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S.31

Introduced by Senators Ram Hinsdale, Clarkson, Gulick, Hardy, Lyons,
Perchlik, Vyhovsky and Watson

Referred to Committee on

Date:

Subject: Criminal procedures; firearms; open carry; defense of self and others

Statement of purpose of bill as introduced: This bill proposes (1) to prohibit the open carry of loaded firearms in public places; (2) to provide that a person may not raise self-defense or defense of others as a defense if the person's use of defensive force occurred outside the person's home or dwelling and the person had sufficient and available means of avoiding the use of force; and (3) to provide that only law enforcement agencies and federally licensed firearms dealers approved as qualified storage locations by the Department of Public Safety may store firearms relinquished by persons subject to relief from abuse orders.

An act relating to the open carry of loaded firearms in public places and the use of force in defense of self and others

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

2 Sec. 1. 13 V.S.A. § 4024 is added to read:

3 § 4024. OPEN CARRY OF LOADED FIREARM IN PUBLIC PLACE

4 PROHIBITED

5 (a) A person shall not openly carry a firearm in a public place.

6 (b) A person who violates this section shall be imprisoned not more than
7 one year or fined not more than \$1,000.00, or both.

8 (c) This section shall not apply to:

9 (1) firearms carried by a person who holds a valid hunting license under
10 10 V.S.A. § 4254 and is lawfully engaged in hunting pursuant to 10 V.S.A.
11 part 4, including travelling to or returning from hunting;

12 (2) firearms that are:

13 (A) unloaded or in an inoperable state; and

14 (B) enclosed in a case, firearm carrying box, or shipping container;

15 (3) firearms carried for legitimate law enforcement purposes by a
16 federal law enforcement officer or a law enforcement officer certified as a law
17 enforcement officer by the Vermont Criminal Justice Council pursuant to 20
18 V.S.A. § 2358;

19 (4) firearms carried by a person while performing the person's official
20 duties as an employee of the United States; a department or agency of the

1 United States; a state; or a department, agency, or political subdivision of a
2 state; or

3 (5) firearms carried in order to prevent imminent harm to any person,
4 provided that this subdivision shall only apply while the risk of imminent harm
5 exists.

6 (d) This section shall not be construed to regulate the carrying or
7 transportation of firearms in motor vehicles.

8 (e) As used in this section:

9 (1) “Firearm” has the same meaning as in section 4017 of this title.

10 (2) “Public place” means any property:

11 (A) owned by the State or a political subdivision of the State, or a
12 municipality, unincorporated town, or gore; and

13 (B) to which the public has access, including highways, streets,
14 sidewalks, parks, and rights-of-way.

15 Sec. 2. 13 V.S.A. § 2305 is amended to read:

16 § 2305. JUSTIFIABLE HOMICIDE

17 (a) If a person kills or wounds another under any of the circumstances
18 enumerated below, the person shall be guiltless:

19 (1) in the just and necessary defense of the person’s own life or the life
20 of any other person;

1 (2) if the person reasonably believed that the person, or any other
2 person, was in imminent peril and that it was necessary to repel that peril with
3 deadly force in the forceful or violent suppression of a person attempting to
4 commit murder, sexual assault, aggravated sexual assault, burglary, or robbery;
5 or

6 (3) in the case of a law enforcement officer as defined in 20 V.S.A.
7 § 2351(a) using force in compliance with 20 V.S.A. § 2368(b)(1)–(2) and (5)
8 or deadly force in compliance with 20 V.S.A. § 2368(c)(1)–(4) and (6).

9 (b) This section shall not be construed to limit or infringe upon defenses
10 granted at common law.

11 (c) Subdivisions (a)(1) and (2) of this section shall not apply, and the
12 person shall not be guiltless, if:

13 (1) the person’s use of defensive force did not occur in the person’s
14 home or dwelling; and

15 (2) the person had other means of avoiding the use of defensive force
16 that:

17 (A) appeared to the person to be sufficient and available at the time;

18 and

19 (B) were objectively sufficient and available.

1 Sec. 3. 20 V.S.A. § 2307 is amended to read:

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

4 (a) As used in this section:

5 (1) “Federally licensed firearms dealer” means a licensed importer,
6 licensed manufacturer, or licensed dealer required to conduct national instant
7 criminal background checks under 18 U.S.C. § 922(t).

