

2019 HOUSE JUDICIARY

HB 1537

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1537
1/30/2019
31806

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek	By: Elaine Stromme
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Explanation or reason for introduction of bill/resolution:

Relating to the seizure of a firearm by law enforcement officer and the issuance of a public safety protection order; and to provide a penalty.

Minutes:

Attachments: 1 – 3

Chairman Koppelman: Opened the hearing on HB 1537.

Representative Hanson: Introduced the bill. (Attachment #1) Read testimony and went through the bill. (1:40-28:32)

Rep. Vetter: How do you classify risk as eminent and do you know any judges that have crystal balls?

Rep. Hanson: An eminent risk is the person trying to commit suicide right there and then. Your question about foreseeing something before something bad happens. Our system has laws in place now if people believe they are a risk to public safety.

Rep. Vetter: Can't someone kill themselves without using a gun?

Rep. Hanson: This bill will stop the person will not stop all violence but it will stop what is the most frequent cause of suicide and the most lethal cause of suicide.

Rep. Vetter: Are we talking about criminal court or is this is just civil? Do you not feel you are adding additional risk on collecting the firearm?

Rep. Hanson: This is just civil. Our police officers face great risks but they do not want to keep coming back to those persons are getting behavioral health. This will give them some time while the person is getting professional help.

Rep. McWilliams: Do you know how many public protection orders there have been or domestic violence protection orders in North Dakota?

Rep. Hanson: There are none in North Dakota. North Dakota does have domestic violence protection orders that also goes through civil court; temporary ones were granted in 2017 for 580; in 2018 there was 611, for domestic violence protection orders, about a thousand people per year are committed.

Rep. McWilliams: You said the petition must be supported by a written affidavit signed by the petitioner under oath must also include other supporting statements would the law we passed previously have any effect on this.

Rep. Hanson: The current bill has a penalty if you have provided false statements. I would be open to amending the bill to increase the penalty to a higher level.

Rep. Rick Becker: We are talking about seizing weapons here. Are there other United States Supreme Court cases that would give you foundation for this type of case law?

Rep. Hanson: Heller which is the US Supreme Court Decision provides a framework for all state Supreme Court decisions.

Rep. Rick Becker: Suicides how does this apply? When a person is intending to not complete suicide they do not use guns. Do you have data on decreased suicides?

Rep. Hanson: I am not an expert. There are other people here who can. In Indiana it did show a reduction in all suicides, in Connecticut it was offset by no firearm suicides. So it depends on the state.

Rep. Rick Becker: Can you confirm law enforcement doesn't need to have interaction with the petitioner at all. It is based on hearsay. Is it also true it could be anything? All those things listed are all true?

Rep. Hanson: I can understand the concern that this might be abused. I have trust in our law enforcement and our court system that they review that information to see if it meets the standard of evidence required.

Rep. Magrum: Under the safe storage of firearms; have you prepared a fiscal note? Does law enforcement provide the safe? The bill says a safe or secure container.

Rep. Hanson: Safe storage could be a trigger lock.

Rep. Magrum: The bill says a safe or other secure container. It doesn't say anything about a trigger lock. What would the cost be to the tax payers?

Rep. Hanson: There will be no cost to the tax payers. The owner will be responsible for storage.

Chairman K. Koppelman: False claim; is there a provision in the bill if false claim gives rise To the confiscation of a firearm, is the firearm returned or a rehearing takes place or something.

Rep. Hanson: The court would take that into consideration.

Rep. McWilliams: Can you provide the committee with data on firearm suicides.

Rep. Hansen: I can send you the link to the study that I sited.

Rep. Hanson: We looked at Florida on this subject. We decided how we wanted it to fit into ND.

Chairman K. Koppelman: You talked about this work group. Did you have pro second amendment advocates there did you have a majority party of legislator's there or was this your brain child with some folks that you thought might be supportive of this approach?

Rep. Hanson: I did consult with gun owners and Representatives. Rep. Pat Heinert, who is a former sheriff, he really liked the provision in the Indiana bill that provided for warrant less seizure, for the safety of law enforcement officers.

Chairman K. Koppelman: Why is Rep. Heinert not a cosponsor.

Rep. Hanson: Why don't you ask Rep. Heinert?

Representative Simons: I don't see where this bill is addressing the real problem. I can purchase a firearm over the internet now. I don't see this bill doing anything for somebody that could be a real problem.

Rep. Hanson: This won't stop every act of violence. It would prevent some the worst horrors that our state could potentially face. We have been very lucky that we have never had a school shooting or a mass shooting. We need every tool we can get.

Rep. Vetter: How does the accused reinstate one's rights and what standard would illustrate that they were no longer a danger?

Rep. Hanson: There is a process for someone to appeal the decision if they felt it was wrongly decided, if they think it was correctly decided but they have addressed the problem, they could petition for early termination for the order. Maybe the order is for one year and you have gotten treatment and you would like to terminate the order. The burden of proof is not on the responder.

Chief David Todd: Fargo Police Department: (Attachment #2) I was hesitant at first. We are trying to temporarily create some time where someone is going through a crisis that cannot be undone. I am talking about suicide. We had 1,377 suicidal calls last year and 21 suicides were in Fargo last year. We are not interested in taking firearms away.

Rep. Satrom: What are you doing now?

David Todd: Sometimes we have to leave the gun there. What about the risk to law enforcement going back there? We can do an electronic search warrant while we are still on scene with that person with a judge that is on call, the judge then makes the determination on that electronic search warrant and then gives us the permission to take that action.

Rep. Satrom: Can you repeat that one more time?

David Todd: Repeated what he said before.

Rep. Satrom: How do you handle this, if you have lots of guns and some have incredible value.

David Todd: We have an evidence room where they are safe. The person we took it from has a receipt.

Chairman K. Koppelman: When you are in a situation now in which someone has a gun to their head, are you saying you have no authority to take the gun away?

David Todd: We can't seize property like that. We are more concerned to get the help they need.

Chairman K. Koppelman: What would you do right now if you were called for a suicide attempt?

David Todd: We take them to the hospital; we hand off the firearm to a family member.

Chairman K. Koppelman: If there is no family around; you have a suicidal person and you are taking that person to the hospital what do you do with the gun then?

David Todd: We have to leave it at the residence. We secure the residence then.

Chairman K. Koppelman: What are your options right now where someone is suicidal?

David Todd: We transfer them to an emergency room.

Chairman K. Koppelman: Do they have to consent to that or are you able to do that because of the circumstances?

David Todd: Most people do consent to that but if they don't, and we feel that they are a danger to themselves and others we can bring them in.

Chairman K. Koppelman: How does a search warrant work electronically?

David Todd: We bring a laptop where we are and type up the warrant and send it to the judge through email. The judge reviews that and can electronically sign it.

Rep. Rick Becker: Is this ok because you are saving lives?

David Todd: I don't view this as an infringement on the second amendment when a person is in mental health crisis, they are not in the right state of mind. We are not going to take someone's word for this, we actually have to see this for ourselves before moving forward with this.

