

1 H.250

2 Introduced by Representatives Clarkson of Woodstock, Till of Jericho,
3 Masland of Thetford, Mrowicki of Putney, Pearson of
4 Burlington, Yantachka of Charlotte, Briglin of Thetford, Cole of
5 Burlington, Deen of Westminster, Donovan of Burlington,
6 Hooper of Montpelier, Stevens of Waterbury, and Sullivan of
7 Burlington

8 Referred to Committee on

9 Date:

10 Subject: Crimes and criminal procedures; firearms; criminal background
11 checks; violent felons in possession; reporting to National Instant
12 Criminal Background Check System

13 Statement of purpose of bill as introduced: This bill proposes to:

14 (1) prohibit a person convicted of a violent crime from possessing
15 a firearm;

16 (2) require that a criminal background check be conducted on the proposed
17 purchaser before a firearm may be sold unless the sale is between immediate
18 family members, by or to a law enforcement agency, or by or to a law
19 enforcement officer or member of the U.S. Armed Forces acting within the
20 course of his or her official duties; and

1 (3) require the Court Administrator to report to the National Instant
2 Criminal Background Check System established by the Brady Handgun
3 Violence Prevention Act of 1993 when a person is:

4 (A) subject to a hospitalization order or nonhospitalization order after a
5 determination by a court that the person is a danger to himself or herself or
6 others; or

7 (B) found not responsible for a crime by reason of insanity or
8 incompetent to stand trial due to a mental illness and is committed to the
9 Department of Mental Health after a determination by a court that the person is
10 a danger to himself or herself or others.

11 An act relating to possession and transfer of firearms

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

13 Sec. 1. 13 V.S.A. § 4017 is added to read:

14 § 4017. VIOLENT FELONS PROHIBITED FROM POSSESSING

15 FIREARMS

16 (a) A person shall not possess a firearm if the person has been convicted of
17 a violent felony.

18 (b) A person who violates this section shall be imprisoned not more than
19 two years or fined not more than \$1,000.00, or both.

1 (c) This section shall not apply to a person who is exempt from federal
2 firearms restrictions under 18 U.S.C. § 925(c).

3 (d) As used in this section:

4 (1) “Firearm” shall have the same meaning as in subdivision 4016(a)(3)
5 of this title.

6 (2) “Violent crime” means:

7 (A) a listed crime as defined in subdivision 5301(7) of this title, or a
8 comparable offense in another jurisdiction if the offense prohibits the person
9 from possessing a firearm under 18 U.S.C. § 922(g)(1);

10 (B) an offense involving sexual exploitation of children in violation
11 of chapter 64 of this title, or a comparable offense in another jurisdiction if the
12 offense prohibits the person from possessing a firearm under 18 U.S.C.
13 § 922(g)(1); or

14 (C) a felony violation of 18 V.S.A. § 4231 (possession and sale of
15 cocaine), 4232 (possession and sale of LSD), 4233 (possession and sale of
16 heroin), 4234 (possession and sale of depressants, stimulants, and narcotics),
17 4234a (possession and sale of methamphetamine), 4234b (possession and sale
18 of ephedrine and pseudoephedrine), 4235 (possession and sale of
19 hallucinogenic drugs), 4235a (possession and sale of Ecstasy), or a comparable
20 offense in another jurisdiction if the offense prohibits the person from
21 possessing a firearm under 18 U.S.C. § 922(g)(1).

1 Sec. 2. 13 V.S.A. § 4018 is added to read:

2 § 4018. FIREARMS SALES; CRIMINAL BACKGROUND

3 CHECKS

4 (a) As used in this section:

5 (1) “Firearm” shall have the same meaning as in subdivision 4016(a)(3)
6 of this title.

7 (2) “Immediate family member” means a spouse, parent, stepparent,
8 child, stepchild, sibling, stepsibling, grandparent, or grandchild.

9 (3) “Law enforcement officer” shall have the same meaning as in
10 subdivision 4016(a)(4) of this title.

11 (4) “Licensed dealer” means a person issued a license as a dealer in
12 firearms pursuant to 18 U.S.C. § 923(a).

13 (5) “Proposed purchaser” means an unlicensed person to whom a
14 proposed seller intends to sell a firearm.