8 (2) “Firearm” ~~shall have~~ has the same meaning as in 18 U.S.C.
9 § 921(a)(3).

10 (3) “Law enforcement agency” means the Vermont State Police, a
11 municipal police department, or a sheriff’s department.

12 (b)~~(4)~~ A person who is required to relinquish firearms, ammunition, or other
13 weapons in the person’s possession by a court order issued under 15 V.S.A.
14 chapter 21 (abuse prevention) or any other provision of law consistent with 18
15 U.S.C. § 922(g)(8) shall, ~~unless the court orders an alternative relinquishment~~
16 ~~pursuant to subdivision (2) of this subsection,~~ upon service of the order
17 immediately relinquish the firearms, ammunition, or weapons to a cooperating
18 law enforcement agency or an approved federally licensed firearms dealer that
19 the Department of Public Safety has listed as a qualified storage location
20 pursuant to subsection (i) of this section. As used in this subdivision, “person”
21 means anyone who meets the definition of “intimate partner” under 18 U.S.C.

1 § 921(a)(32) or who qualifies as a family or household member under 15
2 V.S.A. § 1101.

3 ~~(2)(A) The court may order that the person relinquish the firearms,~~
4 ~~ammunition, or other weapons to a person other than a cooperating law~~
5 ~~enforcement agency or an approved federally licensed firearms dealer unless~~
6 ~~the court finds that relinquishment to the other person will not adequately~~
7 ~~protect the safety of the victim.~~

8 ~~(B) A person to whom firearms, ammunition, or other weapons are~~
9 ~~relinquished pursuant to subdivision (2)(A) of this subsection (b) shall execute~~
10 ~~an affidavit on a form approved by the Court Administrator stating that the~~
11 ~~person:~~

12 ~~(i) acknowledges receipt of the firearms, ammunition, or other~~
13 ~~weapons;~~

14 ~~(ii) assumes responsibility for storage of the firearms,~~
15 ~~ammunition, or other weapons until further order of the court, and specifies the~~
16 ~~manner in which he or she will provide secure storage of such items;~~

17 ~~(iii) is not prohibited from owning or possessing firearms under~~
18 ~~State or federal law; and~~

19 ~~(iv) understands the obligations and requirements of the court~~
20 ~~order, including the potential for the person to be subject to civil contempt~~
21 ~~proceedings pursuant to subdivision (2)(C) of this subsection (b) if the person~~

1 ~~permits the firearms, ammunition, or other weapons to be possessed, accessed,~~
2 ~~or used by the person who relinquished the item or by any other person not~~
3 ~~authorized by law to do so.~~

4 ~~(C) A person to whom firearms, ammunition, or other weapons are~~
5 ~~relinquished pursuant to subdivision (2)(A) of this subsection (b) shall be~~
6 ~~subject to civil contempt proceedings under 12 V.S.A. chapter 5 if the person~~
7 ~~permits the firearms, ammunition, or other weapons to be possessed, accessed,~~
8 ~~or used by the person who relinquished the item or by any other person not~~
9 ~~authorized by law to do so. In the event that the person required to relinquish~~
10 ~~the firearms, ammunition, or other weapons or any other person not authorized~~
11 ~~by law to possess the relinquished items obtains access to, possession of, or~~
12 ~~use of a relinquished item, all relinquished items shall be immediately~~
13 ~~transferred to the possession of a law enforcement agency or approved~~
14 ~~federally licensed firearms dealer pursuant to subdivision (1) of this subsection~~
15 ~~(b).~~

16 (c) A law enforcement agency or an approved federally licensed firearms
17 dealer that takes possession of a firearm, ammunition, or other weapon
18 pursuant to ~~subdivision~~ subsection (b)(1) of this section shall photograph,
19 catalogue, and store the item in accordance with standards and guidelines
20 established by the Department of Public Safety pursuant to subdivision (i)(3)
21 of this section. A firearm, ammunition, or other weapon shall not be taken into

1 possession pursuant to this section if it is being or may be used as evidence in a
2 pending criminal matter.

3 (d)(1) A law enforcement agency that stores firearms, ammunition, or
4 weapons pursuant to ~~subdivision~~ subsection (b)(4) of this section may charge
5 the owner a reasonable storage fee, not to exceed:

6 (A) \$200.00 for the first firearm or weapon, and \$50.00 for each
7 additional firearm or weapon for up to 15 months, prorated on the number of
8 months the items are stored; and

9 (B) \$50.00 per firearm or weapon per year for each year or part
10 thereof thereafter.

