

1 S.141

2 Introduced by Committee on Judiciary

3 Date: March 17, 2015

4 Subject: Crimes and criminal procedures; firearms; violent criminals in
5 possession

6 Statement of purpose of bill as introduced: This bill proposes to prohibit a
7 person convicted of a violent crime from possessing a firearm and to require
8 the Departments of Public Safety and of Mental Health to report on the
9 establishment of a Vermont version of the New Hampshire Gun Shop Project,
10 an initiative in New Hampshire to reduce the number of firearms-related
11 suicide deaths by helping gun shop owners and friends of gun owners avoid
12 providing firearms to suicidal persons. The bill proposes to require personal
13 service notification prior to sale of firearms relinquished pursuant to a relief
14 from abuse order. The bill proposes to require the Court Administrator to
15 report to the National Instant Criminal Background Check System (NICS)
16 established by the Brady Handgun Violence Prevention Act of 1993 when a
17 person is:

18 (A) subject to a hospitalization order or nonhospitalization order after a
19 determination by a court that the person is a danger to himself or herself or
20 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 The proposal permits the person to petition the Court to order that his or her
6 name be removed from the NICS system after three years if the Court finds
7 that the person is no longer a danger to himself or herself or others.

8 An act relating to possession of firearms

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

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

11 § 4017. PERSONS PROHIBITED FROM POSSESSING FIREARMS;

12 CONVICTION OF VIOLENT CRIME

13 (a) A person shall not possess a firearm if the person has been convicted of
14 a violent crime.

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

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

19 (d) As used in this section:

20 (1)(A) “Firearm” means:

1 (i) any weapon (including a starter gun) which will or is designed
2 to or may readily be converted to expel a projectile by the action of an
3 explosive;

4 (ii) the frame or receiver of any such weapon; or

5 (iii) any firearm muffler or firearm silencer.

6 (B) “Firearm” shall not include an antique firearm.

7 (2) “Antique firearm” means:

8 (A) Any firearm (including any firearm with a matchlock, flintlock,
9 percussion cap, or similar type of ignition system) manufactured in or before
10 1898.

11 (B) Any replica of any firearm described in subdivision (A) of this
12 subdivision (2) if the replica:

13 (i) is not designed or redesigned for using rimfire or conventional
14 centerfire fixed ammunition; or

15 (ii) uses rimfire or conventional centerfire fixed ammunition that
16 is no longer manufactured in the United States and which is not readily
17 available in the ordinary channels of commercial trade.

18 (C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle
19 loading pistol which is designed to use black powder or a black powder
20 substitute and which cannot use fixed ammunition. As used in this subdivision

21 (C), “antique firearm” shall not include a weapon which incorporates a firearm

1 frame or receiver, a firearm which is converted into a muzzle loading weapon,
2 or any muzzle loading weapon which can be readily converted to fire fixed
3 ammunition by replacing the barrel, bolt, breechblock, or any combination
4 thereof.

5 (3) “Violent crime” means:

6 (A)(i) A listed crime as defined in subdivision 5301(7) of this title
7 other than:

8 (I) lewd or lascivious conduct as defined in section 2601 of
9 this title;

10 (II) recklessly endangering another person as defined in section
11 1025 of this title;

12 (III) operating a vehicle under the influence of intoxicating
13 liquor or other substance with either death or serious bodily injury resulting as
14 defined in 23 V.S.A. § 1210(f) and (g);

15 (IV) careless or negligent operation resulting in serious bodily
16 injury or death as defined in 23 V.S.A. § 1091(b);

17 (V) leaving the scene of an accident resulting in serious bodily
18 injury or death as defined in 23 V.S.A. § 1128(b) or (c); or

19 (VI) a misdemeanor violation of chapter 28 of this title, relating
20 to abuse, neglect, and exploitation of vulnerable adults; or

1 (ii) a comparable offense and sentence in another jurisdiction if
2 the offense prohibits the person from possessing a firearm under 18 U.S.C.
3 § 922(g)(1).

