

## Analysis of H.735 by Bob DePino

Calendar Source:

<http://www2.leg.state.vt.us/legdir/Committeedocumentslist.cfm?Folder=House%20Judiciary%20Bills/H.735/Drafts,%20Amendments%20and%20Summaries&Sort=Bill>

**House Judiciary/Bills > H.735 > Drafts, Amendments and Summaries**  
**January 22, 2014**

**Testimony Presented to House #1:**

FEE BILL: [Chapter 145 - Disposition and fee for storage of unlawful firearms](#) - **Brynn Hare**

**Evidence Presented:**

“(a)(1) A person who is required to surrender firearms, ammunition, or other weapons by a court order issued under 15 V.S.A. chapter 21 (abuse prevention), or any other provision of law consistent with 18 U.S.C. § 922(g)(8) shall upon service of the order immediately surrender to a law enforcement officer or court-approved federally licensed firearms dealer any firearms, ammunition, or weapons in the person’s possession, custody, or control.”

**Analysis:**

This is the section that violates Constitutional Rights of the accused.

It is in BOTH versions of H.735, House and Senate.

As understood by the following testimony of Erik FitzPatrick, House members were informed that Law Enforcement cannot confiscate weapons unless a Relief From Abuse Order is VIOLATED.

**A Relief From Abuse Order must be finalized AFTER A HEARING in which the accused can address the charges.**

H.735 intentionally and specifically violates the accused's 4<sup>th</sup> Amendment protection from illegal search and seizure, knowing that the accused would not know about a Temporary Relief From Abuse Order until it was served.

## Testimony Presented to House #2:

Fee Bill: [Firearm Possession Prohibition - Federal Law](#) - Erik FitzPatrick

### Evidence Presented:

Source: [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm01116.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01116.htm)

US Attorneys > USAM > Title 9 > Criminal Resource Manual 1116

### Prosecutions Under 18 U.S.C. § 922(g)(8)

Title 18 U.S.C. §§ 922(d)(8) and (g)(8) concern the prohibition against disposal of firearms to, or receipt or possession of firearms by, persons who are subject to domestic violence protection orders. Section 922(d)(8) prohibits the knowing transfer of a firearm to a person who is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner, and section 922(g)(8) prohibits the receipt or possession of a firearm or ammunition by such a person.

There are several key evidentiary issues which can arise in these cases. A violation of § 922(d)(8) must be "knowing." Proof concerning knowledge of the restraining order on the part of the supplier must be established. The term "intimate partner" is defined as including a spouse or former spouse, or a person with whom the victim has had a child, but it does not include a girlfriend or boyfriend with whom the defendant has not resided. See 18 U.S.C. § 921(a)(32). In addition, the protective order must have been issued following an evidentiary hearing as to which the defendant had notice and an opportunity to appear. The order must include a specific finding that the defendant represents a credible threat to the physical safety of the victim or by its terms explicitly prohibit the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury.

"FEDERAL LAW: A violation of § 922(d)(8) must be ""knowing."" Proof concerning knowledge of the restraining order on the part of the supplier must be established.

### Analysis:

**Federal law limits restrictions to firearms and ammunition ONLY.**

**H.735 will expand this to include any, and ALL, "weapons" the judge/Law Enforcement deems "dangerous".**

**In Vermont, the Law Enforcement Officer would NOT be able to confiscate weapons when the "accused" is SERVED. The accused would have to KNOW he is in violation of a Relief From Abuse order to be guilty of possession.**

**H.735 aims to reverse this, and allow Law Enforcement to confiscate IMMEDIATELY upon creation of even a Temporary Relief From Abuse Order.**

**Testimony Presented to House #3:**

Fee Bill: [Gun Storage Fact Sheet](#) - Sarah Kenney

**NOTE: This document in particular holds clear “fear tactics”, biased data sources, and documented facts that H.735 is indeed NEW LAW, and why H.735 was created. A few examples are given below.**

