

1 S.221

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 3, 2018

5 Subject: Criminal procedures; firearms; extreme risk protection orders

6 Statement of purpose of bill as introduced: This bill proposes to establish a  
7 procedure for a law enforcement officer to obtain an extreme risk protection  
8 order. The order would prohibit a person from possessing a firearm for up to  
9 one year if the Family Division of the Superior Court finds by clear and  
10 convincing evidence that the person poses a significant danger of causing  
11 injury to himself or herself or another person by purchasing, possessing, or  
12 receiving a firearm or by having a firearm within the person's custody or  
13 control.

14 An act relating to establishing extreme risk protection orders

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

16 ~~Sec. 1. SHORT TITLE~~

17 ~~This act shall be known as the Vermont Extreme Risk Protection Order Act.~~

18 Sec. 2. 13 V.S.A. chapter 85 is amended to read:

19 ~~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) "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).

(3) "Firearm" shall have the same meaning as in subsection 4017(d) of this title.

(4) "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 in which the law enforcement agency is located.

§ 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

1 (a) A law enforcement officer may file a petition requesting that the court  
2 issue an extreme risk protection order prohibiting a person from purchasing,  
3 possessing, or receiving a firearm or having a firearm within the person's  
4 custody or control. The petitioner shall submit an affidavit in support of the  
5 petition.

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

9 (c)(1) A petition filed pursuant to this section shall allege that the  
10 respondent poses a significant danger of causing injury to himself or herself or  
11 another person by purchasing, possessing, or receiving a firearm or by having  
12 a firearm within the respondent's custody or control.

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

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

15 (B) the number, types, and locations of any firearms the petitioner  
16 believes to be in the respondent's possession, custody, or control; and

17 (C) whether the petitioner knows of an existing order with respect to  
18 the respondent under 15 V.S.A. chapter 21 (abuse prevention orders) or  
19 12 V.S.A. chapter 178 (orders against stalking or sexual assault).

20 (d) The court shall hold a hearing within seven days after a petition is filed  
21 under this section. Notice of the hearing shall be served pursuant to section

1 ~~4056 of this title concurrently with the petition and any ex parte order issued~~  
2 under section 4054 of this title.

3 (e) The court may consider any relevant evidence in determining whether  
4 to grant the petition, including:

5 (1) testimony from the petitioner, the respondent, and other relevant  
6 witnesses;

7 (2) recent acts or threats of violence by the respondent against himself  
8 or herself or another person;

9 (3) the respondent's criminal history;

10 (4) the respondent's history of use, attempted use, or threatened use of  
11 physical force against another person;

12 (5) recent alcohol or drug abuse by the respondent;

13 (6) recent acquisition of firearms by the respondent;

14 (7) previous violations by the respondent of abuse prevention orders or  
15 orders against stalking or harassment;

16 (8) previous unlawful or reckless use, display, or brandishing of a  
17 firearm by the respondent; and

18 (9) previous extreme risk protection orders issued against the  
19 respondent.

20 (f)(1) The court shall grant the petition and issue an extreme risk protection  
21 order if it finds by clear and convincing evidence that the respondent poses a

1 significant danger of causing injury to himself or herself or another person by  
2 purchasing, possessing, or receiving a firearm or by having a firearm within  
3 the respondent's custody or control.

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

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

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

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

13 (D) A description of the requirements for relinquishment of firearms  
14 under section 4059 of this title.

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

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

21 (G) A statement in substantially the following form.

1 ~~“To the subject of this protection order: This order shall be in effect until~~  
2 ~~the date and time stated above. If you have not done so already, you are~~  
3 ~~required to surrender all firearms in your custody, control, or possession to~~  
4 ~~[insert name of law enforcement agency], a federally licensed firearms dealer,~~  
5 ~~or a person approved by the court. While this order is in effect, you are not~~  
6 ~~allowed to purchase, possess, or receive a firearm; attempt to purchase,~~  
7 ~~possess, or receive a firearm; or have a firearm in your custody or control.~~  
8 ~~You have the right to request one hearing to terminate this order during the~~  
9 ~~period that this order is in effect, starting from the date of this order. You may~~  
10 ~~seek the advice of an attorney regarding any matter connected with this order.”~~

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

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

14 ~~(i) Form petitions and form orders shall be provided by the Court~~  
15 ~~Administrator and shall be maintained by the clerks of the courts.~~

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

18 ~~(k) Every final order issued under this section shall bear the following~~  
19 ~~language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A~~  
20 ~~TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY~~  
21 ~~15 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL~~

1 ~~CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT OR BOTH.”~~

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

6 § 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

7 (a) Concurrent with the filing of a petition under section 4053 of this title,  
8 the petitioner may file a motion requesting that the extreme risk protection  
9 order be issued ex parte, without notice to the respondent. The petitioner shall  
10 submit an affidavit in support of the motion alleging that the respondent poses  
11 an immediate and significant danger of causing injury to himself or herself or  
12 another person by purchasing, possessing, or receiving a firearm or by having  
13 a firearm within the respondent’s custody or control.

