

1 S.31

2 Introduced by Senators Campbell, Baruth, and Ayer

3 Referred to Committee on

4 Date:

5 Subject: Crimes and criminal procedures; firearms; criminal background

6 checks; violent felons in possession; reporting to National Instant

7 Criminal Background Check System

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

9 (1) prohibit a person convicted of a violent crime from possessing  
10 a firearm;

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

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

19 (A) subject to a hospitalization order or nonhospitalization order after a  
20 determination by a court that the person is a danger to himself or herself or  
21 others; or

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

5           An act relating to possession and transfer of firearms

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

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

8           § 4017. VIOLENT FELONS PROHIBITED FROM POSSESSING

9                     FIREARMS

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

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

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

16           (d) As used in this section:

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

1           (2) “Violent crime” means:

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

5                   (B) an offense involving sexual exploitation of children in violation  
6           of chapter 64 of this title, or a comparable offense in another jurisdiction if the  
7           offense prohibits the person from possessing a firearm under 18 U.S.C.  
8           § 922(g)(1); or

9                   (C) a felony violation of 18 V.S.A. § 4231 (possession and sale of  
10          cocaine), 4232 (possession and sale of LSD), 4233 (possession and sale of  
11          heroin), 4234 (possession and sale of depressants, stimulants, and narcotics),  
12          4234a (possession and sale of methamphetamine), 4234b (possession and sale  
13          of ephedrine and pseudoephedrine), 4235 (possession and sale of  
14          hallucinogenic drugs), 4235a (possession and sale of Ecstasy), or a comparable  
15          offense in another jurisdiction if the offense prohibits the person from  
16          possessing a firearm under 18 U.S.C. § 922(g)(1).

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

18          § 4018. FIREARMS SALES; CRIMINAL BACKGROUND

19                   CHECKS

20                  (a) As used in this section:

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

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

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

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

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

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

13          (7) “Unlicensed person” means a person who has not been issued a  
14          license as a dealer, importer, or manufacturer in firearms pursuant to 18 U.S.C.  
15          § 923(a).

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

19                (A) the proposed seller and the proposed purchaser physically appear  
20                together with the firearm before a licensed dealer and request that the license  
21                dealer facilitate the sale; and

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

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

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

13          (2) A licensed dealer shall return the firearm to the proposed seller and  
14          decline to continue facilitating the sale if the dealer determines that the  
15          proposed purchaser is prohibited by federal or State law from purchasing or  
16          possessing the firearm.

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

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

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

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

8       (2) A person who violates subdivision (b)(2) of this 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       (e) This section shall not apply to:

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

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

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

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

2 § 4824. REPORTING; NATIONAL INSTANT CRIMINAL

3 BACKGROUND CHECK SYSTEM

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

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

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

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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.