

1 S.277

2 Introduced by Senators Ashe, Campbell, and Sears

3 Referred to Committee on

4 Date:

5 Subject: Domestic relations; abuse prevention; procedure; video conferencing

6 Statement of purpose of bill as introduced: This bill proposes to allow the use
7 of video conferencing technology in an emergency hearing for a temporary
8 relief from abuse order and to establish procedures for the storage of firearms
9 surrendered pursuant to a relief from abuse order.

10 An act relating to the use of video conferencing in an emergency relief from
11 abuse hearing and storage of firearms surrendered pursuant to a relief from
12 abuse order

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

14 Sec. 1. 15 V.S.A. § 1104 is amended to read:

15 § 1104. EMERGENCY RELIEF

16 (a) In accordance with the Vermont Rules of Civil Procedure, temporary
17 orders under this chapter may be issued ex parte, without notice to defendant,
18 upon motion and findings by the ~~court~~ Court that defendant has abused
19 plaintiff, his or her children, or both. The plaintiff shall submit an affidavit in
20 support of the order. Relief under this section shall be limited as follows:

1 (1) Upon a finding that there is an immediate danger of further abuse, an
2 order may be granted requiring the defendant:

3 (A) to refrain from abusing the plaintiff, his or her children, or both,
4 or from cruelly treating as defined in 13 V.S.A. § 352 or 352a or killing any
5 animal owned, possessed, leased, kept, or held as a pet by either party or a
6 minor child residing in the household;

7 (B) to refrain from interfering with the plaintiff's personal liberty, the
8 personal liberty of plaintiff's children, or both; and

9 (C) to refrain from coming within a fixed distance of the plaintiff, the
10 plaintiff's children, the plaintiff's residence, or the plaintiff's place
11 of employment.

12 (2) Upon a finding that the plaintiff, his or her children, or both have
13 been forced from the household and will be without shelter unless the
14 defendant is ordered to vacate the premises, the ~~court~~ Court may order the
15 defendant to vacate immediately the household and may order sole possession
16 of the premises to the plaintiff.

17 (3) Upon a finding that there is immediate danger of physical or
18 emotional harm to minor children, the ~~court~~ Court may award temporary
19 custody of these minor children to the plaintiff or to other persons.

20 (b) Every order issued under this section shall contain the name of the ~~court~~
21 Court, the names of the parties, the date of the petition, and the date and time

1 of the order and shall be signed by the judge. Every order issued under this
2 section shall state upon its face a date, time, and place when the defendant may
3 appear to petition the ~~court~~ Court for modification or discharge of the order.

4 This opportunity to contest shall be scheduled as soon as reasonably possible,
5 which in no event shall be more than 10 days from the date of issuance of the
6 order. At such hearings, the plaintiff shall have the burden of proving abuse by
7 a preponderance of the evidence. If the ~~court~~ Court finds that the plaintiff has
8 met his or her burden, it shall continue the order in effect and make such other
9 order as it deems necessary to protect the plaintiff.

10 (c) Form complaints and form orders shall be provided by the Court
11 Administrator and shall be maintained by the ~~clerks of the courts~~ Clerk of
12 the Courts.

13 (d) Every order issued under this chapter shall bear the following language:
14 “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF
15 IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE
16 PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR
17 IMPRISONMENT, OR BOTH.”

18 (e) Affidavit forms required pursuant to this section shall bear the
19 following language: “MAKING FALSE STATEMENTS IN THIS
20 AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT
21 OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 2904.”

1 (f)(1) The Court may use video conferencing to effect the appearance of the
2 plaintiff and certain witnesses in an ex parte proceeding under this section.

3 The video conferencing equipment shall afford clear, high-quality coverage of
4 the party, counsel, the judicial officer, and any witnesses. If the Court finds
5 that good cause exists not to use video conferencing technology in the
6 proceeding, the Court shall place the finding and the reasons for it on
7 the record.

8 (2) Any requirement that a plaintiff “be present” or the proceeding take
9 place “in open court,” or a plaintiff appear “personally” or any right that a
10 party has to the presence of a witness or may have to be present at the ex parte
11 proceeding may be deemed to have been met if that party or witness appears in
12 court via video conferencing approved by the Court.

13 (3) The video media shall be kept as part of the record.

