



2018 LEGISLATIVE WRAP UP

The following is a list of laws passed during Vermont's 2018 legislative session that impact victims and survivors of stalking, sexual violence, and domestic violence. More information is available about any of these acts (or any of the bills that did not become law this session) on the legislative website at <http://legislature.vermont.gov/>. You may also contact Auburn Watersong at the Network for more information or to be added to the Network's legislative alert email list at: auburn@vtnetwork.org or 802-223-1302 ext. 1106.

Removal of Firearms from the Scene of a Domestic Assault - H.422/ACT 92

13 V.S.A. § 1048 is added (new)

1. When a law enforcement officer arrests, cites, or obtains an arrest warrant for a person for domestic assault, the officer may remove any firearm:
 - (A) that is contraband or will be used as evidence in a criminal proceeding; or
 - (B) that is in the **immediate possession or control** of the person being arrested or cited, in **plain view** of the officer at the scene of the alleged domestic assault, or discovered during a **lawful search**, including under exigent circumstances,if the removal is necessary for the protection of the officer, the alleged victim, the person being arrested or cited, or a family member of the alleged victim or of the person being arrested or cited.
2. A person cited for domestic assault shall be arraigned on the next business day after the citation is issued except for good cause shown. Unless the person is held without bail, the State's Attorney shall request conditions of release for a person cited or lodged for domestic assault.
3. At arraignment, the court shall issue a written order releasing any firearms removed - 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 through an abuse prevention order or any other provision of law consistent with 18 U.S.C. § 922(g)(8) (federal law which prohibits possession and purchase). In these cases, the weapon shall be stored according to Vermont's current statute 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.
4. If the court does order that the firearm be returned, the law enforcement agency in possession of it must make it available to the owner within three business days after receipt of the written order and in a manner consistent with federal law.
5. Law enforcement is not liable for acts or omission; and law enforcement is immune from liability for any damage or deterioration of the firearms removed, stored or transported.



6. Law enforcement agencies are **not** limited by this law in taking any necessary and appropriate action, including disciplinary action, regarding an officer's performance in connection with this law.

EFFECTIVE DATE: September 1, 2018

Extreme Risk Protection Order – S.221/ACT 97

13 V.S.A. chapter 85 (amended).

This act establishes a procedure for a State's Attorney or the Attorney General to obtain a court order, called an Extreme Risk Protection Order (known as an ERPO) that prohibits a person from possessing a firearm or explosive for *up to six months if the court finds by clear and convincing evidence* that the person's possession of the weapon poses an extreme risk of harm to the person or to other people.

A petition filed 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.

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.

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.

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 existing abuse prevention orders or orders against stalking or sexual assault.

The court may issue an ex parte (emergency) ERPO that lasts for *up to 14 days 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 having a dangerous weapon.



A person who intentionally violates an extreme risk protection order after being served with notice of its contents or a person who files a petition for the order knowing that information in the petition is false or with the intent to harass the weapon owner is subject to one year of imprisonment or a fine of \$1,000.00, or both.

EFFECTIVE DATE: April 11, 2018

Firearms Storage - S.55/ACT 94

20 V.S.A. § 2301 (amended); 20 V.S.A. § 2302 (amended); 20 V.S.A. § 2305 (amended); 20 V.S.A. § 2306 (amended); 20 V.S.A. § 2307 (amended); 13 V.S.A. § 4019 (new); 13 V.S.A. § 4020 (new); 13 V.S.A. § 4021 (new); 13 V.S.A. § 4022 (new).

This act:

- (1) establishes the authority of the Department of Public Safety to transfer firearms in its possession to the Department of Buildings and General Services for sale to federally licensed firearms dealers;
- (2) requires that background checks be conducted on most private firearms sales;
- (3) prohibits, with certain exceptions, the sale of firearms to persons under 21 years of age;
- (4) prohibits, with certain exceptions, the manufacture, possession, transfer, sale, purchase, or receipt or import into Vermont of large capacity ammunition feeding devices, which are defined to be magazines and similar devices capable of accepting more than 10 rounds of ammunition for a long gun or more than 15 rounds of ammunition for a hand gun; and
- (5) prohibits the possession of bump-fire stocks as of October 1, 2018.

OF NOTE: When firearms stored by the State are then sold have been delivered by a local law enforcement agency, the Commissioner of Buildings and General Services shall return two-thirds of the net proceeds from the sale to the appropriate municipality. These proceeds shall, to the extent needed by the municipality, be used to offset the costs of storing nonevidentiary firearms.