**Evidence Presented:**

2013 Vermont Domestic Violence Fatality Review Commission Report:

**“56% of Vermont’s domestic violence related homicides were committed with firearms and 80% of the suicides associated with the homicides (i.e. murder/suicides) and domestic violence are committed with firearms.”**

**Analysis:**

**56% ranking based on 20 year old statistics that were DOUBLE the current rate for the last 4 years (2009-12)**

**80% of suicides in 19 years = 23, approx 1 per year in a state of over 600,000 inhabitants.**

**5% of all “Domestic Violence” deaths were caused by Law Enforcement Officers.**

**Evidence Presented:**

Mayors Against Illegal Guns: Gun Laws and Violence Against Women. Fact Sheet, 2013.

**“Women in the US are 11 times more likely than women in other developed countries to be murdered with guns.”**

**Analysis:**

This statistic has nothing to do with Vermont and is trying to create fear and sense of urgency.

This statistical “evidence” is reported from the most rabid anti-firearm group in the nation, Michael Bloomberg’s Mayors Against Illegal Guns. These “statistics” have been questioned publicly by countless firearm groups, as the data is skewed and ranked (in opposition to posted FBI warnings not to rank) to achieve the desired “statistic”.

There is no way this statistic could possibly be verified as other countries do not keep detailed records like the FBI and CDC do, and since MAIG is not a government agency, they do not have to prove their facts.

Vermont has averaged 2 firearm-related deaths per year over the last 4 years, down from an average of 4 back in the 1990’s. How can women (in Vermont) be subjected to 11 times more gun deaths than other countries?

**Evidence Presented:**

Law Center to Prevent Gun Violence. *Gun Laws and Policies*.

**“Abused women are five times more likely to be killed by their abuser if the abuser owns a firearm.”**

### **Analysis:**

Once again, this statistical “evidence” is reported from another rabid anti-firearm group, and is the one responsible for some of the most restrictive and unconstitutional laws in the country (restriction/registration/confiscation in California).

If abused women in Vermont were five times as likely to be killed by a gun owned by their abuser, we should at least have documented proof of that in Vermont.

But the Vermont Domestic Violence Fatality Review Commission reports continually show this to be untrue.

Women are not killed 5 times more often by a partner who owns a gun. It is according to Ms Kinney’s own data, which was analyzed by myself for Gun Owners of Vermont, domestic violence gun deaths have been at an historic low of 38% for the last 4 consecutive years, only a portion of those were women, although the facts of exactly how many males/females were killed by weapon type is hidden from public record.

### **Evidence Presented:**

[Gun Storage Fact Sheet](#) - Sarah Kenney

**“The lives of victims of domestic violence literally depend on our state’s ability to secure and store firearms when a state court has ordered that an abuser’s guns be relinquished. Vermont’s current system of relinquishment and storage is inadequate and places victims of domestic violence at risk.”**

### **Analysis:**

**This is clearly hype and conjecture as Vermont does not have an epidemic of domestic firearm violence.**

**Ms Kenney makes the allegation that Vermont’s “current system of relinquishment” is “inadequate” and needs to be fixed.**

**According to the annual Domestic Violence Fatality Commission reports:**

**2009 saw ZERO DV Homicides by firearm.**

**2010 saw ONE DV Homicides by firearm.**

**2011 saw THREE DV Homicides by firearm.**

**2012 saw ONE DV Homicides by firearm.**

**Over 5000 people die in Vermont every year, 5 firearms deaths in 4 years is not an epidemic.**

**How many of these homicides HAD a RFA order?**

**How many of these homicides HAD a RFA order that did NOT prohibit firearms?**

**How many of these homicides were men?**

**The details of all these cases are SECRET and cannot be verified as proof to make logical decisions.**

### **Evidence Presented:**

[Gun Storage Fact Sheet](#) - Sarah Kenney

**“Each year Vermont’s Domestic Violence Fatality Review Commission releases a report analyzing domestic violence homicide statistics for the previous year and making recommendations to the state based on case reviews of past homicides.**

