

1 H.675

2 Introduced by Representative Grad of Moretown

3 Referred to Committee on

4 Date:

5 Subject: Crimes and criminal procedure; bail and recognizances; release prior  
6 to trial

7 Statement of purpose of bill as introduced: This bill proposes to clarify that a  
8 court may order, as a condition of release prior to trial, that a defendant  
9 participate in prevention of domestic violence programming or that a  
10 defendant not possess a firearm or other weapon.

11 An act relating to conditions of release prior to trial

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

13 ~~Sec. 1. 13 V.S.A. § 7554 is amended to read:~~

14 § 7554. RELEASE PRIOR TO TRIAL

15 (a) Any person charged with an offense, other than a person held without  
16 bail under section 7553 or 7553a of this title, shall at his or her appearance  
17 before a judicial officer be ordered released pending trial in accordance with  
18 this section.

19 ~~(1) The defendant shall be ordered released on personal recognizance or~~

1 ~~upon the execution of an unsecured appearance bond in an amount specified~~  
2 by the judicial officer unless the judicial officer determines that such a release  
3 will not reasonably ensure the appearance of the person as required. In  
4 determining whether the defendant presents a risk of nonappearance, the  
5 judicial officer shall consider, in addition to any other factors, the seriousness  
6 of the offense charged and the number of offenses with which the person is  
7 charged. If the officer determines that such a release will not reasonably  
8 ensure the appearance of the defendant as required, the officer shall, either in  
9 lieu of or in addition to the methods of release in this section, impose the least  
10 restrictive of the following conditions or the least restrictive combination of  
11 the following conditions that will reasonably ensure the appearance of the  
12 defendant as required:

13 (A) Place the defendant in the custody of a designated person or  
14 organization agreeing to supervise him or her if the defendant is charged with  
15 an offense that is not a nonviolent misdemeanor or nonviolent felony as  
16 defined in 28 V.S.A. § 301.

17 (B) Place restrictions on the travel, association, or place of abode of  
18 the defendant during the period of release.

19 (C) Require the defendant to participate in an alcohol or drug  
20 treatment program. The judicial officer shall take into consideration the  
21 ~~defendant's ability to comply with an order of treatment and the availability of~~

1 ~~treatment resources.~~

2 (D) Require the execution of a secured appearance bond in a  
3 specified amount and the deposit with the clerk of the Court court, in cash or  
4 other security as directed, of a sum not to exceed 10 percent of the amount of  
5 the bond, such deposit to be returned upon the appearance of the defendant as  
6 required.

7 (E) Require the execution of a surety bond with sufficient solvent  
8 sureties, or the deposit of cash in lieu thereof.

9 (F) Impose any other condition found reasonably necessary to ensure  
10 appearance as required, including a condition requiring that the defendant  
11 return to custody after specified hours.

12 (G) Place the defendant in a program of community-based electronic  
13 monitoring in accordance with section 7554d of this title.

14 (2) If the judicial officer determines that conditions of release imposed  
15 to ensure appearance will not reasonably protect the public, the judicial officer  
16 may impose in addition the least restrictive of the following conditions or the  
17 least restrictive combination of the following conditions that will reasonably  
18 ensure protection of the public:

19 (A) Place the defendant in the custody of a designated person or  
20 organization agreeing to supervise him or her if the defendant is charged with  
21 ~~an offense that is not a nonviolent misdemeanor or nonviolent felony as~~

1 defined in 28 V.S.A. § 301.

2 (B) Place restrictions on the travel, association, or place of abode of  
3 the defendant during the period of release.

4 (C) Require the defendant to participate in an alcohol or drug  
5 treatment program. The judicial officer shall take into consideration the  
6 defendant's ability to comply with an order of treatment and the availability of  
7 treatment resources.

8 (D) Impose any other condition found reasonably necessary to  
9 protect the public, except that a physically restrictive condition may only be  
10 imposed in extraordinary circumstances.

11 (E) If the defendant is a State, county, or municipal officer charged  
12 with violating section 2537 of this title, the court may suspend the officer's  
13 duties in whole or in part, if the court finds that it is necessary to protect the  
14 public.