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

8 (C) A violation of 18 V.S.A. § 4231(b)(2), (b)(3), or (c) (selling,
9 dispensing, or trafficking cocaine); 4232(b)(2) or (b)(3) (selling or dispensing
10 LSD); 4233 (b)(2), (b)(3), or (c) (selling, dispensing, or trafficking heroin);
11 4234(b)(2) or (b)(3) (selling or dispensing depressants, stimulants, and
12 narcotics); 4234a(b)(2), (b)(3), or (c) (selling, dispensing, or trafficking
13 methamphetamine); 4235(c)(2) or (c)(3) (selling or dispensing hallucinogenic
14 drugs); 4235a(b)(2) or (b)(3) (selling or dispensing Ecstasy), or a comparable
15 offense and sentence in another jurisdiction if the offense prohibits the person
16 from possessing a firearm under 18 U.S.C. § 922(g)(1).

17 (D) A conviction of possession with intent to distribute a controlled
18 substance other than marijuana in another jurisdiction if the offense prohibits
19 the person from possessing a firearm under 18 U.S.C. § 922(g)(1).

1 Sec. 2. 20 V.S.A. § 2307 is amended to read:

2 § 2307. FIREARMS RELINQUISHED PURSUANT TO RELIEF FROM
3 ABUSE ORDER; STORAGE; FEES; RETURN

4 * * *

5 (g)(1) A law enforcement agency, an approved federally licensed firearms
6 dealer, or any other person that takes possession of firearms, ammunition, or
7 weapons for storage purposes pursuant to this section shall not release the
8 items to the owner without a court order unless the items are to be sold
9 pursuant to subdivision (2)(A) of this subsection. If a court orders the release
10 of firearms, ammunition, or weapons stored under this section, the law
11 enforcement agency or firearms dealer in possession of the items shall make
12 them available to the owner within three business days of receipt of the order
13 and in a manner consistent with federal law. The Supreme Court may
14 promulgate rules under 12 V.S.A. § 1 for judicial proceedings under this
15 subsection.

16 (2)(A)(i) If the owner fails to retrieve the firearm, ammunition, or
17 weapon and pay the applicable storage fee within 90 days of the court order
18 releasing the items, the firearm, ammunition, or weapon may be sold for fair
19 market value. Title to the items shall pass to the law enforcement agency or
20 firearms dealer for the purpose of transferring ownership.

1 (2) A description of the manner in which suicide prevention outreach
2 information can be transmitted to gun owners and friends of gun owners at gun
3 shops, gun ranges, and gun shows.

4 (3) An analysis of whether the New Hampshire Gun Shop Project could
5 be effectively implemented in Vermont to reduce the number of suicide deaths
6 by gunshot in this State.

7 (c) For purposes of developing the report required by this section, the
8 Departments of Public Safety and of Mental Health shall consult with:

9 (1) the Vermont Suicide Prevention Coalition;

10 (2) principals in the New Hampshire Gun Shop Project;

11 (3) the Vermont Federation of Sportsmen's Clubs, and other firearms
12 owners organizations;

13 (4) gun shop owners and other firearms retailers; and

14 (5) any other parties that may assist in preparing the report.

15 ~~Sec. 4. 13 V.S.A. § 4824 is added to read.~~

16 ~~§ 4824. REPORTING; NATIONAL INSTANT CRIMINAL~~

17 ~~BACKGROUND CHECK SYSTEM~~

18 (a) If the Court finds that a person is a person in need of treatment pursuant
19 to section 4822 of this title, the Court Administrator shall within 24 hours
20 report the name of the person subject to the order to the National Instant
21 ~~Criminal Background Check System, established by Section 103 of the Brady~~

1 ~~Handgun Violence Prevention Act of 1993. The report shall include only~~
2 ~~information sufficient to identify the person, the reason for the report, and a~~
3 ~~statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).~~

4 ~~(b) A report required by this section shall be submitted notwithstanding~~
5 ~~18 V.S.A. § 7103 or any other provision of law.~~

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

Sec. 4. 13 V.S.A. § 4824 is added to read:

*§ 4824. REPORTING; NATIONAL INSTANT CRIMINAL
BACKGROUND CHECK SYSTEM*

(a) If the Court finds that a person is a person in need of treatment pursuant to section 4822 of this title, the Court Administrator shall within 48 hours report the name of the person subject to the order to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

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

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

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not thereafter permitted to possess a firearm.

