

1 Introduced by Committee on Judiciary

2 Date:

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

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

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

20 (B) found not responsible for a crime by reason of insanity or  
21 incompetent to stand trial due to a mental illness and is committed to the

1 Department of Mental Health after a determination by a court that the person is  
2 a danger to himself or herself or others.

3 The proposal permits the person to petition the Court to order that his or her  
4 name be removed from the NICS system after three years if the Court finds  
5 that the person is no longer a danger to himself or herself or others.

6 An act relating to possession of firearms

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

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

9 § 4017. PERSONS PROHIBITED FROM POSSESSING FIREARMS:

10 CONVICTION OF VIOLENT CRIME

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

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

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

17 (d) As used in this section:

18 (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 this  
9 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);

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

5 (iii) As used in this subdivision (2)(A), “reasonable effort” shall  
6 include ~~providing notice to the owner at least 21 days prior to the date of the~~  
7 ~~sale via first class mail, certified restricted delivery~~ mean notice shall be served  
8 as provided for in the Vermont Rules of Civil Procedure.

9 \* \* \*

10 Sec. 3. REPORT; NEW HAMPSHIRE GUNSHOP PROJECT

11 (a) On or before December 15, 2015, the Departments of Public Safety and  
12 of Mental Health shall report to the Senate and House Committees on  
13 Judiciary, the Senate Committee on Health and Welfare, and the House  
14 Committee on Human Services on the establishment of a Vermont version of  
15 the New Hampshire Gunshop Project.

16 (b) The report required by this section shall include the following  
17 provisions:

18 (1) A review of the methods and strategies the New Hampshire Gun  
19 Shop Project employs to help gunshop owners avoid selling firearms to  
20 suicidal people.

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.

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.