MULTIPLE EFFECTIVE DATES: Beginning on April 11, 2018

Electronic Filing of After Hours Relief From Abuse Orders – H.836/ACT 110

15 V.S.A. § 1106 (amended).

This act permits temporary relief from abuse orders to be obtained electronically in certain circumstances when courts are closed (after hours) while enhancing the safety of all parties involved.

This act also requires the Office of Court Administrator to report on the availability after regular court hours of orders against stalking or sexual assault (issued under 12 V.S.A. chapter 178).

EFFECTIVE DATE: April 25, 2018



Restorative Justice Study Committee – H.718/ACT 146 Governor approved bill on May 21, 2018

This Act creates a Restorative Justice Study Committee for the purpose of conducting a comprehensive examination of whether there is a role for victim-centered restorative justice principles and processes in domestic and sexual violence and stalking cases.

EFFECTIVE DATE: May 21, 2018

Employment Protections for Victims of Crime – H.711/ACT 184

21 V.S.A. § 495 (amended); 21 V.S.A. § 495d (amended); 21 V.S.A. § 472c (new);

This act amends Vermont’s Fair Employment Practices Act to add crime victim status to the list of characteristics that are protected from discrimination under 21 V.S.A. § 495 and to add a definition of “crime victim” to 21 V.S.A. § 495d. *“It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition.”*

This act also allows employees who are crime victims to take unpaid leave to attend a deposition or court proceeding related to certain criminal proceedings; relief from abuse hearings; order against stalking or sexual assault hearings; or relief from abuse, neglect, or exploitation of a vulnerable adult hearings. It requires employers to continue employment benefits during the leave, to post notices of the provisions of the law, and, with limited exceptions, to offer an employee the same job upon his or her return from the leave.

An employer is exempt from the leave requirement if:

1. The employer provides goods or services to the general public at a location open to the general public AND
2. Granting leave to the employee would require the employer to suspend all business operations at that location.

EFFECTIVE DATE: July 1, 2018.

Child’s Hearsay Statements at Human Services Board – H.727/ACT 147

33 V.S.A. § 4916b (amended)

This act creates an exemption to the hearsay rule with respect to statements made by a child 12 years of age or under who is alleged to have been abused or neglected and provides that such a child shall not be required to testify or give evidence at any hearing before the Human Services Board regarding a substantiation proceeding.



It adds two provisions for children who are 13, 14 or 15 who are victims of abuse and neglect:

1. Reliable hearsay can be admitted in Human Services Board hearings when it can be demonstrated that a child would be further traumatized by being compelled to testify. The language clarifies that expert testimony is not required to prove to the Human Services Board that the child would be traumatized.
2. Furthermore, the language includes a provision for accepting reliable hearsay if the child is physically unavailable to testify or the Department has made diligent efforts to locate the child and was unsuccessful.

EFFECTIVE DATE: July 1, 2018

Data Broker Bill - H.764/ACT 171 enacted without Governor signature on May 22, 2018

9 V.S.A. chapter 62 (amended); 9 V.S.A. § 2480b (amended); 9 V.S.A. § 2480h (amended);

This Act helps victims protect their own privacy by regulating how data brokers manage personally identifying information. This law provides victims with the information necessary to control the sharing of their information by:

1. Requiring Data Brokers who trade in Vermonter data to register with the State of Vermont and annually report information including:
 - a. contact information
 - b. what opt-out options they offer and how to request an opt out, including whether it authorizes "third party opt outs"
 - c. Whether they have a purchaser credentialing process
 - d. The number of "Data Broker Security Breaches" the data broker has experienced in the prior year, and the total number of effected consumers
 - e. Whether it collects information about minors, and opt out methods for information about minors
2. Requiring data brokers to implement Massachusetts-type data security standards.
3. Making it illegal to acquire data through fraudulent means; or in order to harass, stalk, engage in ID theft or fraud, or to engage in unlawful discrimination.
4. Eliminating fees for credit freezes and thaws.

This Act also requires a report from the Attorney General of Vermont on one-stop freeze possibility.

MULTIPLE EFFECTIVE DATES: Beginning May 22, 2018

Parentage Bill – H.562/ACT 162

Title 15C is added to read: TITLE 15C. PARENTAGE PROCEEDINGS Chapters 1-8 added (new)

This act repeals existing parentage laws in Title 15 and enacts a new Title 15C that creates a comprehensive, statutory framework for the establishment of parentage, covering voluntary acknowledgement of parentage, presumed parentage, de facto parentage, genetic parentage, parentage by assisted reproduction, and parentage by gestational carrier agreement.