15 (6) “Proposed seller” means an unlicensed person who intends to sell a
16 firearm to another unlicensed person.

17 (7) “Unlicensed person” means a person who has not been issued a
18 license as a dealer, importer, or manufacturer in firearms pursuant to
19 18 U.S.C. § 923(a).

1 (b)(1) Except as provided in subsection (e) of this section, an unlicensed
2 person shall not sell a firearm to or purchase a firearm from another unlicensed
3 person unless:

4 (A) the proposed seller and the proposed purchaser physically appear
5 together with the firearm before a licensed dealer and request that the license
6 dealer facilitate the sale; and

7 (B) the licensed dealer agrees to facilitate the sale and determines
8 that the proposed purchaser is not prohibited by State or federal law from
9 purchasing or possessing the firearm.

10 (2) A person shall not, in connection with the sale or attempted sale of a
11 firearm pursuant to this section, knowingly make a false statement or exhibit a
12 false identification intended to deceive a licensed dealer with respect to any
13 fact material to the sale.

14 (c)(1) A licensed dealer who agrees to facilitate a firearm sale pursuant to
15 this section shall comply with all requirements of State and federal law and
16 shall, unless otherwise expressly provided in this section, conduct the sale in
17 the same manner as the licensed dealer would if selling the firearm from his or
18 her own inventory.

19 (2) A licensed dealer shall return the firearm to the proposed seller and
20 decline to continue facilitating the sale if the dealer determines that the

1 proposed purchaser is prohibited by federal or State law from purchasing or
2 possessing the firearm.

3 (3) A licensed dealer may charge a reasonable fee to facilitate a firearm
4 transfer between a proposed seller and a proposed purchaser pursuant to
5 this section.

6 (d)(1) An unlicensed person who sells a firearm to or purchases a firearm
7 from another unlicensed person in violation of subdivision (b)(1) of this
8 section shall:

9 (A) for a first offense, be imprisoned not more than one year or fined
10 not more than \$500.00, or both;

11 (B) for a second or subsequent offense, be imprisoned not more than
12 five years or fined not more than \$1,000.00, or both.

13 (2) A person who violates subdivision (b)(2) of this section shall:

14 (A) for a first offense, be imprisoned not more than one year or fined
15 not more than \$500.00, or both;

16 (B) for a second or subsequent offense, be imprisoned not more than
17 five years or fined not more than \$1,000.00, or both.

18 (e) This section shall not apply to:

19 (1) the sale of a firearm by or to a law enforcement agency;

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

1 (3) the sale of a firearm from one immediate family member to another
2 immediate family member.

3 Sec. 3. 13 V.S.A. § 4824 is added to read:

4 § 4824. REPORTING; NATIONAL INSTANT CRIMINAL

5 BACKGROUND CHECK SYSTEM

6 (a) If the Court finds that a person is a person in need of treatment pursuant
7 to section 4822 of this title, the Court Administrator shall within 24 hours
8 report the name of the person subject to the order to the National Instant
9 Criminal Background Check System, established by Section 103 of the Brady
10 Handgun Violence Prevention Act of 1993. The report shall include only
11 information sufficient to identify the person, the reason for the report, and a
12 statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

13 (b) A report required by this section shall be submitted notwithstanding
14 18 V.S.A. § 7103 or any other provision of law.

15 (c) A report required by this section is confidential and exempt from public
16 inspection and copying under the Public Records Act. The report shall not be
17 used for any purposed other than for submission to the National Instant
18 Criminal Background Check System pursuant to this section, where it may be
19 used for any purpose permitted by federal law, including in connection with
20 the issuance of a firearm-related permit or license.