15 (F) Place the defendant in a program of community-based electronic  
16 monitoring in accordance with section 7554d of this title.

17 (G) Require the defendant to participate in prevention of domestic  
18 violence programming which meets statewide standards as certified by the  
19 Council on Domestic Violence in accordance with 15 V.S.A. § 1172.

20 (H) Require a defendant not to possess firearms or other weapons.

21 ~~(S) A judicial officer may order that a defendant not harass or contact or~~

1 ~~cause to be harassed or contacted a victim or potential witness. This order~~

2 shall take effect immediately, regardless of whether the defendant is  
3 incarcerated or released.

4 (b) In determining which conditions of release to impose under subsection  
5 (a) of this section, the judicial officer shall, on the basis of available  
6 information, take into account the nature and circumstances of the offense  
7 charged; the weight of the evidence against the accused; and the accused's  
8 family ties, employment, financial resources, character and mental condition,  
9 ~~the~~ length of residence in the community, record of convictions, and record of  
10 appearance at court proceedings or of flight to avoid prosecution or failure to  
11 appear at court proceedings. Recent history of actual violence or threats of  
12 violence may be considered by the judicial officer as bearing on the character  
13 and mental condition of the accused.

14 (c) A judicial officer authorizing the release of a person under this section  
15 shall issue an appropriate order containing a statement of the conditions  
16 imposed, if any, shall inform such person of the penalties applicable to  
17 violations of the conditions of release, and shall advise him or her that a  
18 warrant for his or her arrest will be issued immediately upon any such  
19 violation.

20 (d)(1) A person for whom conditions of release are imposed and who is  
21 ~~detained as a result of his or her inability to meet the conditions of release or~~

1 ~~who is ordered released on a condition that he or she return to custody after~~  
2 specified hours shall, within 48 hours of application, be entitled to have the  
3 conditions reviewed by a judge in the court having original jurisdiction over  
4 the offense charged. A person applying for review shall be given the  
5 opportunity for a hearing. Unless the conditions of release are amended as  
6 requested, the judge shall set forth in writing or orally on the record a  
7 reasonable basis for continuing the conditions imposed. In the event that a  
8 judge in the court having original jurisdiction over the offense charged is not  
9 available, any Superior judge may review such conditions.

10 (2) A person for whom conditions of release are imposed shall, within  
11 five working days ~~of~~ after application, be entitled to have the conditions  
12 reviewed by a judge in the court having original jurisdiction over the offense  
13 charged. A person applying for review shall be given the opportunity for a  
14 hearing. Unless the conditions of release are amended as requested, the judge  
15 shall set forth in writing or orally on the record a reasonable basis for  
16 continuing the conditions imposed. In the event that a judge in the court  
17 having original jurisdiction over the offense charged is not available, any  
18 Superior judge may review such conditions.

19 (e) A judicial officer ordering the release of a person on any condition  
20 specified in this section may at any time amend the order to impose additional  
21 ~~or different conditions of release, provided that the provisions of subsection~~

1 ~~(d) of this section shall apply.~~

2 (f) The term "judicial officer" as used in this section and section 7556 of  
3 this title shall mean a clerk of a Superior Court or a Superior Court judge.

4 (g) Information stated in, or offered in connection with, any order entered  
5 pursuant to this section need not conform to the rules pertaining to the  
6 admissibility of evidence in a court of law.

7 (h) Nothing contained in this section shall be construed to prevent the  
8 disposition of any case or class of cases by forfeiture of collateral security  
9 where such disposition is authorized by the court.

10 (i) The Court Administrator shall establish forms for appearance bonds,  
11 secured appearance bonds, and surety bonds, and for use in the posting of bail.  
12 Each form shall include the following information:

13 (1) The bond or bail may be forfeited in the event that the defendant or  
14 witness fails to appear at any required court proceeding.

15 (2) The surety or person posting bond or bail has the right to be released  
16 from the obligations under the bond or bail agreement upon written application  
17 to the judicial officer and detention of the defendant or witness.