14 Sec. 2. 20 V.S.A. § 2307 is added to read:

15 § 2307. FIREARMS SURRENDERED PURSUANT TO RELIEF FROM
16 ABUSE ORDER; STORAGE; FEES; RETURN

17 (a)(1) A person who is required to surrender firearms, ammunition, or other
18 weapons by a court order issued under 15 V.S.A. § 1103 (relief from abuse
19 order) or 1104 (emergency relief from abuse order) or any other provision of
20 law shall upon service of the order immediately surrender to a law enforcement

1 officer or court-approved federally licensed firearms dealer any firearms,
2 ammunition, or weapons in the person's possession, custody, or control.

3 (2) The Department of Public Safety shall maintain a list of federally
4 licensed firearms dealers who are certified to receive firearms, ammunition, or
5 other weapons pursuant to this section.

6 (b) A law enforcement officer or a court-approved federally licensed
7 firearms dealer who takes possession of a firearm, ammunition, or other
8 weapon pursuant to subsection (a) of this section shall photograph, catalogue,
9 and store the item in accordance with rules adopted by the Commissioner of
10 Public Safety under subsection (f) of this section. A firearm, ammunition, or
11 other weapon shall not be taken into possession pursuant to this section if it is
12 being or may be used as evidence in a pending criminal matter.

13 (c)(1) A law enforcement officer or a court-approved federally licensed
14 firearms dealer who stores firearms, ammunition, or weapons pursuant to
15 subsection (b) of this section may charge the owner a reasonable storage fee.
16 The fee shall not exceed the fees established in rules adopted by the
17 Commissioner of Public Safety under subsection (f) of this section.

18 (2) A fee shall not be charged under this section for transport or storage
19 of any firearm, ammunition, or other weapon used as evidence in a
20 criminal matter.

1 (3)(A) If the owner fails to pay the applicable storage fee for 90 days,
2 the law enforcement officer or firearms dealer may deliver the firearm,
3 ammunition, or weapon to the Treasurer for disposition by public sale pursuant
4 to subsection 2305(b) of this title.

5 (B) The Treasurer shall apportion the proceeds from the sale of a
6 firearm, ammunition, or weapon delivered pursuant to subdivision (A) of this
7 subdivision (3) as follows:

8 (i) Storage charges and all necessary costs associated with the
9 surrender and transfer of the firearm, ammunition, or weapon shall be paid to
10 the law enforcement officer or firearms dealer who stored it.

11 (ii) Any proceeds remaining after payment is made to the law
12 enforcement officer or firearms dealer pursuant to subdivision (i) of this
13 subdivision (B) shall be paid to the owner.

14 (d)(1) A law enforcement officer or a court-approved federally licensed
15 firearms dealer shall be immune from civil or criminal liability for any damage
16 or deterioration of firearms, ammunition, or weapons stored or transferred
17 pursuant to subsection (b) of this section.

18 (2) This subsection shall not apply if the damage or deterioration
19 occurred as a result of recklessness, gross negligence, or intentional
20 misconduct by the law enforcement officer or firearms dealer.

1 (e) A law enforcement officer or court approved federally licensed dealer
2 who takes possession of firearms, ammunition, or weapons for storage
3 purposes pursuant to this section shall not release the item without a court
4 order. If a court orders the release of firearms, ammunition, or weapons stored
5 under this section the law enforcement officer or firearms dealer in possession
6 of the item shall release it to the owner within three business days of the order
7 and in a manner consistent with federal law. The Supreme Court may
8 promulgate rules under 12 V.S.A. § 1 for judicial proceedings under
9 this subsection.

10 (f) The Commissioner of Public Safety shall adopt rules pursuant to the
11 Vermont Administrative Procedure Act for the:

12 (1) transfer and storage of firearms, ammunition, and other weapons by
13 law enforcement officers and court-approved federally licensed firearms
14 dealers under this section; and

15 (2) certification of federally licensed firearms dealers to receive
16 firearms, ammunition, or other weapons pursuant to subdivision (a)(1) of
17 this section.

18 (g) As used in this section:

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

1 (2) “Law enforcement officer” means a State Police officer, municipal
2 police officer, sheriff, or deputy sheriff certified by the Vermont Criminal
3 Justice Training Council as having satisfactorily completed the approved
4 training programs required to meet the minimum training standards applicable
5 to that person under section 2358 of this title.

6 Sec. 3. EFFECTIVE DATE

7 This act shall take effect on passage.