**In 2009, the Commission recommended that the Vermont legislature consider adoption of a law to govern the relinquishment, inventory, storage and return of guns for defendants subject to final relief from abuse orders.**

**In 2007, the Vermont Center for Justice Research (VCJR) prepared a study entitled ‘Alternatives to Current Relinquished Firearms Storage Arrangements in Vermont: A Feasibility Study’.**

**This study concluded that establishing alternative firearms storage arrangements would alleviate current storage burdens for law enforcement agencies, allow for more consistent law enforcement and judicial responses to RFA defendants with firearms, and reduce concerns about potential access to these firearms by abusers when firearms are relinquished to friends and relatives, as commonly occurs.”**

**Based on the Commission's case reviews it concurs with the VCJR study's conclusions and encourages the legislature to consider the establishment of a storage system and a statutory procedure for relinquishment, inventory, storage and return of the guns.”**

**Analysis:**

**In a single stroke of Sarah Kenney's own pen, she has just described the need for a NEW LAW in Vermont to keep relinquished firearms away from persons accused of Domestic Violence.**

**The Review Commission, which Sarah Kenney is a member, knew that this law did not yet exist. H.735 (and S.277) were designed to slide this new provision into law quietly.**

**Testimony Presented to House #4:**

FEE BILL: [Fee Memo to Judiciary Committee from Ways and Means](#)

From: Rep. Janet Ancel, Chair, House Committee on Ways and Means

Rep. Carolyn Branagan, Vice-Chair, House Committee on Ways and Means

**Evidence Presented:**

**“Sec. 21. 20 V.S.A. chapter 145 is redesignated to read:**

**CHAPTER 145. DISPOSITION AND FEE FOR STORAGE OF UNLAWFUL FIREARMS**

**Sec. 22. 20 V.S.A. § 2307 is added to read: “**

**Analysis:**

**If this was just a “fee bill”, why was the bill sent to the Judiciary Committee for “recommendations”?**

**Because Section 2307 is ADDED, hence NEW LAW.**

**Evidence Presented:**

FEE BILL: [Fee Memo to Judiciary Committee from Ways and Means](#)

**“§ 2307. FIREARMS SURRENDERED PURSUANT TO RELIEF FROM ABUSE ORDER; STORAGE; FEES; RETURN**

**(a)(1) A person who is required to surrender firearms, ammunition, or other weapons by a court order issued under 15 V.S.A. chapter 21 (abuse prevention), or any other provision of law consistent with 18 U.S.C. § 922(g)(8) shall upon service of the order immediately surrender to a law enforcement officer or court-approved federally licensed firearms dealer any firearms, ammunition, or weapons in the person’s possession, custody, or control.”**

**Analysis:**

Nowhere does it say that any person is required to surrender firearms, ammunition, or other weapons under 15 V.S.A. chapter 21.

It is currently, and should remain, at the judge’s discretion to deem surrender as a “required” action.

**Final Analysis:**

**- Sarah Kenney has been on the Vermont Domestic Violence Fatality Review Commission since 2007.**

She is well aware that this was not current law when she presented her facts and recommendations by her committee for the formation of a new law to confiscate firearms from the accused.

**- Brynn Hare identified Federal law limited surrender to “firearms and ammunition” not the intentionally over-broad use of the term “weapons” that H.735 proposes.**

- Erik FitzPatrick pointed out that Federal law required the fact that the accused had to have notification of the order BEFORE any possible violation was in occurrence.
- The House knew it was not current law by the evidence provided.
- Everyone knew it would not pass Constitutional muster and that is why the new law would have to be created under the guise of a fee bill, behind closed doors, with compromise and the Governor's urging.
- Gun Owners of Vermont, Inc. have provided a detailed analysis of Domestic Violence in Vermont to every senator in Montpelier.
- Gun Owners of Vermont, Inc. have provided a Constitutional/legal analysis from Cindy Hill, Esq.

**And yet, we still debate and have hearings.**

**A lot of media coverage has opened the eyes of a huge new crowd of people, not just gun owners, to what kind of unconstitutional “deals” are being made in Montpelier.**