

1 S.141

2 Introduced by Committee on Judiciary

3 Date:

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.

12 Sec. 5. 18 V.S.A. § 7103 is amended to read:

13 § 7103. DISCLOSURE OF INFORMATION

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

20 (1) as the individual identified, the individual's health care agent under
21 section 5264 of this title, or the individual's legal guardian, if any ~~or~~, or, if the

1 individual is an unemancipated minor, his or her parent or legal ~~guardian~~;
2 guardian shall consent in writing; ~~or~~

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

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

8 (4) as the disclosure is made to comply with the reporting requirements
9 of section 7617a of this title or 13 V.S.A. § 4824.

10 * * *

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

12 § 7617a. REPORTING; NATIONAL INSTANT CRIMINAL

13 BACKGROUND CHECK SYSTEM

14 (a) If the Court issues a hospitalization order pursuant to subdivision
15 7617(b)(1) or (2) of this title or a nonhospitalization order pursuant to
16 subdivision 7617(b)(3), the Court Administrator shall within 24 hours report
17 the name of the person subject to the order to the National Instant Criminal
18 Background Check System, established by Section 103 of the Brady Handgun
19 Violence Prevention Act of 1993. The report shall include only information
20 sufficient to identify the person, the reason for the report, and a statement that
21 the report is made in accordance with 18 U.S.C. § 922(g)(4).

1 **(b) A report required by this section shall be submitted notwithstanding**
2 **7103 of this title or any other provision of law.**

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

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

10 **§ 4825. PERSONS PROHIBITED BY FEDERAL LAW FROM**
11 **POSSESSING FIREARMS DUE TO MENTAL ILLNESS;**
12 **PETITION FOR RELIEF FROM DISABILITY**

13 **(a) A person who is prohibited from possessing firearms by 18 U.S.C.**
14 **§ 922(g)(4) may petition the Court for an order that the person be relieved**
15 **from the firearms disability imposed by that section. The petitioner shall**
16 **provide notice of the petition to the State's Attorney or the Attorney General,**
17 **who shall be the respondent in the matter.**

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

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

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

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

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

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

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

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.
9 The Court Administrator shall report the names provided pursuant to this
10 section to the National Instant Criminal Background Check System,
11 established by Section 103 of the Brady Handgun Violence Prevention Act of
12 1993. The report shall include only information sufficient to identify the
13 person, the reason for the report, and a statement that the report is made in
14 accordance with 18 U.S.C. § 922(g)(4).

15 (b) Reports required by this section shall be submitted notwithstanding
16 18 V.S.A. § 7103 or any other provision of law.

17 (c) A report required by this section is confidential and exempt from public
18 inspection and copying under the Public Records Act. The report shall not be
19 used for any purpose other than for submission to the National Instant Criminal
20 Background Check System pursuant to this section, where it may be used for

1 any purpose permitted by federal law, including in connection with the
2 issuance of a firearm-related permit or license.

3 Sec. 9. EFFECTIVE DATES; APPLICABILITY

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

5 (b) Secs. 4, 5, 6, and 7 shall take effect on October 1, 2015 and shall apply
6 to hospitalization orders issued pursuant to subdivision 18 V.S.A. § 7617(b)(1)
7 or (2), nonhospitalization orders issued pursuant to 18 V.S.A. § 7617(b)(3), or
8 orders that a person is a person in need of treatment pursuant to 13 V.S.A.
9 § 4822 issued on or after that date.