11 (2) A federally licensed firearms dealer that stores firearms,
12 ammunition, or weapons pursuant to ~~subdivision~~ subsection (b)(4) of this
13 section may charge the owner a storage fee that is reasonably related to the
14 expenses it incurs in the administration of this section. Any federally licensed
15 firearm dealer that certifies compliance under this section shall provide a copy
16 of its fee schedule to the court.

17 (3) Fees permitted by this subsection shall not begin to accrue until after
18 the court issues a final relief from abuse order pursuant to 15 V.S.A. § 1103.

19 (e) Nothing in this section shall be construed to prohibit the lawful sale of
20 firearms or other items.

1 (f) A final relief from abuse order issued pursuant to 15 V.S.A. § 1103
2 requiring a person to relinquish firearms, ammunition, or other weapons shall
3 direct the law enforcement agency, or approved federally licensed firearms
4 dealer, ~~or other person~~ in possession of the items under subsection (b) of this
5 section to release them to the owner upon expiration of the order if all
6 applicable fees have been paid.

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

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

1 or firearms dealer for the purpose of transferring ownership, except that the
2 Vermont State Police shall follow the procedure described in section 2305 of
3 this title.

4 (ii) The law enforcement agency or approved firearms dealer shall
5 make a reasonable effort to notify the owner of the sale before it occurs. In no
6 event shall the sale occur until after the court issues a final relief from abuse
7 order pursuant to 15 V.S.A. § 1103.

8 (iii) As used in this subdivision (2)(A), “reasonable effort” ~~shall~~
9 ~~mean~~ means notice shall be served as provided for by Rule 4 of the Vermont
10 Rules of Civil Procedure.

11 (B) Proceeds from the sale of a firearm, ammunition, or weapon
12 pursuant to subdivision (A) of this subdivision (2) shall be apportioned as
13 follows:

14 (i) ~~unpaid~~ Unpaid storage fees and associated costs, including the
15 costs of sale and of locating and serving the owner, shall be paid to the law
16 enforcement agency or firearms dealer that incurred the cost; ~~and~~.

17 (ii) ~~any~~ Any proceeds remaining after payment is made to the law
18 enforcement agency or firearms dealer pursuant to subdivision (i) of this
19 subdivision (2)(B) shall be paid to the original owner.

20 (h) A law enforcement agency shall be immune from civil or criminal
21 liability for any damage or deterioration of firearms, ammunition, or weapons

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

5 (i) The Department of Public Safety shall be responsible for the
6 implementation and establishment of standards and guidelines to carry out this
7 section. To carry out this responsibility, the Department shall:

8 (1) Establish minimum standards to be a qualified storage location and
9 maintain a list of qualified storage locations, including:

10 (A) federally licensed firearms dealers that annually certify
11 compliance with the Department's standards to receive firearms, ammunition,
12 or other weapons pursuant to ~~subdivision (b)(2)~~ subsection (b) of this section;
13 and

14 (B) cooperating law enforcement agencies.

15 (2) Establish a fee schedule consistent with the fees established in this
16 section for the storage of firearms and other weapons by law enforcement
17 agencies pursuant to this section.

18 (3) Establish standards and guidelines to provide for the storage of
19 firearms, ammunition, and other weapons pursuant to this section by law
20 enforcement agencies. Such guidelines shall provide that:

1 (A) with the consent of the law enforcement agency taking
2 possession of a firearm, ammunition, or weapon under this section, an owner
3 may provide a storage container for the storage of such relinquished items;

4 (B) the law enforcement agency that takes possession of the firearm,
5 ammunition, or weapon may provide a storage container for the relinquished
6 item or items at an additional fee; and

7 (C) the law enforcement agency that takes possession of the firearm,
8 ammunition, or weapon shall present the owner with a receipt at the time of
9 relinquishment that includes the serial number and identifying characteristics
10 of the firearm, ammunition, or weapon and record the receipt of the item or
11 items in a log to be established by the Department.

12 (4) Report on January 15, 2015 and annually thereafter to the House and
13 Senate Committees on Judiciary on the status of the program. The provisions
14 of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report
15 to be made under this subdivision.

16 Sec. 4. EFFECTIVE DATE

17 This act shall take effect on passage.