OF NOTE:

Section 402: Another parent of a child may challenge a presumption of parentage if that parent openly held out the child as the presumptive parent's child due to duress, coercion, or threat of harm. Evidence of duress, coercion, or threat of harm may include whether within the prior 10 years the person presumed to be a parent:

1. Has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child,
2. Was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or
3. Was substantiated for abuse against the child or another parent of the child pursuant to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69

Section 616: In a proceeding in which a person is alleged to have committed a sexual assault that resulted in the birth of a child, the person giving birth may seek to preclude the establishment of the other person's parentage.

EFFECTIVE DATE: July 1, 2018

Bail Bill – H.728/ACT 164

13 V.S.A. § 7551 (amended); Rule 3(k) of the Vermont Rules of Criminal Procedure (amended); 13 V.S.A. § 7554 (amended); 13 V.S.A. § 7575 (amended); 13 V.S.A. § 7576 (amended);

BAIL:

No bail, secured appearance bond, or appearance bond may be imposed:

- (A) at the initial appearance of a person charged with a misdemeanor if the person was cited for the offense in accordance with Rule 3 of the Vermont Rules of Criminal Procedure; or
- B) at the initial appearance or upon the temporary release pursuant to Rule 5(b) of the Vermont Rules of Criminal Procedure of a person charged with a violation of a misdemeanor offense that is eligible for expungement pursuant to subdivision 7601(4)(A) of this title.

NOTE: 7601(4)(A) means: a misdemeanor offense that is NOT:

- (i) a listed crime as defined in subdivision 5301(7) of this title;



- (ii) an offense involving sexual exploitation of children in violation of chapter 64 of this title;*
- (iii) an offense involving violation of a protection order in violation of section 1030 of this title;*
- (iv) prostitution as defined in section 2632 of this title, or prohibited conduct under section 2601a of this title; or*
- (v) a predicate offense*

(2) In the event the court finds that imposing bail is necessary to mitigate the risk of flight from prosecution for a person charged with a violation of a misdemeanor offense that is eligible for expungement, the court may impose bail in a maximum amount of \$200.00.

Incarceration Study Committee:

This act also creates a study committee to collect and analyze the incarceration rates of people of color in Vermont and requires that on or before October 15, 2018, the committee report its findings to the Joint Legislative Justice Oversight Committee.

Home Detention Program:

A defendant held without bail pursuant to section 7553 or 7553a of this title shall not be eligible for release to the Home Detention Program on or after June 1, 2018.

During the 2018 legislative interim, the Joint Legislative Justice Oversight Committee shall evaluate the Home Detention Program established under 13 V.S.A. § 7554b and recommend how to improve and expand the Program and what entity should manage the Program. Any resulting legislative recommendations shall be introduced as a bill in the 2019 legislative session.

EFFECTIVE DATE: July 1, 2018

Sexual Harassment Bill – H.707/ACT 183

21 V.S.A. § 495h (amended); 21 V.S.A. § 495b (amended); 9 V.S.A. § 4552 (amended); 21 V.S.A. § 495n (new)

This act makes numerous changes to Vermont’s laws related to sexual harassment, including:

- requiring that a working relationship with a person hired to perform work or services be free from sexual harassment;
- prohibiting employment contracts from containing provisions that prevent an employee from disclosing sexual harassment or waive an employee’s rights or remedies with respect to a claim of sexual harassment;
- prohibiting agreements to settle a claim of sexual harassment from including provisions that prevent an employee from working for the employer or an affiliate of the employer in the future;
- requiring an agreement to settle a claim of sexual harassment to state that it does not prevent the employee from reporting sexual harassment to an appropriate governmental



agency, complying with a discovery request or testifying at a hearing or trial related to a claim of sexual harassment, or exercising his or her right under State or federal labor law to engage in concerted activity for mutual aid and protection; and

- permitting the Attorney General or Human Rights Commission to inspect a place of business or employment for purposes of determining whether the employer is complying with the law related to sexual harassment.

In addition, the act requires the Attorney General and Human Rights Commission to develop enhanced mechanisms for reporting instances of sexual harassment or workplace discrimination, directs the Vermont Commission on Women to develop education and outreach materials regarding the laws related to and best practices for preventing sexual harassment, and requires a person who files a civil action related to a claim of sexual harassment under Vermont law to provide notice of the action to the Attorney General or Human Rights Commission.

MULTIPLE EFFECTIVE DATES: Beginning on May 28, 2018

Salary Inquiries – H.294/ACT 126

21 V.S.A. § 495m (new)

This act prohibits employers from inquiring about a prospective employee's current or past compensation, requiring that a prospective employee's compensation satisfy certain criteria, or determining whether to interview a prospective employee based on his or her current or past compensation. This act permits an employer to confirm voluntarily disclosed information about a prospective employee's current or past compensation after the employer has made an offer of employment with compensation.

EFFECTIVE DATE: July 1, 2018.