household member may file a motion requesting that the court issue an  
14 extreme risk protection order ex parte, without notice to the respondent. A law  
15 enforcement officer may notify the court that an ex parte extreme risk  
16 protection order is being requested pursuant to this section, but the court shall  
17 not issue the order until after the motion is submitted.

18 \* \* \*

19 Sec. 10. 13 V.S.A. § 4055 is amended to read:

20 § 4055. TERMINATION AND RENEWAL MOTIONS

21 \* \* \*

1 (b)(1) A State's Attorney ~~or~~, the Office of the Attorney General, or a  
2 family or household member may file a motion requesting that the court renew  
3 an extreme risk protection order issued under this section or section 4053 of  
4 this title for an additional period of up to six months. The motion shall be  
5 accompanied by an affidavit and shall be filed not more than 30 days and not  
6 less than 14 days before the expiration date of the order. The motion and  
7 affidavit shall comply with the requirements of subsection 4053(c) of this title,  
8 and the moving party shall have the burden of proof by clear and convincing  
9 evidence.

10 \* \* \*

11 Sec. 11. 13 V.S.A. § 4057 is amended to read:

12 § 4057. PROCEDURE

13 (a) Except as otherwise specified, proceedings commenced under this  
14 subchapter shall be in accordance with the Vermont Rules for Family  
15 Proceedings and shall be in addition to any other available civil or criminal  
16 remedies.

17 \* \* \*

18 (d)(1) For purposes of a petition filed pursuant to this subchapter, a health  
19 care provider may notify a law enforcement officer when the provider believes  
20 in good faith that disclosure of the information is necessary to prevent or lessen  
21 a serious and imminent threat to the health or safety of a person or the public.

1           (2) As used in this subsection:

2           (A) “Health care provider” has the same meaning as in 18 V.S.A.  
3           § 9432.

4           (B) “Necessary to prevent or lessen a serious and imminent threat to  
5           the health or safety of a person or the public” includes circumstances when the  
6           health care provider reasonably believes that the patient poses an extreme risk  
7           of causing harm to himself or herself or another person by purchasing,  
8           possessing, or receiving a dangerous weapon or by having a dangerous weapon  
9           within his or her custody or control.

10                                   \* \* \* Conditions of Release Prior to Trial \* \* \*

11           Sec. 12. 13 V.S.A. § 7554 is amended to read:

12           § 7554. RELEASE PRIOR TO TRIAL

13           (a) Release; conditions of release. Any person charged with an offense,  
14           other than a person held without bail under section 7553 or 7553a of this title,  
15           shall at his or her appearance before a judicial officer be ordered released  
16           pending trial in accordance with this section.

17                                   \* \* \*

18           (2) If the judicial officer determines that conditions of release imposed  
19           to ensure appearance will not reasonably protect the public, the judicial officer  
20           may impose in addition the least restrictive of the following conditions or the

1 least restrictive combination of the following conditions that will reasonably  
2 ensure protection of the public:

3 \* \* \*

4 (G) Require a defendant not to possess firearms or other weapons.

5 \* \* \*

6 \* \* \* Effective Date \* \* \*

7 Sec. 13. EFFECTIVE DATE

8 This act shall take effect on passage.