Representative Simons: Temporary seems like a long time? Who is to say they are now stable?

David Todd: It is my job to show up in court and show the facts. Then the court will make that decision.

Representative Simons: What is a threat. What are your grounds? What if it is false?

David Todd: If I presented that to a judge, I would quickly lose credibility with that judge.

Chairman K. Koppelman: What authority is available now in terms of people that are unstable or are threatening violence or on the brink of suicide.

David Todd: Emergency committal we usually do through a hospital.

Chief Janke: Police Chief in West Fargo: (Attachment #3) stopped 1:18:54. This bill is necessary currently do to the current mental health crisis we are dealing with today. Discussed various incidents of active shootings that did happen.

Rep. Rick Becker: Are you aware of when you go to the court to get the warrant to seize the firearms; we know that it can be based on
On page 2, line 13, page 17 it can be based on hearsay? Are you aware of that?

Chief Janke: There has to be credible evidence. It is more than taking someone's hear say.

Rep. Hanson: We are limiting who can petition the court to start this process.

Chairman K. Koppelman: Does this bill go to far?

Chief Janke: It is a common sense bill. We just had a case this weekend, we took a man to the hospital and they released him and he beat us home. We had to leave the gun in his home. Up to the time we take him to the hospital HIPPA prevents us from knowing what has occurred there. If they show up within 14 days with a doctor and the doctor tells a judge they are on medicine and it is working.

Recessed hearing: until 2:45PM

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1537
1/30/2019
31841

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek By: Elaine Stromme

Explanation or reason for introduction of bill/resolution:

Relating to the seizure of a firearm by law enforcement officer and the issuance of a public safety protection order; and to provide a penalty.

Minutes:

Attachments: 1,2,3,4,5,6,7,8,9

Chairman Koppelman: Re-opened the hearing on HB 1537.

Support:

Kora Dockter: (Attachment #1) stopped 5:40.

Rep. Satrom: What was the issues with your son?

Kora Dockter: We did not know what he was going through. We did not have a name for what was wrong with him; but we don't know.

Alexis Baxley: ND School Boards Association: Supports HB1537. Many of the violent events that we see occurring in schools are either a result of domestic situations or mental health and suicidal situations. We believe that this would be one opportunity to keep our students safe and help prevent some of those incidents from taking place.

Thea Jorgenson, ND National Guard and volunteer if AFSP: (Attachment #2) I support HB1537. Because of my personal struggle with depression and after losing a member of my former unit in the National Guard to suicide, I knew I needed to do something.

Cheryl Biller, Citizen from Fargo: (Attachment #3) I support this bill since I watched what happened in so many cases. I would like to think in a state like ND this bill protects family.

Recessed the HB1537

Opposition:

Brian Gosch, State Liaison, NRA: Went over the bill. (Attachment #4).
Stopped 32:30.

Rep. Hanson: Are there any court case that have successfully struck down these red flag laws?

Brian Gosch: I will get back to you on that.

Rep. Satrom: Do you have any suggestions to protect peoples second amendment rights and address people that shouldn't have them.

Brian Gosch: That is a good question. A lot of it starts at home, teaching children proper goals and ways of living. We have things that exist to take care of those situations.

Rep. Magrum: When the court orders a gun seizure and you live out in the country? Do they go out and go through all the buildings?

Brian Gosch: Yes they can look wherever they need to. They would have the authority to seize all the firearms.

Rep. Jones: If someone is showing red flag signs can the fire arms could be taken from them?

Brian Gosch: The disorderly conduct statute is written very broadly.

Rep. McWilliams: What happens when a police department does a search and seizure.

Brian Gosch: Anything in open view then can be used as evidence.

Raymond S. Morrell, serve as Commandant of the Marine Corps League, Dept. of ND: (Attachment #5) Read testimony. Stopped 50:00

Mark Anderson, Private Citizen: The thing that troubles me is the lack of criteria on what actually dictates threatening behavior. If I don't want to get pulled over for a DUI I don't drink and I don't drive. My understanding of this bill is to catch the problem before it becomes a tragedy. Anyone can make a charge against me and I must disprove the negative. I would rather be arrested at least I would have a lawyer. This does not say where I am allowed legal counsel and I won't be notified when the hearing is. Florida red flag law, a month after it was signed, Kashub was at a shooting range with his father. He took a picture of that put it on twitter and the law enforcement came, jerked him out of school, his parents were not notified nor asked for permission to question their child, he was taken in there and grilled by the deputy. Please do not pass this bill.

Travis Waitman, Lincoln ND, Service man: (Attachment #6) Everything he says about veterans is spot on. I have PTSD. I have a sheet of issues and a lot of them have been brought up. It is recognized that this can be abused. Their maybe resentment in families and it will increase my anger. Everyone is concentrating around mental health. Zero times did it say mental health. I want more mental health services. I do isolate myself but this

disturbed me enough so I had to come up. I would offer you guys a different way to do this. The step before involuntary commitment and if you are going through the same process as what you do for involuntary committeemen. I would suggest expanding it.

Representative Simons: Thank you for your service.

Brent Wheeland: (Attachment # 7) emailed to Koppelman; I am here to encourage you to a do not pass.

1:00:47

Dustin Amundson: (Attachment #8) 1:02:19 – 1:06:18

Cody Shoe, Businessman: If you have firearms in the house and they will be seized where does that line get drawn?

Paul Malony handed out testimony from two citizens: Brittany Williams Policies Director of ND Young Republicans and one from Gun Owners of America.

Alison Traynor: Suicide Prevention Program Director for the North Dakota Department of Health (NDDoH): (Refer to Attachment #9) (Neutral) 1:14:10

Rep. Satrom: Do you have any information about the root causes that people take their own lives?

Alison Traynor: The leading theory is, Joiners Theory, 3 things are in play, perceive burdensomeness, or the belief that the family and loved ones would be better off without them, or isolation, real or perceived, the 3rd factor would be the capacity for suicide.

Rep. Satrom: What is the answer? How do we fix this?

Alison Traynor: That is a complex question. We need a comprehensive approach.

Rep. Paur: Firearm issues are mostly among males? Do you have any statistics for that?

Alison Traynor: Yes firearms are used mostly by males and they do die that way.

Recess hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1537
2/4/2019
32094

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek By : Elaine Stromme
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Explanation or reason for introduction of bill/resolution:

Relating to the seizure of a firearm by law enforcement officer and the issuance of a public safety protection order; and to provide a penalty.

Minutes:

Attachments: 1,2,3,4

Chairman Koppelman: Reopened the hearing on HB 1537.

Support:

Janelle Moos: Executive Director of CAWS ND: (Attachments #1) Went over testimony and handouts. Stopped 7:45. This bill will potentially save lives. It won't fix everything. This is just another tool for law enforcement.

Rep. McWilliams: Are you saying they should not have had that fire arm or possessed it because of red flags?

Janelle Moos: There are two ways that a judge can order a removal of a firearm. The judge can order the removal of a firearm if they feel like the victim is threatened, or if they have a misdemeanor conviction of domestic violence a firearm should be removed at that point in time.