18 (3) The bond will continue through sentencing in the event that bail is  
19 continued after final adjudication.

20 (j) Any juvenile between 14 and 16 years of age who is charged with a  
21 ~~listed crime as defined in subdivision 5501(7) of this title shall appear before a~~

1 ~~judicial officer and be ordered released pending trial in accordance with this~~  
2 ~~section within 24 hours of after the juvenile's arrest.~~

3 Sec. 2. EFFECTIVE DATE

4 ~~This act shall take effect on July 1, 2018.~~

*Sec. 1. 13 V.S.A. § 7554(a)(2)(G) is added to read:*

*(G) Require a defendant not to possess firearms or other weapons.*

*Sec. 1a. 13 V.S.A. chapter 85 is amended to read:*

*CHAPTER 85. WEAPONS*

*Subchapter 1. Generally*

*\* \* \**

*Subchapter 2. Extreme Risk Protection Orders*

*§ 4051. DEFINITIONS*

*As used in this subchapter:*

*(1) "Court" means the Family Division of the Superior Court.*

*(2) "Dangerous weapon" means an explosive or a firearm.*

*(3) "Explosive" means dynamite, or any explosive compound of which nitroglycerin forms a part, or fulminate in bulk or dry condition, or blasting caps, or detonating fuses, or blasting powder or any other similar explosive.*

*The term does not include a firearm or ammunition therefor or any components of ammunition for a firearm, including primers, smokeless powder, or black gunpowder.*



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

(5) “Firearm” shall have the same meaning as in subsection 4017(d) of this title.

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

§ 4052. JURISDICTION AND VENUE

(a) The Family Division of the Superior Court shall have jurisdiction over proceedings under this subchapter.

(b) Emergency orders under section 4054 of this title may be issued by a judge of the Criminal, Civil, or Family Division of the Superior Court.

(c) Proceedings under this chapter shall be commenced in the county where the law enforcement agency is located, the county where the respondent resides, or the county where the events giving rise to the petition occur.

§ 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

(a) A State’s Attorney or the Office of the Attorney General may file a petition requesting that the court issue an extreme risk protection order prohibiting a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person’s custody or control. The petitioner shall submit an affidavit in support of the petition.

(b) Except as provided in section 4054 of this title, the court shall grant relief only after notice to the respondent and a hearing. The petitioner shall have the burden of proof by a preponderance of the evidence.

(c)(1) A petition filed pursuant to this section shall allege that the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

(2)(A) An extreme risk of harm to others may be shown by establishing that:

(i) the respondent has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions the respondent has placed others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions the respondent has presented a danger to persons in his or her care.

(B) An extreme risk of harm to himself or herself may be shown by establishing that the respondent has threatened or attempted suicide or serious bodily harm.

(3) The affidavit in support of the petition shall state:

(A) the specific facts supporting the allegations in the petition;

(B) any dangerous weapons the petitioner believes to be in the

respondent's possession, custody, or control; and

(C) whether the petitioner knows of an existing order with respect to the respondent under 15 V.S.A. chapter 21 (abuse prevention orders) or 12 V.S.A. chapter 178 (orders against stalking or sexual assault).

(d) The court shall hold a hearing within 14 days after a petition is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the petition and any ex parte order issued under section 4054 of this title.

(e)(1) The court shall grant the petition and issue an extreme risk protection order if it finds by a preponderance of the evidence that the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

(2) An order issued under this subsection shall prohibit a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control for a period of up to one year. The order shall be signed by the judge and include the following provisions:

(A) A statement of the grounds for issuance of the order.

(B) The name and address of the court where any filings should be made, the names of the parties, the date of the petition, the date and time of the

order, and the date and time the order expires.

(C) A description of how to appeal the order.

(D) A description of the requirements for relinquishment of dangerous weapons under section 4059 of this title.

(E) A description of how to request termination of the order under section 4055 of this title. The court shall include with the order a form for a motion to terminate the order.

(F) A statement directing the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of the firearm to release it to the owner upon expiration of the order.