1 Sec. 5. 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, or,~~ if the
11 individual is an unemancipated minor, his or her parent or legal ~~guardian),~~
12 guardian 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 7617a of this title or 13 V.S.A. § 4824.

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~~Sec. 6. 18 V.S.A. § 7617a is added to read:~~

§ 7617a. REPORTING; NATIONAL INSTANT CRIMINAL
BACKGROUND CHECK SYSTEM

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

(b) A report required by this section shall be submitted notwithstanding 7103 of this title or any other provision of law.

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

Sec. 6. 18 V.S.A. § 7617a is added to read:

§ 7617a. REPORTING; NATIONAL INSTANT CRIMINAL
BACKGROUND CHECK SYSTEM

(a) If the Court issues a hospitalization order pursuant to subdivision 7617(b)(1) or (2) of this title or a nonhospitalization order pursuant to subdivision 7617(b)(3), the Court Administrator shall within 48 hours report the name of the person subject to the order to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

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

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

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not thereafter permitted to possess a firearm.

1 ~~Sec. 7. 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~~

1 ~~provide notice of the petition to the State's Attorney or the Attorney General,~~
2 who shall be the respondent in the matter.

3 (b) In determining a petition filed under this section, the Court shall
4 consider:

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

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

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

11 (c) The Court shall grant a petition filed under this section if it finds that
12 the petitioner has demonstrated by a preponderance of the evidence that:

13 (1) at least three years have elapsed since the date that the person was
14 last in the custody of the Department of Mental Health;

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

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

18 (d) If a petition filed under this section is granted, the Court shall enter an
19 order declaring that the basis under which the person was prohibited from
20 possessing firearms by 18 U.S.C. § 922(g)(4) no longer applies. The Court

1 ~~shall inform the Federal Bureau of Investigation, the U.S. Attorney General,~~
2 ~~and the National Instant Criminal Background Check System of its decision.~~

3 ~~(e) If the Court denies the petition, the petitioner may appeal the denial to~~
4 ~~the Vermont Supreme Court. The appeal shall be on the record, and the~~
5 ~~Supreme Court may review the record de novo.~~

6 ~~(f) If the Court denies a petition filed under this section, no further petition~~
7 ~~shall be filed by the person for at least three years.~~

Sec. 7. 13 V.S.A. § 4825 is added to read:

*§ 4825. PERSONS PROHIBITED BY FEDERAL LAW FROM
POSSESSING FIREARMS DUE TO MENTAL ILLNESS;
PETITION FOR RELIEF FROM DISABILITY*

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

*(b) In determining a petition filed under this section, the Court shall
consider:*

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

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

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

*(c)(1) The Court shall grant a petition filed under this section if it finds that
the petitioner has demonstrated by a preponderance of the evidence that:*

*(A) at least 18 months have elapsed since the date that the person
was last in the custody of the Department of Mental Health; and*

*(B) the person is no longer a person in need of treatment as defined
in 18 V.S.A. § 7101(17).*

(2) As the terms are used in this subsection, a finding that the person is no longer a person in need of treatment shall also mean that granting the relief will not be contrary to the public interest.

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

(e) If the Court denies the petition, the petitioner may appeal the denial to the Vermont Supreme Court. The appeal shall be on the record, and the Supreme Court may review the record de novo.

(f) If the Court denies a petition filed under this section, no further petition shall be filed by the person until at least one year after the order of the trial court, or of the Supreme Court if an appeal is taken, becomes final.

(g) At the time a petition is filed pursuant to this chapter, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the Court a statement. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim's statement. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(h) As used in this section, "reasonable effort" means attempting to contact the victim by first class mail at the victim's last known address and by telephone at the victim's last known telephone number.