1 Sec. 4. 18 V.S.A. § 7103 is amended to read:

2 § 7103. DISCLOSURE OF INFORMATION

3 (a) All certificates, applications, records, and reports, other than an order of
4 a court made for the purposes of this part of this title, and directly or indirectly
5 identifying a patient or former patient or an individual whose hospitalization or
6 care has been sought or provided under this part, together with clinical
7 information relating to such persons shall be kept confidential and shall not be
8 disclosed by any person except insofar:

9 (1) as the individual identified, the individual's health care agent under
10 section 5264 of this title, or the individual's legal guardian, if any (or, if the
11 individual is an unemancipated minor, his or her parent or legal guardian),
12 shall consent in writing; ~~or~~

13 (2) as disclosure may be necessary to carry out any of the provisions of
14 this part; ~~or~~

15 (3) as a court may direct upon its determination that disclosure is
16 necessary for the conduct of proceedings before it and that failure to make
17 disclosure would be contrary to the public interest; or

18 (4) as the disclosure is made to comply with the reporting requirements
19 of section 7619a of this title or 13 V.S.A. § 4824.

20 * * *

1 Sec. 5. 18 V.S.A. § 7617a is added to read:

2 § 7617a. REPORTING; NATIONAL INSTANT CRIMINAL

3 BACKGROUND CHECK SYSTEM

4 (a) If the Court issues a hospitalization order pursuant to subdivision
5 7617(b)(1) or (2) of this title or a nonhospitalization order pursuant to
6 subdivision 7617(b)(3), the Court Administrator shall within 24 hours report
7 the name of the person subject to the order to the National Instant Criminal
8 Background Check System, established by Section 103 of the Brady Handgun
9 Violence Prevention Act of 1993. The report shall include only information
10 sufficient to identify the person, the reason for the report, and a statement that
11 the report is made in accordance with 18 U.S.C. § 922(g)(4).

12 (b) A report required by this section shall be submitted notwithstanding
13 18 V.S.A. § 7103 or any other provision of law.

14 (c) A report required by this section is confidential and exempt from public
15 inspection and copying under the Public Records Act. The report shall not be
16 used for any purpose other than for submission to the National Instant Criminal
17 Background Check System pursuant to this section, where it may be used for
18 any purpose permitted by federal law, including in connection with the
19 issuance of a firearm-related permit or license.

1 Sec. 6. 13 V.S.A. § 4825 is added to read:

2 § 4825. PERSONS PROHIBITED BY FEDERAL LAW FROM

3 POSSESSING FIREARMS DUE TO MENTAL ILLNESS;

4 PETITION FOR RELIEF FROM DISABILITY

5 (a) A person who is prohibited from possessing firearms by 18 U.S.C.
6 § 922(g)(4) may petition the Court for an order that the person be relieved
7 from the firearms disability imposed by that section. The petitioner shall
8 provide notice of the petition to the State's Attorney or the Attorney General,
9 who shall be the respondent in the matter.

10 (b) A petition filed under this section shall include:

11 (1) all the petitioner's mental health records;

12 (2) an authorization, signed by the petitioner, for release of his or her
13 mental health records to the Court and the respondent; and

14 (3) an affidavit from a licensed mental health practitioner that the
15 practitioner examined the petition not more than 30 days prior to filing of the
16 petition and determined that the petitioner is not likely to act in a manner
17 dangerous to public safety.

18 (c) In determining a petition filed under this section, the Court shall
19 consider:

20 (1) the circumstances regarding the firearms disabilities imposed on the
21 person by 18 U.S.C. § 922(g)(4);

1 (2) the petitioner's record, including his or her mental health and
2 criminal history records; and

3 (3) the petitioner's reputation, as demonstrated by character witness
4 statements, testimony, or other character evidence.

5 (d) The Court shall grant a petition filed under this section if it finds that:

6 (1) at least five years have elapsed since the event that prohibited the
7 person from possessing firearms;

8 (2) the person will not be likely to act in a manner dangerous to public
9 safety; and

10 (3) granting the relief will not be contrary to the public interest.

11 (e) If a petition filed under this section is granted, the Court shall enter an
12 order declaring that the basis under which the person was prohibited from
13 possessing firearms by 18 U.S.C. § 922(g)(4) no longer applies. The Court
14 shall inform the Federal Bureau of Investigation, the U.S. Attorney General,
15 and the National Instant Criminal Background Check System of its decision.

16 (f) If the Court denies the petition, the petitioner may appeal the denial
17 de novo to the Vermont Supreme Court.

18 (g) If the Court denies a petition filed under this section, no further petition
19 shall be filed by the person for at least five years.

20 Sec. 7. EFFECTIVE DATE

21 This act shall take effect on July 1, 2015.