(G) A statement in substantially the following form:

“To the subject of this protection order: This order shall be in effect until the date and time stated above. If you have not done so already, you are required to surrender all dangerous weapons in your custody, control, or possession to [insert name of law enforcement agency], a federally licensed firearms dealer, or a person approved by the court. While this order is in effect, you are not allowed to purchase, possess, or receive a dangerous weapon; attempt to purchase, possess, or receive a dangerous weapon; or have a dangerous weapon in your custody or control. You have the right to request one hearing to terminate this order during the period that this order is in effect, starting from the date of this order. You may seek the advice of an

attorney regarding any matter connected with this order.”

(f) If the court denies a petition filed under this section, the court shall state the particular reasons for the denial in its decision.

(g) No filing fee shall be required for a petition filed under this section.

(h) Form petitions and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(i) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

(j) Every final order issued under this section shall bear the following language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

(k) Affidavit forms required pursuant to this section shall bear the following language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

§ 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

(a)(1) A State’s Attorney or the Office of the Attorney General may file a motion requesting that the court issue an extreme risk protection order ex parte, without notice to the respondent. A law enforcement officer may notify

the court that an ex parte extreme risk protection order is being requested pursuant to this section, but the court shall not issue the order until after the motion is submitted.

(2) The petitioner shall submit an affidavit in support of the motion alleging that the respondent poses an imminent and extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The affidavit shall state:

(A) the specific facts supporting the allegations in the motion, including the imminent danger posed by the respondent; and

(B) any dangerous weapons the petitioner believes to be in the respondent's possession, custody, or control.

(b)(1) The court shall grant the motion and issue a temporary ex parte extreme risk protection order if it finds by a preponderance of the evidence that at the time the order is requested the respondent poses an imminent and extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title, and the court shall deliver a copy to the holding station.

(2)(A) An extreme risk of harm to others may be shown by establishing that:

(i) the respondent has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions the respondent has placed others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions the respondent has presented a danger to persons in his or her care.

(B) An extreme risk of harm to himself or herself may be shown by establishing that the respondent has threatened or attempted suicide or serious bodily harm.

(c)(1) Unless the petition is voluntarily dismissed pursuant to subdivision (2) of this subsection, the court shall hold a hearing within 14 days after the issuance of a temporary ex parte extreme risk protection order to determine if a final extreme risk protection order should be issued. If not voluntarily dismissed, the temporary ex parte extreme risk protection order shall expire when the court grants or denies a motion for an extreme risk protection order under section 4053 of this title.

(2) The prosecutor may voluntarily dismiss a motion filed under this section at any time prior to the hearing if the prosecutor determines that the respondent no longer poses an extreme risk of causing harm to himself or

herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. If the prosecutor voluntarily dismisses the motion pursuant to this subdivision, the court shall vacate the temporary ex parte extreme risk protection order and direct the person in possession of the dangerous weapon to return it to the respondent consistent with section 4059 of this title.

(d)(1) An order issued under this section shall prohibit a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control for a period of up to 14 days. The order shall be in writing and signed by the judge and shall include the following provisions:

(A) A statement of the grounds for issuance of the order.

(B) The name and address of the court where any filings should be made, the names of the parties, the date of the petition, the date and time of the order, and the date and time the order expires.

(C) The date and time of the hearing when the respondent may appear to contest the order before the court. This opportunity to contest shall be scheduled as soon as reasonably possible, which in no event shall be more than 14 days after the date of issuance of the order.

(D) A description of the requirements for relinquishment of dangerous weapons under section 4059 of this title.



(E) A statement in substantially the following form:

“To the subject of this protection order: This order shall be in effect until the date and time stated above. If you have not done so already, you are required to surrender all dangerous weapons in your custody, control, or possession to [insert name of law enforcement agency], a federally licensed firearms dealer, or a person approved by the court. While this order is in effect, you are not allowed to purchase, possess, or receive a dangerous weapon; attempt to purchase, possess, or receive a dangerous weapon; or have a dangerous weapon in your custody or control. A hearing will be held on the date and time noted above to determine if a final extreme risk prevention order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for up to 60 days. You may seek the advice of an attorney regarding any matter connected with this order.”