Opposition:

John Olson, Representing Watford City. (Attachment #2) Handed out Police Chief Shawn Doble's testimony.

Jody Ranisate, Resident of Bismarck: Refer to (Attachment #3) Stopped 25.24

Chairman K. Koppelman: Mr. Gosch, NRA testimony passed out.

Vice Chairman Karls: Handed out Testimony See (Attachment 4)

Chairman Koppelman: Hearing Closed

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1537
2/13/2019
32683

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating the seizure of a firearm by a law enforcement officer and the issuance of a public safety protection order; and to provide a penalty.

Minutes:

1

Chairman Koppelman: Opened the meeting on HB 1537.

Rep. Hanson: (Attachment #1) This is a civil process that would save lives. Went over the proposed amendment. Primarily targeted at mass shootings and suicides. During the hearing we had a good discussion around the penalty for false claim. We thought it might be more appropriate to amend the penalty for false claims from a B misdemeanor up to an A misdemeanor so it would be a bigger penalty when someone knowingly provided false information. This also provides greater consistency with the false claims statute which is in chapter 12.1. The safe storage provision enables the judge to order safe storage of the other firearms in the home. This adds trigger lock as an alternative.

Motion Made to move the amendment Attachment #1 by Rep. Hanson; Seconded by Rep. Rick Becker.

Discussion: None

Voice Vote Carried.

Do Not Pass as Amended Motion Made by Rep. Rick Becker; Seconded by Representative Simons:

Discussion:

Roll Call Vote: 11 Yes 2 No 1 Absent Carrier: Rep. Rick Becker

Rep. Jones: I liked addressing that issue with the previous one that we just went through.

Chairman K. Koppelman: I did have a change to visit with our police chief from West Fargo who was here testifying in favor of the bill about some of his concerns and they were a lot

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narrower than what the bill addressed. I am hoping what is in the other bill may be something that will work.

Closed.

DP 2/13/19

19.0337.04002
Title.06000

Prepared by the Legislative Council staff for
Representative Hanson
February 4, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1537

Page 6, line 28, replace "B" with "A"

Page 10, line 18, replace "B" with "A"

Page 14, line 24, after "depository" insert "or install a trigger lock on the firearm"

Page 14, line 25, replace ", 'safe'" with ";"

a. "Safe"

Page 14, after line 29, insert:

"b. 'Trigger lock' means a commercially available device that is operated with a key or combination lock that prevents a firearm from being discharged while the device is attached to the firearm. The term includes devices that obstruct the barrel or cylinder of the firearm and devices that immobilize the trigger."

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1537**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Attachment #1 19.0337.0400a

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Harson Seconded By Rep Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Install trigger lock on the firearm.
 Voice Vote Carried

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1537**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Becker Seconded By Rep. Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Representative Buffalo		X
Vice Chairman Karls	X		Representative K. R. Hanson		X
Representative Becker	X				
Representative Terry Jones	X				
Representative Magrum	X				
Representative McWilliams	X				
Representative B. Paulson	X				
Representative Paur	X				
Representative Roers Jones	----				
Representative Satrom	X				
Representative Simons	X				
Representative Vetter	X				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. Becker

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1537: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1537 was placed on the Sixth order on the calendar.

Page 6, line 28, replace "B" with "A"

Page 10, line 18, replace "B" with "A"

Page 14, line 24, after "depository" insert "or install a trigger lock on the firearm"

Page 14, line 25, replace ", safe" with ":

a. "Safe"

Page 14, after line 29, insert:

"b. "Trigger lock" means a commercially available device that is operated with a key or combination lock that prevents a firearm from being discharged while the device is attached to the firearm. The term includes devices that obstruct the barrel or cylinder of the firearm and devices that immobilize the trigger."

Renumber accordingly

2019 TESTIMONY

HB 1537

#1
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1-30-19
Pg 1

HB 1537 - Public Safety Protection Orders

House Judiciary Committee

Jan. 29, 2019

Testimony from Rep. Karla Rose Hanson - District 44

Thank you, Mr. Chairman and members of the committee, for the opportunity to introduce to you HB 1537.

This bill aims to reduce gun violence. In 2017, North Dakota saw an all-time high of 103 firearm deaths. 93 of those were suicides by firearm. Suicide is the second leading cause of death for ND youth. Luckily, we have not had a mass shooting like the many that are in the national news, but we should have as many tools as possible to prevent the horror of a school shooting or mass shooting in our state.

I first read about this legislation last spring - after the Parkland shooting. The Florida legislature passed this legislation in response to the shooting at Marjory Stoneman Douglas High School - which one year ago killed 17 and injured 17.

I started by talking to law enforcement leaders and suicide prevention advocates in our state to see if this would be a tool that could be useful in North Dakota - for averting similar mass shootings and for reducing suicide. They did see value in the idea, so we set up a working group representing a broad array of perspectives - prosecutors, law enforcement, school resource officers, domestic violence prevention, suicide prevention and others. Together we wrote this bill - line by line - to fit North Dakota.

What does the bill do?

HB 1537 would establish a new type of protection order in our state - a Public Safety Protection Order.

Public Safety Protection Orders save lives by enabling families and law enforcement to act before warning signs escalate into tragedies. They can petition the court to temporarily remove a weapon from a person who is a danger to themselves or others.

There are four main scenarios in which Public Safety Protection Orders could be used: preventing suicide, reducing peril for victims and law enforcement officers during domestic violence calls, and averting school shootings and other active shooter situations. It could also be a tool for families who are concerned about a person with Alzheimer's.

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Public Safety Protection Orders have the strongest possible due process in civil court – which means the courts are involved at every step and high evidentiary standards are applied. A family member or law enforcement officer must petition a court, the respondent must be notified, a hearing is held, and a judge must review the affidavit and testimony to determine if the information rises to the standard of evidence required before issuing an order.

I'll go into much more detail about the process in a minute - but the bottom line is that there is very strong due process and to say otherwise is not accurate.

This legislation is constitutional.

Our society balances the right to bear arms with the right for public safety and the courts have repeatedly upheld this by saying we can restrict gun ownership if there is a concern for public safety. Restrictions are already in place if you've committed specific criminal offenses and in certain civil judgements.

This type of legislation is currently in 13 other states, including Indiana and Florida. It has a few different names in those other states, like extreme risk protection order, and it's colloquially known as a red flag law.

Because this type of legislation been around for so many years - since 1999 in Connecticut and since 2004 in Indiana - it's been tested in the courts several times.

As a result, **case law has affirmed the constitutionality of this legislation**, indicating that public safety regulations are not in conflict with the Second Amendment. These cases include *DC v Heller*, *Hope v State*, *City of San Diego v Boggess*, and *Redington v. State*.

I've attached a memo prepared by Legislative Council that explains some of the relevant case law. In addition to the cases outlined in the memo, you can also look at *Redington v State* - about the Indiana red flag law. Indiana's law is very similar to this legislation except it goes beyond ours and includes a warrantless seizure provision - where law enforcement may seize the weapon without first getting the warrant like HB 1537 does - and Indiana's law was also found constitutional by the court.