~~1 Sec. 8. REPORTING; DEPARTMENT OF MENTAL HEALTH; COURT~~

~~2 ADMINISTRATOR~~

~~3 (a) The Department of Mental Health shall report to the Court~~

~~4 Administrator on or before October 1, 2015 the names of all persons under the~~

~~5 custody of the Department on that date who have been subject to a~~

~~6 hospitalization order issued pursuant to 18 V.S.A. § 7617(b)(1) or (2), a~~

~~7 nonhospitalization order issued pursuant to 18 V.S.A. § 7617(b)(3), or an order~~

~~8 that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822.~~

1 ~~The Court Administrator shall report the names provided pursuant to this~~
2 ~~section to the National Instant Criminal Background Check System,~~
3 ~~established by Section 103 of the Brady Handgun Violence Prevention Act of~~
4 ~~1993. The report shall include only information sufficient to identify the~~
5 ~~person, the reason for the report, and a statement that the report is made in~~
6 ~~accordance with 18 U.S.C. § 922(g)(4).~~

7 ~~(b) Reports required by this section shall be submitted notwithstanding~~
8 ~~18 V.S.A. § 7103 or any other provision of law.~~

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

*Sec. 8. REPORTING; DEPARTMENT OF MENTAL HEALTH; COURT
ADMINISTRATOR*

(a) The Department of Mental Health shall report to the Court Administrator on or before October 1, 2015 the names of all persons under the custody of the Department who on that date are subject to a hospitalization order issued pursuant to 18 V.S.A. § 7617(b)(1) or (2), a nonhospitalization order issued pursuant to 18 V.S.A. § 7617(b)(3), or an order that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822. The Court Administrator shall report the names provided pursuant to this section to the National Instant Criminal Background Check System, established by Section 103 of the Brady Handgun Violence Prevention Act of 1993. The report shall include only information sufficient to identify the person, the reason for the report, and a statement that the report is made in accordance with 18 U.S.C. § 922(g)(4).

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

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

(d) A copy of the report required by this section shall be provided to the person who is the subject of the report. The report shall include written notice to the person who is the subject of the report that the person is not thereafter permitted to possess a firearm.

~~1 Sec. 9. EFFECTIVE DATES, APPLICABILITY~~

~~2 (a) Secs. 1, 2, 3, 8, and this section shall take effect on July 1, 2015.~~

~~3 (b) Secs. 4, 5, 6, and 7 shall take effect on October 1, 2015 and shall apply~~
~~4 to hospitalization orders issued pursuant to subdivision 18 V.S.A. § 7617(b)(1)~~
~~5 or (2), nonhospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(3), or~~
~~6 orders that a person is a person in need of treatment pursuant to 13 V.S.A.~~
~~7 § 4822 issued on or after that date.~~

Sec. 9. REPORTS

(a) On or before January 15, 2018, the Court Administrator, in consultation with the Commissioner of Mental Health and the Executive Director of State's Attorneys and Sheriffs, shall report to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services on data compiled with respect to the legal requirements established by this Act. The report shall include:

(1)(A) The number of persons reported to the National Instant Criminal Background Check System since October 1, 2015 pursuant to:

(i) 13 V.S.A. § 4824 (persons in custody of the Department of Mental Health as the result of an order issued under 13 V.S.A. § 4822); and

(ii) 18 V.S.A. § 7617a (persons in custody of the Department of Mental Health as the result of a hospitalization order issued under 18 V.S.A. § 7617(b)(1) or (2), or a nonhospitalization order issued under 18 V.S.A. § 7617(b)(3)); and

(B) with respect to each of the persons reported to the National Instant Criminal Background Check System pursuant to 13 V.S.A. § 4824 and 18 V.S.A. § 7617a since October 1, 2015, whether the person filed a petition for relief from disabilities pursuant to 13 V.S.A. § 4825, and whether the petition was granted, denied, or remains pending.

(2) The total number of petitions for relief from disabilities filed pursuant to 13 V.S.A. § 4825 since October 1, 2015, and the number of those petitions that were granted, denied, and remain pending.

(b) On or before January 15, 2018, the Executive Director of the Department of State's Attorneys and Sheriffs shall report to the Senate and House Committees on Judiciary the number of persons charged with violating 13 V.S.A. § 4017 since July 1, 2015, and the number of charges that resulted in conviction, dismissal, and acquittal.

Sec. 10. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1, 2, 3, 8, 9, and this section shall take effect on July 1, 2015.

(b) Secs. 4, 5, 6, and 7 shall take effect on October 1, 2015, and shall apply to hospitalization orders issued pursuant to subdivision 18 V.S.A. § 7617(b)(1) or (2), nonhospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(3), or orders that a person is a person in need of treatment pursuant to 13 V.S.A. § 4822 issued on or after that date.