(2)(A) The court may issue an ex parte extreme risk protection order by telephone or by reliable electronic means pursuant to this subdivision if requested by the petitioner.

(B) Upon receipt of a request for electronic issuance of an ex parte extreme risk protection order, the judicial officer shall inform the petitioner that a signed or unsigned motion and affidavit may be submitted electronically. The affidavit shall be sworn to or affirmed by administration of the oath over the telephone to the petitioner by the judicial officer. The administration of the

oath need not be made part of the affidavit or recorded, but the judicial officer shall note on the affidavit that the oath was administered.

(C) The judicial officer shall decide whether to grant or deny the motion and issue the order solely on the basis of the contents of the motion and the affidavit or affidavits provided. If the motion is granted, the judicial officer shall immediately sign the original order, enter on its face the exact date and time it is issued, and transmit a copy to the petitioner by reliable electronic means. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title.

(D) On or before the next business day after the order is issued:

(i) the petitioner shall file the original motion and affidavit with the court; and

(ii) the judicial officer shall file the signed order, the motion, and the affidavit with the clerk. The clerk shall enter the documents on the docket immediately after filing.

(e) Form motions and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(f) Every order issued under this section shall bear the following language: "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT

PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

(g) Affidavit forms required pursuant to this section shall bear the following language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

(h) If the court denies a petition filed under this section, the court shall state the particular reasons for the denial in its decision.

§ 4055. TERMINATION AND RENEWAL MOTIONS

(a)(1) The respondent may file a motion to terminate an extreme risk protection order issued under section 4053 of this title or an order renewed under subsection (b) of this section. A motion to terminate shall not be filed more than once during the effective period of the order. The State shall have the burden of proof by a preponderance of the evidence.

(2) The court shall grant the motion and terminate the extreme risk protection order unless it finds by a preponderance of the evidence that the respondent continues to pose an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent’s custody or control.

(b)(1) A State’s Attorney or the Office of the Attorney General may file a motion requesting that the court renew an extreme risk protection order issued

under this section or section 4053 of this title for an additional period of up to one year. The motion shall be accompanied by an affidavit and shall be filed not more than 30 days and not less than 14 days before the expiration date of the order. The motion and affidavit shall comply with the requirements of subsection 4053(c) of this title, and the moving party shall have the burden of proof by a preponderance of the evidence.

(2) The court shall grant the motion and renew the extreme risk protection order for an additional period of up to one year if it finds by a preponderance of the evidence that the respondent continues to pose an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The order shall comply with the requirements of subdivision 4053(f)(2) and subsections 4053(j) and (k) of this title.

(c) The court shall hold a hearing within 14 days after a motion to terminate or a motion to renew is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the motion.

(d) If the court denies a motion filed under this section, the court shall state the particular reasons for the denial in its decision.

(e) Form termination and form renewal motions shall be provided by the

Court Administrator and shall be maintained by the clerks of the courts.

(f) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

§ 4056. SERVICE

(a) A petition, ex parte temporary order, or final order issued under this subchapter shall be served in accordance with the Vermont Rules of Civil Procedure and may be served by any law enforcement officer. A court that issues an order under this chapter during court hours shall promptly transmit the order electronically or by other means to a law enforcement agency for service, and shall deliver a copy to the holding station.

(b) A respondent who attends a hearing held under section 4053, 4054, or 4055 of this title at which a temporary or final order under this subchapter is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served. A respondent notified by the court on the record shall be required to adhere immediately to the provisions of the order. However, even when the court has previously notified the respondent of the order, the court shall transmit the order for additional service by a law enforcement agency.

(c) Extreme risk protection orders shall be served by the law enforcement agency at the earliest possible time and shall take precedence over other summonses and orders. Orders shall be served in a manner calculated to

ensure the safety of the parties. Methods of service that include advance notification to the respondent shall not be used. The person making service shall file a return of service with the court stating the date, time, and place at which the order was delivered personally to the respondent.