In summary, HB 1537 does not infringe on our second amendment rights.

Other Options - How This Fits In

It might be helpful to compare Public Safety Protection Orders to the other options available today when a person is a danger to themselves or others - to see what is used today and how this would fit in.

Ideally, someone's concerns would be resolved through the least restrictive means - all of these types of behavioral health services in the community. Ideally, that person recognizes that there

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is a problem and is able to access behavioral health services in a timely and affordable way - which is why it's so important that, during this session, the ND Legislature also pass policies and budgets that improve behavioral health services across the state. Additionally, if that person owns a firearm, they should store the weapon safely or have a friend or relative store it for them temporarily.

However, we know not every situation can be handled this way. I sometimes call public safety protection orders a tool of last resort, after all other options have been exhausted, but it is actually a tool of second-to-last resort because there are currently other paths that are used when a person is a danger to themselves or others. Those include 72-hour holds and involuntary committals.

Approximately 1,000 people in North Dakota per year are admitted to the state hospital through the involuntary committal process for treatment (excluding sexual dangerousness). The involuntary committal process also goes through civil court and - like Public Safety Protection Orders - requires the same high standard of evidence, called clear & convincing evidence.

Public Safety Protection Orders are a less restrictive solution than an involuntary committal - both in terms of your liberty and your firearm ownership rights.

An involuntary committal typically results in a stay in the state hospital, which, besides restricting your liberty, is an expense to us as taxpayers. Isolating the firearm instead of the person could allow some of these individuals to receive behavioral health care in their own community while continuing to go to work, go to church and be with their family.

Involuntary committals also prohibit a person from owning a firearm long term. Being adjudicated in this manner has long-term firearm restrictions based on both state and federal law, similar to being convicted of a felony or a domestic violence offense. This bill would create a process that preserves a person's right to own a firearm long term, while ensuring public safety.

Additionally, there currently exists another civil process called Domestic Violence Protection Orders, which give judges the option of temporarily removing a firearm from a respondent for up to 2 years. Public Safety Protection Orders are similar to Domestic Violence Protection Orders, but can only be issued for up to one year and can be applied to additional situations.

So - when you look at the range of options available today when people are contemplating suicide or a violent act, most will get the help they need in their community. In rare cases, a public safety protection order would be an additional tool for families who need to intervene (in addition to comprehensive community-based behavioral health services) but used before the very last resort of involuntary committal, which restricts liberty and gun ownership rights.

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P.H.

Let's look at the process in more detail.

The first step is a petition to the court. We have limited who can petition the court -- to law enforcement and family & household members -- because they are often the first to see warning signs that a person is in crisis and is a threat to themselves or others. If someone outside of this definition identifies a threat - for example, a teacher or a neighbor, they would have to go through the police or states attorney.

The petition must be supported by a written affidavit signed by the petitioner under oath. It may also include other sworn statements or testimony of other witnesses to support the petition.

I know some are concerned about false allegations. The bill includes a provision that levies a criminal consequence on someone who provides information to the court - either in the affidavit or in a hearing - knowing it is false. If the committee is concerned about false allegations, they could certainly amend the bill to increase that penalty to further deter them. In fact, increasing the penalty from a B Misdemeanor to an A Misdemeanor would create greater consistency with the false claims statute in Chapter 12.1-11 so I would support that amendment. (Page 6, line 28)

The next step is to identify if the risk is imminent. If risk is not imminent, then a **hearing would be scheduled** no later than 30 days after the petition is filed. (Hearing details are described on page 8 - starting on line 8 - section 12.1.31.3-06)

The respondent - who is the person identified as being potentially a danger to themselves or others - would be **notified of the hearing**. (Service of the petition and orders are described on page 12, starting on line 20 in section 12.1-31.3-09)

At the hearing the judge would then consider evidence presented from both the petitioner and the respondent. The petitioner has the burden of proving by clear and convincing evidence that the respondent poses a risk of personal injury to themselves or others by having a firearm in their possession. If the standard is met, the judge would issue an order for up to one year.

A side note about evidentiary standards - which you recall you got a hand-out on earlier in the session. The standard of "clear and convincing evidence" is the highest possible standard in civil court. This is the same level of evidence used in the committal process. Clear & convincing evidence is a higher standard of proof than "preponderance of the evidence" - which is the evidentiary standard used in most civil cases. Sometimes you'll hear judges or attorneys say that "preponderance of the evidence" requires a finding that at least 51 percent of the evidence favors the plaintiff, but this illustrative only - not a legal standard or statutory requirement.

So that's the process if risk isn't imminent. If risk is imminent, then the petitioner can request an Emergency Public Safety Protection Order.

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At this point, we diverge into two separate "paths" - one for family members and one for law enforcement. Both still must petition the court. Again, nothing happens without going through the court.

If it's a family member requesting an Emergency Public Safety Protection Order, then an emergency ex parte hearing must be held within 48 hours of the petition being filed. (section 12.1.31.3-05 - page 6 starting on line 12.)

If the court finds probable cause to believe the respondent poses an imminent risk, then the judge can issue a temporary order - which can be in effect for up to 14 days. (Probable cause means reasonable belief and is the same standard used when issuing a search warrant or arrest warrant.)

Then a full hearing would be held just like described above, where further evidence would be shared by both parties. Just like before, if the judge determines that the petitioner has met the burden of proving by clear and convincing evidence - the judge can issue a "regular" Public Safety Protection Order for up to one year.

If it's law enforcement who identifies imminent danger, they can also request an Emergency Public Safety Protection Order from the court - but their process is a little different from a family member's. (section 12.1-31.3-02: Page 2 - starting on line 4)

Here, law enforcement wanted to account for the scenario of an officer being called to a scene - for example, a man is holding a gun to his head and saying he is going to kill himself. Having an emergency hearing in 48 hours is too late, so this provides them a way to handle it onsite after they've de-escalated the individual.

Law enforcement would provide a judge with a sworn affidavit stating why they believe the individual is dangerous - this process would typically happen in minutes or hours -- versus days. This process is similar to requesting a search warrant - which also uses probable cause as the standard of evidence. If the court determines that probable cause exists that the individual is dangerous and in possession of a firearm, the court would allow the weapons to be seized. The officer then follows up with the court to file a return with the court - the paperwork outlining what was seized.

Just like when an Emergency Protection Order is issued for a family member, a hearing is scheduled no later than 14 days after the officer files the return. Both parties have the opportunity to present evidence. If the state meets the burden of proof of clear and convincing evidence, then a regular public safety protection order may be issued for up to one year.

Now, once an issue is ordered - whether for an emergency order or a regular order, law enforcement would **collect the firearms** and provide documentation of what was collected. The

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order must be entered into the NICS (a statewide judicial information system) to ensure licensed firearm dealers know that this person is temporarily prohibited from purchasing a gun. (outlined in 12.1-31.3-10, page 13 - starting on line 15).