14 (b) The court shall hold a hearing on an ex parte motion filed pursuant to  
15 this section on the day the motion is filed or on the day immediately following  
16 the day the motion is filed. The court may consider any relevant evidence in  
17 determining whether to grant the petition, including the evidence described in  
18 subsection 4053(e) of this title.

19 (c) The court shall grant the motion and issue a temporary ex parte extreme  
20 risk protection order if it finds by clear and convincing evidence that the  
21 respondent poses an immediate and significant danger of causing injury to

1 ~~himself or herself or another person by purchasing, possessing, or receiving a~~  
2 ~~firearm or by having a firearm within the respondent's custody or control.~~

3 (d) As set forth in subsection 4053(d) of this title, the court shall hold a  
4 hearing within seven days after the issuance of a temporary ex parte extreme  
5 risk protection order to determine if a final extreme risk protection order  
6 should be issued. The temporary ex parte extreme risk protection order shall  
7 expire when the court grants or denies a motion for an extreme risk protection  
8 order under section 4053 of this title.

9 (e) An order issued under this section shall prohibit a person from  
10 purchasing, possessing, or receiving a firearm or having a firearm within the  
11 person's custody or control for a period of up to seven days. The order shall  
12 be signed by the judge and include the following provisions:

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

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

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

21 ~~(4) A description of the requirements for relinquishment of firearms~~



1 under section 4059 of this title.

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

5 (6) A statement in substantially the following form:

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

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

20 (g) Every order issued under this section shall bear the following language:

21 VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF

1 ~~IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A.~~  
2 ~~§ 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT~~  
3 ~~PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”~~

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

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

10 § 4055. TERMINATION AND RENEWAL MOTIONS

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

16 (2) The court shall grant the motion and terminate the extreme risk  
17 protection order if it finds by clear and convincing evidence that the  
18 respondent no longer poses a significant danger of causing injury to himself or  
19 herself or another person by purchasing, possessing, or receiving a firearm or  
20 by having a firearm within the respondent’s custody or control.

21 ~~(b)(1) A law enforcement officer may file a motion requesting that the~~

1 ~~court renew an extreme risk protection order issued under this section or~~  
2 section 4053 of this title for an additional period of up to one year. The  
3 motion shall be accompanied by an affidavit and shall be filed not more than  
4 30 days and not less than 14 days before the expiration date of the order. The  
5 motion and affidavit shall comply with the requirements of section 4053(c) of  
6 this title, and the moving party shall have the burden of proof by clear and  
7 convincing evidence.

8 (2) The court shall grant the motion and renew the extreme risk  
9 protection order for an additional period of up to one year if it finds by clear  
10 and convincing evidence that the respondent continues to pose a significant  
11 danger of causing injury to himself or herself or another person by purchasing,  
12 possessing, or receiving a firearm or by having a firearm within the  
13 respondent's custody or control. The order shall comply with the requirements  
14 of subdivision 4053(f)(2) and subsections 4053(j) and (k) of this title.

15 (c) The court shall hold a hearing within 14 days after a motion to  
16 terminate or a motion to renew is filed under this section. Notice of the  
17 hearing shall be served pursuant to section 4056 of this title concurrently with  
18 the motion. The court may consider any relevant evidence in determining  
19 whether to grant the motion, including the evidence described in subsection  
20 4053(e) of this title.

21 ~~(d) If the court denies a motion filed under this section, the court shall state~~

1 the particular reasons for the denial in its decision.

2 (e) Form termination and form renewal motions shall be provided by the  
3 Court Administrator and shall be maintained by the clerks of the courts.

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

6 § 4056. SERVICE

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

13 (b) A respondent who attends a hearing held under section 4053, 4054, or  
14 4055 of this title at which a temporary or final order under this subchapter is  
15 issued and who receives notice from the court on the record that the order has  
16 been issued shall be deemed to have been served. A respondent notified by the  
17 court on the record shall be required to adhere immediately to the provisions  
18 of the order. However, even when the court has previously notified the  
19 respondent of the order, the court shall transmit the order for additional service  
20 by a law enforcement agency.

21 (c) Extreme risk protection orders shall be served by the law enforcement

1 ~~agency at the earliest possible time and shall take precedence over other~~  
2 summons and orders. Orders shall be served in a manner calculated to  
3 ensure the safety of the parties. Methods of service that include advance  
4 notification to the respondent shall not be used. The person making service  
5 shall file a return of service with the court stating the date, time, and place at  
6 which the order was delivered personally to the respondent.

7 (d) If service of a notice of hearing issued under section 4053 or section  
8 4055 of this title cannot be made before the scheduled hearing, the court shall  
9 continue the hearing and extend the terms of the order upon request of the  
10 petitioner for such additional time as it deems necessary to achieve service on  
11 the respondent.