(d) If service of a notice of hearing issued under section 4053 or 4055 of this title cannot be made before the scheduled hearing, the court shall continue the hearing and extend the terms of the order upon request of the petitioner for such additional time as it deems necessary to achieve service on the respondent.

§ 4057. PROCEDURE

(a) Except as otherwise specified, proceedings commenced under this subchapter shall be in accordance with the Vermont Rules for Family Proceedings and shall be in addition to any other available civil or criminal remedies.

(b) The Court Administrator shall establish procedures to ensure access to relief after regular court hours or on weekends and holidays. The Court Administrator is authorized to contract with public or private agencies to assist petitioners to seek relief and to gain access to Superior Courts. Law enforcement agencies shall assist in carrying out the intent of this section.

(c) The Court Administrator shall ensure that the Superior Court has procedures in place so that the contents of orders and pendency of other

proceedings can be known to all courts for cases in which an extreme risk protection order proceeding is related to a criminal proceeding.

§ 4058. ENFORCEMENT; CRIMINAL PENALTIES

(a) Law enforcement officers are authorized to enforce orders issued under this chapter. Enforcement may include collecting and disposing of dangerous weapons pursuant to section 4059 of this title and making an arrest in accordance with the provisions of Rule 3 of the Vermont Rules of Criminal Procedure.

(b)(1) A person who intentionally commits an act prohibited by a court or fails to perform an act ordered by a court, in violation of an extreme risk protection order issued pursuant to section 4053, 4054, or 4055 of this title, after the person has been served with notice of the contents of the order as provided for in this subchapter, shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(2) A person who files a petition for an extreme risk protection order under this subchapter knowing that information in the petition is false or with the intent to harass the respondent shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) In addition to the provisions of subsections (a) and (b) of this section, violation of an order issued under this subchapter may be prosecuted as criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure.

The prosecution for criminal contempt may be initiated by the State's Attorney in the county in which the violation occurred. The maximum penalty that may be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment for six months, or both. A sentence of imprisonment upon conviction for criminal contempt may be stayed, in the discretion of the court, pending the expiration of the time allowed for filing notice of appeal or pending appeal if any appeal is taken.

§ 4059. RELINQUISHMENT, STORAGE, AND RETURN OF

DANGEROUS WEAPONS

(a) A person who is required to relinquish a dangerous weapon other than a firearm in the person's possession, custody, or control by an extreme risk protection order issued under section 4053, 4054, or 4055 of this title shall upon service of the order immediately relinquish the dangerous weapon to a cooperating law enforcement agency. The law enforcement agency shall transfer the weapon to the Bureau of Alcohol, Tobacco, Firearms and Explosives for proper disposition.

(b)(1) A person who is required to relinquish a firearm in the person's possession, custody, or control by an extreme risk protection order issued under section 4053, 4054, or 4055 of this title shall, unless the court orders an alternative relinquishment pursuant to subdivision (2) of this subsection, upon service of the order immediately relinquish the firearm to a cooperating law



enforcement agency or an approved federally licensed firearms dealer.

(2)(A) The court may order that the person relinquish a firearm to a person other than a cooperating law enforcement agency or an approved federally licensed firearms dealer unless the court finds that relinquishment to the other person will not adequately protect the safety of any person.

(B) A person to whom a firearm is relinquished pursuant to subdivision (A) of this subdivision (2) shall execute an affidavit on a form approved by the Court Administrator stating that the person:

(i) acknowledges receipt of the firearm;

(ii) assumes responsibility for storage of the firearm until further order of the court and specifies the manner in which he or she will provide secure storage;

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

(iv) understands the obligations and requirements of the court order, including the potential for the person to be subject to civil contempt proceedings pursuant to subdivision (C) of this subdivision (2) if the person permits the firearm to be possessed, accessed, or used by the person who relinquished the item or by any other person not authorized by law to do so.