The workgroup also thought through scenarios relating to how a firearm can be **transferred or sold** -- if the respondent preferred to do that rather than having law enforcement store the weapon or if the respondent is no longer legally allowed to own a firearm (they were convicted of a felony while the order was in effect, for example). The respondent may just want to sell the gun, or if the gun is a family heirloom - they may want to transfer it to a family member who doesn't live in their home. (outlined in section 112.1-31.3-08 - page 11, starting at line 18)

30 days before an order is set to expire, a **review hearing** is scheduled to see if it's ok to let it expire or if it should be renewed. Again, the burden of proof is on the petitioner, not the respondent. (outlined in 12.1-31.3-07 - page 11, starting at line 5)

If it is determined that the person no longer poses a danger to self or others, then the **firearms would be returned** to the owner - providing they can legally own a weapon. The order would also be removed from the NICS database to enable future purchases.

If respondents feel any court judgement was wrongly decided, they can **appeal** the decision. (outlined in 12.1-31.3-13 - page 15, starting at line 15)

A respondent could also file a motion to **terminate the order early** - before the end of the order. This would apply to a situation where a person recognizes that the order WAS correctly issued in the first place - they were a danger to themselves or others -- but the person feels he or she has remedied the concerns. (outlined in 12.1-31.3-07 - page 10, starting at line 10)

If a Protection Order is violated - which means the respondent is found to have purchased or possess a gun when they are not supposed to -- they would face a penalty. (class A misdemeanor for a first offense and class C felony for subsequent offense within one year) (outlined in 12.1-31-3-12 - page 15, starting on line 1)

Public Safety Protection Orders could also apply to **youth in crisis**. If a person is under 18, they can't legally own a firearm, but they may have access to one in their home. If there's evidence that a young person is exhibiting red flags, the court could order **safe storage** of the firearm in the home (they'd be required to lock it up), to prevent irreversible harm while still respecting the rights of the firearm owner. (outlined in 12.1.31.3-11 - page 14, starting on line 20)

This entire process that I've just described to you is due process. Nothing happens without going through the court. The respondent is notified, the petitioner must meet the burden of proof, and - for an order to be issued for up to one year - the respondent has an opportunity to respond and appeal.

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Positive Outcomes

This bill will not prevent every act of violence, but this legislation does reduce suicides.

Firearms are the most common and the most lethal method of suicide. In ND, 55% of suicides are caused by firearm. Research shows that putting time and distance between a person who has suicidal intentions and lethal means can save lives. Nearly all suicide attempts with a gun result in death while most people who attempt suicide by other, less lethal means survive—and do not eventually die by suicide.

A study published in the Psychiatry Services Journal in August 2018 found that laws like 1537 do help reduce suicides by firearm. It said that Indiana's firearm seizure law was associated with a 7.5% reduction in firearm suicides in the ten years following its enactment. Enactment of Connecticut's law was associated with a 1.6% reduction in firearm suicides immediately after its passage in 1999 and a 13.7% reduction in firearm suicides in the post-Virginia Tech period, when awareness of the law substantially increased.

Besides reducing suicides, this can help ND avoid what other states have already seen with mass shootings and school shootings. We should have every tool at our disposal to avert this horror.

If this can save even one person's life, isn't it worth it?

Police, Educators and the Trump Administration support this bill

Supporters of HB 1537 include the North Dakota Chiefs Association; The North Dakota Association of School Resource Officers; ND United, which represents educators and public employees; the ND Department of Public Instruction; the ND School Board Association and the Trump Administration.

In news articles, the NRA has provided qualified support for red flag legislation. They emphasized the need for strong due process and consequences for submitting a false statement, and this bill meets both of those criteria. The NRA also asks for mandatory behavioral health services as part of the order, which would be beyond the scope of a judge and not necessary in all situations such as domestic violence and individuals with Alzheimer's.

Closing

Public Safety Protection Orders will save lives in North Dakota. They use an established civil court process with very strong due process at every step. This legislation has been found to be constitutional - case law affirms that. They are less restrictive than an involuntary committal and preserve long-term gun ownership.

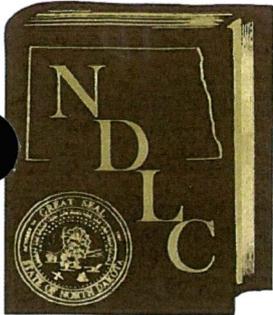
I respectfully ask the committee to give this a do-pass recommendation.

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Outline of HB 1537 - Public Safety Protection Orders:

- 12.1-31.3-01 – definitions
- 12.1-31.3-02: this explains the path to allow law enforcement to petition the court to request the seizure of a weapon (requires probable cause, similar to the search warrant process), to be followed within 14 days by a court hearing to determine if a Public Safety Protection order should be issued for up to one year (requires clear and convincing evidence).
- 12.1-31.3-03 and 3-04: this explains the path for family/household members to petition the court to request a Public Safety Protection Order (requires clear and convincing evidence).
- 12.1-31.3-05: this enables the petitioner to get an emergency, temporary order if the threat is imminent (requires probable cause).
- 12.1-31.3-06: this section outlines the full hearing process, which must be done 30 days after a petition is filed or 14 days after an emergency protection order is issued. Clear and convincing evidence is required for an order to be issued for up to one year.
- 12.1-31.3-07: this section outlines how a respondent could file a motion to terminate the order (if the respondent feels he/she remedied the concern before the end of the order). This also outlines the step of scheduling a hearing shortly before the order expires to decide if it should expire or be renewed.
- 12.1-31.3-08: this section outlines how the firearm should be returned once an order has been terminated or – in specific scenarios – how a firearm can be transferred or sold.
- 12.1-31.3-09: this outlines the process of serving the orders.
- 12.1-31.3-10: this outlines the reporting of orders and entry into NICS (database).
- 12.1-31.3-11: if the person exhibiting red flags is under 18 and can't legally own a firearm but lives with a person who owns a firearm, this section outlines a safe storage provision that the court may order.
- 12.1-31.3-12: this outlines the penalties if a person violates the order.
- 12.1-31.3-13: this outlines the appeal process (if the respondent feels the order was incorrectly issued).
- 12.1-31.3-14: this section limits the liability for law enforcement.



North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360

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P. 9 John Bjornson
Director

Allen H. Knudson
Legislative Budget
Analyst & Auditor

Vonette J. Richter
Legal Division Director

Jason J. Steckler
Administrative Services
Division Director

Emily L. Thompson
Code Revisor

January 29, 2019

Honorable Karla Rose Hanson
State Representative
House Chamber
State Capitol
Bismarck, ND 58505

Dear Representative Hanson:

This letter is in response to your request for case law relating to public safety regulations, and whether those regulations are in conflict with the Second Amendment to the United States Constitution.

Public safety regulations, commonly referred to as "red flag laws", are gun violence prevention laws that allow law enforcement officers or family members to petition a state court to order the temporary removal of firearms from an individual who may present a danger to others or themselves. The orders issued by the court prohibiting an individual from possessing a firearm are known as "extreme risk protection orders" in Oregon, Washington, Maryland, and Vermont; as "risk protection orders" in Florida; as "gun violence restraining orders" in California; as "risk warrants" in Connecticut; and as "proceedings for the seizure and retention of a firearm" in Indiana.