12 § 4057. PROCEDURE

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

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

1 ~~(c) The Court Administrator shall ensure that the Superior Court has~~  
2 ~~procedures in place so that the contents of orders and pendency of other~~  
3 ~~proceedings can be known to all courts for cases in which an extreme risk~~  
4 ~~protection order proceeding is related to a criminal proceeding.~~

5 § 4058. ENFORCEMENT; CRIMINAL PENALTIES

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

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

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

20 (c) In addition to the provisions of subsections (a) and (b) of this section,  
21 violation of an order issued under this subchapter may be prosecuted as

1 ~~criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure.~~  
2 The prosecution for criminal contempt may be initiated by the State's Attorney  
3 in the county in which the violation occurred. The maximum penalty that may  
4 be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment  
5 for six months, or both. A sentence of imprisonment upon conviction for  
6 criminal contempt may be stayed, in the discretion of the court, pending the  
7 expiration of the time allowed for filing notice of appeal or pending appeal if  
8 any appeal is taken.

9 § 4059. RELINQUISHMENT, STORAGE, AND RETURN OF FIREARMS

10 (a)(1) A person who is required to relinquish a firearm in the person's  
11 possession, custody, or control by an extreme risk protection order issued  
12 under section 4053, 4054, or 4055 of this title shall, unless the court orders an  
13 alternative relinquishment pursuant to subdivision (2) of this subsection, upon  
14 service of the order immediately relinquish the firearm to a cooperating law  
15 enforcement agency or an approved federally licensed firearms dealer.

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

20 (B) A person to whom a firearm is relinquished pursuant to  
21 subdivision (A) of this subdivision (2) shall execute an affidavit on a form

1 approved by the Court Administrator stating that the person:

2 (i) acknowledges receipt of the firearm;

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

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

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

13 (C) A person to whom a firearm is relinquished pursuant to  
14 subdivision (A) of this subdivision (2) shall be subject to civil contempt  
15 proceedings under 12 V.S.A. chapter 5 if the person permits the firearm to be  
16 possessed, accessed, or used by the person who relinquished the item or by any  
17 other person not authorized by law to do so. In the event that the person  
18 required to relinquish the firearm or any other person not authorized by law to  
19 possess the relinquished item obtains access to, possession of, or use of a  
20 relinquished item, all relinquished items shall be immediately transferred to  
21 the possession of a law enforcement agency or approved federally licensed



1 ~~firearms dealer pursuant to subdivision (b)(1) of this section.~~

2 (b) A law enforcement agency or an approved federally licensed firearms  
3 dealer that takes possession of a firearm pursuant to subdivision (a)(1) of this  
4 section shall photograph, catalogue, and store the item in accordance with  
5 standards and guidelines established by the Department of Public Safety  
6 pursuant to 20 V.S.A. § 2307(i)(3). A firearm shall not be taken into  
7 possession pursuant to this section if it is being or may be used as evidence in  
8 a pending criminal matter.

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

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

16 (e)(1) A law enforcement agency, an approved federally licensed firearms  
17 dealer, or any other person who takes possession of a firearm for storage  
18 purposes pursuant to this section shall not release it to the owner without a  
19 court order unless the firearm is to be sold pursuant to subdivision (2)(A) of  
20 this subsection. If a court orders the release of a firearm stored under this  
21 section, the law enforcement agency or firearms dealer in possession of the

1 ~~firearm shall make it available to the owner within three business days after~~  
2 ~~receipt of the order and in a manner consistent with federal law.~~

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

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

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

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

16 ~~(i) associated costs, including the costs of sale and of locating and~~  
17 ~~servicing the owner, shall be paid to the law enforcement agency or firearms~~  
18 ~~dealer that incurred the cost; and~~

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

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

6 ~~(g) This section shall be implemented consistent with the standards and~~  
7 ~~guidelines established by the Department of Public Safety under 20 V.S.A.~~  
8 ~~§ 2307(i).~~

9 § 4060. APPEALS

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

15 Sec. 3. EFFECTIVE DATE

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

*Sec. 1. 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 clear and convincing 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 intended to place 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 clear and convincing evidence that at the time of the hearing 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 60 days. 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 filed.

(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.

(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 intended to place 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 clear and convincing evidence.

(2) The court shall grant the motion and terminate the extreme risk protection order unless it finds by clear and convincing 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 60 days. 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 clear and convincing evidence.

(2) The court shall grant the motion and renew the extreme risk protection order for an additional period of up to 60 days if it finds by clear and convincing 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.

(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.~~

(2) A person who files a petition for an extreme risk protection order under this subchapter, or who submits an affidavit accompanying the petition, knowing that information in the petition or the affidavit is false, or that the petition or affidavit is submitted with the intent to harass the respondent, shall be imprisoned for 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, except that the Vermont State Police shall follow the procedure described in 20 V.S.A. § 2305.

(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 serving 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.

#### Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.