(C) A person to whom a firearm is relinquished pursuant to subdivision (A) of this subdivision (2) shall be subject to civil contempt

proceedings under 12 V.S.A. chapter 5 if the person permits the firearm to be possessed, accessed, or used by the person who relinquished the item or by any other person not authorized by law to do so. In the event that the person required to relinquish the firearm or any other person not authorized by law to possess the relinquished item obtains access to, possession of, or use of a relinquished item, all relinquished items shall be immediately transferred to the possession of a law enforcement agency or approved federally licensed firearms dealer pursuant to subdivision (b)(1) of this section.

(b) A law enforcement agency or an approved federally licensed firearms dealer that takes possession of a firearm pursuant to subdivision (b)(1) of this section shall photograph, catalogue, and store the item in accordance with standards and guidelines established by the Department of Public Safety pursuant to 20 V.S.A. § 2307(i)(3).

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

(d) An extreme risk protection order issued pursuant to section 4053 of this title or renewed pursuant to section 4055 of this title shall direct the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of a firearm under subsection (b) of this section to release it to the owner upon expiration of the order.

(e)(1) A law enforcement agency, an approved federally licensed firearms

dealer, or any other person who takes possession of a firearm for storage purposes pursuant to this section shall not release it to the owner without a court order unless the firearm is to be sold pursuant to subdivision (2)(A) of this subsection. If a court orders the release of a firearm stored under this section, the law enforcement agency or firearms dealer in possession of the firearm shall make it available to the owner within three business days after receipt of the order and in a manner consistent with federal law.

(2)(A)(i) If the owner fails to retrieve the firearm within 90 days after the court order releasing it, the firearm may be sold for fair market value. Title to the firearm shall pass to the law enforcement agency or firearms dealer for the purpose of transferring ownership.

(ii) The law enforcement agency or firearms dealer shall make a reasonable effort to notify the owner of the sale before it occurs. In no event shall the sale occur until after the court issues a final extreme risk protection order pursuant to section 4053 of this title.

(iii) As used in this subdivision (2)(A), "reasonable effort" shall mean notice shall be served as provided for by Rule 4 of the Vermont Rules of Civil Procedure.

(B) Proceeds from the sale of a firearm pursuant to subdivision (A) of this subdivision (2) shall be apportioned as follows:

(i) associated costs, including the costs of sale and of locating and

servicing the owner, shall be paid to the law enforcement agency or firearms dealer that incurred the cost; and

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

(f) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of a firearm stored or transported pursuant to this section. This subsection shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(g) This section shall be implemented consistent with the standards and guidelines established by the Department of Public Safety under 20 V.S.A. § 2307(i).

(h) Notwithstanding any other provision of this chapter:

(1) A dangerous weapon shall not be returned to the respondent if the respondent's possession of the weapon would be prohibited by state or federal law.

(2) A dangerous weapon shall not be taken into possession pursuant to this section if it is being or may be used as evidence in a pending criminal matter.

§ 4060. APPEALS

An extreme risk protection order issued by the court under section 4053 or 4055 of this title shall be treated as a final order for the purposes of appeal. Appeal may be taken by either party to the Supreme Court under the Vermont Rules of Appellate Procedure, and the appeal shall be determined forthwith.

§ 4061. EFFECT ON OTHER LAWS

This chapter shall not be construed to prevent a court from prohibiting a person from possessing firearms under any other provision of law.

Sec. 1b. FINDINGS

The General Assembly finds:

(1) The State of Vermont has a compelling interest in preventing domestic abuse.

(2) Domestic violence is often volatile, escalates rapidly, and is possibly fatal. The victim has a substantial interest in obtaining immediate relief because any delay may result in further injury or death. The State's compelling interest in protecting domestic violence victims from actual or threatened harm and safeguarding children from the effects of exposure to domestic violence justifies providing law enforcement officers with the authority to undertake immediate measures to stop the violence. For these reasons the State has a special need to remove firearms from a home where law enforcement has probable cause to believe domestic violence has occurred.