The Second Amendment provides "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The United States Supreme Court, in *District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), recognized the Second Amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home". The Second Amendment is fully applicable to the states through the due process clause of the 14th Amendment. In *Heller*, the Supreme Court held the Second Amendment "does not confer the right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose and legislatures may still use a variety of "presumptively lawful regulatory measures" to prevent the violence associated with firearms including "longstanding prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

In *Heller*, the Supreme Court adopted a two-pronged approach to Second Amendment challenges. First, the court must consider whether the challenged law imposes a burden on conduct that falls within the scope of the Second Amendment's guarantee. If the law does not, the inquiry is complete. If the law falls within the scope, the court must evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is deemed constitutional. If the law fails, it is invalid.

In *Hope v. State*, 133 A.3d 519, 523 (Conn. App. Ct. 2016), the Appellate Court of Connecticut held Connecticut General Statute § 29-38c (seizure of firearms and ammunition from person posing risk of imminent personal injury to self or others) did not implicate the Second Amendment, as the law does not restrict the right of law-abiding, responsible citizens to use arms in defense of their homes. The law restricts for up to 1 year the rights of only those individuals a court has adjudged to pose a risk of

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imminent physical harm to themselves or others after affording due process protection to challenge the seizure of the firearms. The statute is an example of the longstanding "presumptively lawful regulatory measures" articulated in *Heller*.

In *San Diego v. Boggess*, 157 Cal. Rptr. 3d 644, 647 (Ct. App. 2013), the Court of Appeal for the Fourth District, Division 1, of California, held California Statute § 8102 (confiscation and custody of firearms or other deadly weapons; procedure for return of weapon; notice; destruction of weapon), which allows the state to seize firearms from persons detained for examination due to mental illness who are likely to cause a danger, did not violate the Second Amendment.

We hope this information is helpful. If you would like additional information or have any other questions, please contact us.

Sincerely,



Christopher S. Joseph
Counsel

CSJ/JJB

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Mr. Chairperson and Committee, good morning, my name is David Todd and I currently work for the City of Fargo as the chief of police for the Fargo Police Department. I AM HERE IN SUPPORT

OF BILL 1537

Representative Karla Rose Hanson contacted me last year regarding her interest in working on proposed legislation, which is commonly known as a "Red Flag protection order" in addressing firearms in the possession of people exhibiting suicidal or homicidal behavior or ideations.

Admittedly, I was somewhat hesitant at first because I knew there would a campaign of misinformation and fear generated in order to cause its defeat. I also knew people supporting this would be targeted for criticism based on misinformation or people not willing ^{to} actually read the bill to dive-in deeper to what this bill really does and doesn't do.

However, sometimes leadership is about standing up to provide clarity on an issue and resolving to push for the right thing. The reality of this bill when you boil it down is this, we are trying to temporarily create some time and distance between a firearm and someone who is going through what amounts to a mental health crisis. We do not want them to do something in crisis - that can never be undone.

I have been a police officer for over 31 years. Unfortunately, I have been to numerous incidents where someone has committed an act that cannot be undone. I am of course, talking about suicide. I have listened to family members talk about getting the guns out of the house until their father, brother, sister or whomever can get some help. I have watched as our officers and even myself during times in my career have talked a suicidal person into putting down a gun and going with us to get help.

Unfortunately, I can tell you that within a day or two, many of these people are right back in their home with the same gun they were threatening to kill themselves with.

This last Sunday night, my officers were at an apartment where a young man had a shotgun, was distraught, threatened others and even discharged the shotgun into the ceiling. He was going to commit

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suicide, but our officers talked him into putting the gun down and coming with them to get help. These calls happen more often than ever is reported in the media.

We told our communities we had a crisis when opioids took the lives of 16 people within a year in our city. We came together and put initiatives in place in order to make a difference. In comparison, just in the city of Fargo, we responded to 1,377 suicidal person calls in 2018. We had 33 suicides in Cass County last year, with 17 of those suicides being committed with a firearm. We had 21 suicides in Fargo. The rate of suicide is steadily climbing in our communities.

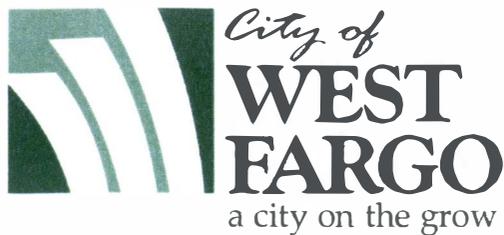
We as law enforcement are not interested in depriving people of their 2nd Amendment rights. We are just trying to temporarily stabilize a situation utilizing "Due Process" in hope the person gets to a better place and can have their firearm returned to them.

The due process within this bill is equivalent to the requirements of a search warrant where an officer(s) have to swear to the contents of an affidavit and then a judge makes a determination. Then within 14 days a hearing for the respondent must take place where the state needs to provide clear and convincing evidence and again a judge then makes a determination.

The one amendment I would support regarding this bill is raising the penalty from a class B misdemeanor - to a class A misdemeanor for providing false information to the court in a petition for a public safety protection order.

In my view, which is accompanied with 31 years of law enforcement experience marked with tragedies along the way, this is common sense legislation.

I thank the chairperson and committee for your time in allowing me to provide testimony regarding bill 1537.



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**Testimony on HB 1535
Presented to the House Judiciary Committee
Prepared by Heith Janke, Chief of West Fargo Police Department
Wednesday, Jan. 30, 2019**

1 Mr. Chairman and members of the Judiciary Committee. Thank you for the
2 opportunity to testify regarding House Bill 1535. Today, I would like to provide you with a
3 law enforcement perspective of this bill.

4 To be blunt, this bill is necessary due to the current mental health crisis that is
5 causing a rise in suicides and mass shootings. In West Fargo alone, we had 59
6 community members complete or attempt to take their lives last year and we had an
7 additional 119 calls to respond to someone making suicidal threats. This was a 40
8 percent increase in cases from 2017. This mental health crisis is placing my officers in
9 increasingly dangerous situations that could result in injury or death to them, which is
10 why as a leader, I feel obligated to speak out in favor of this bill.

11 I have personally witnessed the hurt that a mass shooting imposes on a
12 community. In my former career as a supervisory special agent in the FBI, I had the
13 unfortunate duty to lead the investigations of two separate active shooter tragedies. In
14 those two shootings, six people were shot and four were killed, including a grandfather
15 and his 14-year-old grandson. In both cases, the murderers had issues that I would call
16 red flags.

17 Right now, if one of my officers encounters an individual exhibiting mental health
18 issues and they have not broken any laws that allow for the seizure of the weapon, or
19 won't voluntarily allow the weapon to be removed, or there is no family member to
20 take the weapon, my officers have no other option than to leave the weapon with the
21 individual. I can tell you from personal experience how frustrating and difficult it is to
22 walk away from these situations without the ability to remove a dangerous weapon

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23 from the distressed individual. HB 1535 allows a judge to order the temporary removal
24 before a tragedy occurs.