(3) The General Assembly recognizes that it is current practice for law

enforcement to remove firearms from a domestic violence scene if the firearms are contraband or evidence of the offense. However, given the potential harm of delay during a domestic violence incident, this legislation authorizes law enforcement officers to temporarily remove other dangerous firearms from persons arrested or cited for domestic violence, while protecting rights guaranteed by the Vermont and U.S. Constitutions, and insuring that those firearms are returned to the owner as soon as doing so would be safe and lawful.

*Sec. 1c. 13 V.S.A. § 1048 is added to read:*

§ 1048. REMOVAL OF FIREARMS

(a)(1) When a law enforcement officer arrests, cites, or obtains an arrest warrant for a person for domestic assault in violation of this subchapter, the officer may remove any firearm obtained pursuant to a search warrant or a judicially recognized exception to the warrant requirement if the removal is necessary for the protection of the officer or any other person.

(2) As used in this section, “judicially recognized exception to the warrant requirement” includes a search incident to a lawful arrest, a search with consent, a search under exigent circumstances, a search of objects in plain view, and a search pursuant to a regulatory statute.

(b) A person cited for domestic assault shall be arraigned on the next business day after the citation is issued except for good cause shown.

(c)(1) At arraignment, the court shall issue a written order releasing any firearms removed pursuant to subsection (a) of this section unless:

(A) the firearm is being or may be used as evidence in a pending criminal or civil proceeding;

(B) a court orders relinquishment of the firearm pursuant to 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to 20 V.S.A. § 2307;

(C) the person requesting the return is prohibited by law from possessing a firearm; or

(D) the court imposes a condition requiring the defendant not to possess a firearm.

(2) If the court under subdivision (1) of this subsection orders the release of a firearm removed under subsection (a) of this section, the law enforcement agency in possession of the firearm shall make it available to the owner within three business days after receipt of the written order and in a manner consistent with federal law.

(d)(1) A law enforcement officer shall not be subject to civil or criminal liability for acts or omissions made in reliance on the provisions of this section. This section shall not be construed to create a legal duty to a victim or to any other person, and no action may be filed based upon a claim that a law

enforcement officer removed or did not remove a firearm as authorized by this section.

(2) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms removed, stored, or transported pursuant to this section. This subdivision shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(3) This section shall not be construed to limit the authority of a law enforcement agency to take any necessary and appropriate action, including disciplinary action, regarding an officer's performance in connection with this section.

*Sec. 1d. 13 V.S.A. § 4004 is amended to read:*

*§ 4004. POSSESSION OF DANGEROUS OR DEADLY WEAPON IN A  
SCHOOL BUS OR SCHOOL BUILDING OR ON SCHOOL  
PROPERTY*

*(a) No person shall knowingly possess a firearm or a dangerous or deadly weapon while within a school building or on a school bus. A person who violates this section shall, for the first offense, be imprisoned not more than one year or fined not more than \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.*



*(b) No person shall knowingly possess a firearm or a dangerous or deadly weapon on any school property with the intent to injure another person. A person who violates this section shall, for the first offense, be imprisoned not more than ~~two~~ three years or fined not more than \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned not more than ~~three~~ five years or fined not more than \$5,000.00, or both.*

*(c) This section shall not apply to:*

*(1) A law enforcement officer while engaged in law enforcement duties.*

*(2) Possession and use of firearms or dangerous or deadly weapons if the board of school directors, or the superintendent or principal if delegated authority to do so by the board, authorizes possession or use for specific occasions or for instructional or other specific purposes.*

*(d) As used in this section:*

*(1) "School property" means any property owned by a school, including motor vehicles.*

*(2) "Owned by the school" means owned, leased, controlled, or subcontracted by the school.*

*(3) "Dangerous or deadly weapon" has the same meaning defined as set forth in section 4016 of this title.*

*(4) "Firearm" has the same meaning defined as set forth in section 4016 of this title.*

(5) “Law enforcement officer” has the same meaning defined as set forth in section 4016 of this title.

(e) The provisions of this section shall not limit or restrict any prosecution for any other offense, including simple assault or aggravated assault.

*Sec. 2. EFFECTIVE DATE*

*This act shall take effect on passage.*