25 I appreciate the fact that the idea of limiting the access to firearms causes great
26 consternation amongst people. But, it is important we actually look at the details of the
27 bill.

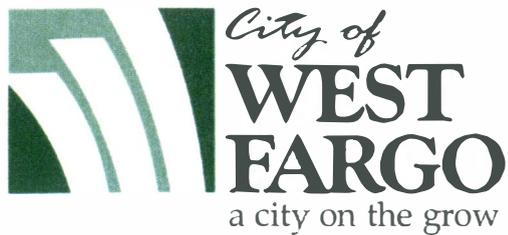
28 This bill is NOT about:

- 29 • The government kicking in doors and taking guns;
- 30 • Doing away with the Second Amendment and the Due Process Clause;
- 31 • Putting people in jail or a state hospital;
- 32 • Law enforcement officers playing psychologist or psychiatrist;
- 33 • And, most importantly, it is not a comprehensive fix to our mental health crisis.

34 This bill IS about:

- 35 • Saving lives – to keep people from killing themselves; to keep someone from
36 killing others in our community; and to keep law enforcement officers from being
37 killed when repeatedly dealing with someone in a mental crisis who has a
38 weapon;
- 39 • Being proactive and giving someone in a mental crisis time and distance from
40 their weapon;
- 41 • Preventing a school shooting and ensuring guns are locked away from students
42 threatening to do harm;
- 43 • Preventing an active shooter and mass casualty event;
- 44 • Giving the judicial system a tool of last resort when there is no other option;
- 45 • Implementing strict requirements that requires a judge to find probable cause to
46 remove weapons, and requires a judge to find clear and convincing evidence a
47 protection order should be put in place for a set period of time; and
- 48 • Doing what the Trump administration has asked of all 50 states by passing these
49 protection orders (see attachment to testimony).

50 Finally, although law enforcement must find the information to be credible and
51 have probable cause to apply for the search warrant, a Class B misdemeanor may not



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52 be a sufficient deterrent to keep someone from making a false claim. Therefore, I
53 recommend an amendment to the bill to make it a Class A misdemeanor for making a
54 false claim.

55 In closing, I do not believe we have to wait for a mass shooting to take some
56 common sense action to prevent tragedies. HB 1535 is just one piece of the puzzle for
57 law enforcement and courts, in a very limited circumstance, to protect the individual
58 and community until the distressed individual is able to get help. In fact, of the nearly
59 30,000 calls for service the West Fargo Police Department had in 2018, less than a
60 handful would have resulted in this utilization of this bill. However, it is in these limited
61 situations that we have the most potential for a catastrophic outcome. While it is a step
62 in the right direction, I also encourage you to continue to examine the mental health
63 crisis our state faces and look for additional ways to address the root of this problem.

64 For these reasons, I join the North Dakota Association of Police Chiefs in supporting
65 HB 1535. I would answer any questions that you have at this time, or you can certainly
66 contact me later by email at heith.janke@westfargond.gov.

67

68 **Attachment: President Donald J. Trump is Taking Immediate Actions to Secure Our**
69 **Schools Fact Sheet**

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FACT SHEETS

President Donald J. Trump is Taking Immediate Actions to Secure Our Schools

NATIONAL SECURITY & DEFENSE

Issued on: March 12, 2018



“

Every child deserves to grow up in a safe community surrounded by a loving family and to have a future filled with opportunity and with hope.

President Donald J. Trump

HARDENING OUR SCHOOLS: President Donald J. Trump is making sure our schools are safe and secure, just like our airports, stadiums, and government buildings.

- President Trump’s Administration will assist States to train specially qualified school personnel on a voluntary basis.
 - Department of Justice (DOJ) assistance programs will be leveraged to enable schools to partner with State and local law enforcement to provide firearms training for school personnel.
 - The Administration will support the transition of military veterans and retired law enforcement into new careers in education.
- The Administration will encourage States’ Attorneys General to audit school district compliance with State emergency preparedness activities.

- Federal agencies, including the Department of Homeland Security, will partner with States and localities to support a public awareness campaign modeled on “See Something, Say Something” to encourage awareness and reporting of suspicious activity.

STRENGTHENING BACKGROUND CHECKS AND PREVENTION: President Trump supports legislation and reforms to strengthen background checks and law enforcement operations.

- President Trump’s Administration is calling on every State to adopt Extreme Risk Protection Orders (ERPOs).
 - The President is directing the Department of Justice to provide technical assistance to States, at their request, on establishing and implementing ERPOs.
 - ERPOs allow law enforcement, with approval from a court, to remove firearms from individuals who are a demonstrated threat to themselves or others and temporarily to prevent individuals from purchasing new firearms.
 - ERPOs should be carefully tailored to ensure the due process rights of law-abiding citizens are protected.
- President Trump supports improving the National Instant Criminal Background Check System (NICS). The President supports the legislative framework introduced by Senators Cornyn and Murphy that will help improve the accuracy and effectiveness of NICS.
 - The Cornyn-Murphy bill will hold Federal agencies more accountable for reporting information to NICS and will incentivize States to improve their reporting to the system.
- The President supports the framework of the STOP School Violence Act, which provides for State-based grants to implement evidence-based violence prevention programs.
 - Grants will provide States with funds for training, technology, and technical assistance to help schools identify and prevent violent acts.
- The Administration requests that Congress provide funding in 2018 to jump start implementation of this evidence-based program in middle and high schools nationwide.
- The President’s Administration will audit and make accountability improvements to the Federal Bureau of Investigation’s (FBI) tip line, and will promote its use.
- DOJ will provide emergency and crisis training for local law enforcement.

MENTAL HEALTH REFORM: President Trump is proposing an expansion and reform of mental health programs, including those that help identify and treat individuals who may be a threat to themselves or others.

- The President is proposing increased integration of mental health, primary care, and family services, as well as support for programs that utilize court-ordered treatment.
- The President is calling for a review of the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), and other statutory and regulatory privacy protections.
- Reviews will determine if any changes or clarifications are needed to improve coordination between mental health and other healthcare professionals, school officials, and law enforcement personnel.

INVESTIGATION: In addition to these immediate actions, President Trump is establishing a Federal Commission on School Safety chaired by Secretary Betsy DeVos and will recommend policy and funding proposals for school violence prevention.

- President Trump's Administration will establish a Federal commission, chaired by Secretary DeVos, to address school safety and the culture of violence.
- While the Administration is taking immediate action on school safety, the Federal commission will develop a process to evaluate and make recommendations on school safety.
- The commission will study and make recommendations on the following areas of focus:
 - Age restrictions for certain firearm purchases.
 - Existing entertainment rating systems and youth consumption of violent entertainment.
 - Strategies to advance the science and practice of character development in youth and a culture of connectedness.
 - Effects of press coverage of mass shootings.
 - Repeal of the Obama Administration's "Rethink School Discipline" policies.
 - Best practices for school buildings and campus security from Federal Government components, including the Department of State's Bureau of Diplomatic Security, and also

from other State, local, and private sector sources.

- A plan for integration and coordination of Federal resources focused on prevention and mitigation of active shooter incidents at schools.
- Opportunities to improve access to mental health treatment, including through efforts that raise awareness about mental illness and the effectiveness of treatment, reduce barriers to the recruitment of mental health professionals, and provide training related to violence prevention.
- Best practices for school-based threat assessment and violence prevention strategies.
- The effectiveness and appropriateness of psychotropic medication for treatment of troubled youth.
- Ensuring that findings are sufficiently supported by existing and additional Federal, State, and local funding sources.

North Dakota Suicide Prevention Coalition

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Testimony for 66th Assembly of the North Dakota Legislature
North Dakota House Judiciary Committee, HB 1537
January 30, 2019 at 10:30AM

Good morning, Chairman Koppelman and members of the House Judiciary Committee. My name is Kora Dockter. I am a retired pediatric nurse, wife, mother, grandmother and I have the unfortunate opportunity to serve as Chair for the North Dakota Suicide Prevention Coalition. This is because in 2014, my son Steven died by suicide, leaving a wife and three beautiful girls behind. Today I am here to share Steven's story and ask that you to save lives by passing House Bill 1537. This is not a not a bill about guns. I is about providing another chance at hope and recovery for at person at risk of suicide.

Steven was a journeyman electrician at Tesoro with a strong work ethic. I knew he was struggling from depression and thoughts of suicide. He would tell me "mom, it hurts so much". If you ever wonder if there is a physical pain associated with mental health conditions like depression, there absolutely is. Steven admitted himself into the hospital where they quickly discharged him saying, "the place was doing him more harm than good". We were not offered as much as a brochure upon his discharge from the psychiatric ward. The psychiatric facility where my son stayed was not equipped to handle my son's severe depression, so they discharged him to self. I picked him up, grabbed his phone, his car keys and we went home. If the psychiatric unit couldn't help my son, who could? I felt utterly helpless. We were in the process of getting Steven packed for a stay at the Meier Christian treatment facility in Chicago when he couldn't take it anymore. He took his own life in February of 2014.

Since my son died by suicide, I have learned that people are at greatest risk of suicide immediately following a discharge from a psychiatric unit, after discharge from Emergency Departments and immediately and other points of transition in care. My son was at considerable risk and I did not have any tools to help him. The Public Safety Protection Order is a much-needed tool that can be used after discharge from a psychiatric hospitalization or until treatment is made available. Currently, North Dakota has no resources for family who are in this predicament.

While the Public Safety Protection Order is not itself the cure for suicide, it is a research-based strategy to keep someone safe while they access treatment services and get through the acute crisis period.

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Several studies reported by the Harvard School of Public Health show that most suicides are impulsive and the more time it takes to access firearms or other lethal means, the greater the persons' chances of finding hope and choosing life or using a less lethal method to complete suicide. This is important because 90 percent of people who survive a suicide attempt never die by suicide. Many have a change of heart or they get help and recover.

My family and I are avid hunters and sportsmen. We value life, faith, family and freedom. I would not consider supporting a bill that infringes upon our personal liberties. The ND Suicide Prevention Coalition and I personally support this piece of legislation because it is research-based, bipartisan and has due process at every step.

North Dakota is in crisis. We are experiencing the largest suicide death rate increase of any other state. In 2017, we lost 27 veterans to suicide, which was 18 percent of the total. To address this crisis, we need a comprehensive solution that includes effective treatment for depression, community-based services and common-sense safety practices like the Public Safety Protection Order.

Please pass HB 1537 to reverse the suicide trend in North Dakota.

Thank you for your time and attention. I will stand for any questions about Steven or suicide that you may have.

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Thea Jorgensen
American Foundation for Suicide Prevention North Dakota Chapter
1422 North 22nd Street Apt 1
Bismarck, ND 58501
701.934.2458
thea@theawardfitness.com

Chairman Koppelman, Vice Chairman ~~Klein~~^{Karis} and Judiciary Committee Members,

My name is Thea Jorgensen I am a local business owner and an active volunteer with the North Dakota Chapter of the American Foundation for Suicide Prevention (AFSP). We are a nationwide community empowered by research, education and advocacy dedicated to saving lives and bringing hope to those affected by suicide. I am also a North Dakota resident with a connection to suicide and I urge you to please support HB1537 to create a Public Safety Protection Order.

I joined AFSP in January of 2017 after my own struggles with depression. We know that suicide risk increases when lethal means are readily accessible, and research shows that the presence of a firearm in the home increases the risk of a suicide attempt. Firearms are the most commonly used and a highly lethal method of suicide. According to the latest Centers for Disease Control statistics, in 2017, over 47,000 lives were lost to suicide across the country and more than half of these suicides were completed with a firearm. In North Dakota, we lost 154 residents to suicide in 2017 and 93 of these were the result of a firearm. 1

Temporary removal of firearms should be voluntary whenever possible. However, there needs to be a mechanism in place to keep at risk individuals safe in those instances where safe storage or voluntary removal is not an option. Safe storage and/or temporary removal of a firearm during a time of increased risk will give suicidal individuals something they desperately need: time for the intense suicidal risk to diminish and time for someone to intervene with mental health support and resources.

The Public Safety Protection Order can fill a gap that currently exists for families who want to protect a loved one who owns a firearm but who isn't able or willing to take the voluntary steps to ensure safety during times of a suicidal crisis. AFSP North Dakota supports the implementation of a Public Safety Protection Order as a tool to reduce suicide.

Thank you for your consideration,



Thea Jorgensen

1 National Center for Injury Prevention and Control. (2019, January 29). Fatal Injury Reports, National, Regional and State (RESTRICTED), 1999 – 2017. Retrieved from Centers for Disease Control and Prevention : <https://webappa.cdc.gov/cgi-bin/broker.exe>

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HB 1537 Testimony

My name is Cheryl Biller and I live in Fargo. I am a plant pathologist, realtor, and Moms Demand Action volunteer. I am also an Aunt whose nephew has had to learn how to navigate the great sadness and confusion that comes from losing a friend to a gunshot in school, and knowing another friend was the shooter. I've been paying attention since Sandy Hook but this particular school shooting made preventing gun violence deeply personal and important to me.

I stand in support of HB 1537. *→ you already heard Rep Hanson express her* This legislation is not a knee-jerk reaction to any particular event. *Since he desire to reduce gun violence in ND* Rather it was carefully written with the input of critical stakeholders over the course of many months with the intention of truly providing a means to reduce gun deaths, and injuries, in ND.

A nationwide study of the attackers in mass shootings showed that in nearly half of mass shooting events the shooter exhibited at least one dangerous warning sign, or red flag, prior to the shooting. In particular, the Parkland shooter's mother had contacted law enforcement numerous times to express concern about his behavior, knowing he had access to firearms. We all know that 17 students died almost 1 year ago because family members and law enforcement did not have the means to intervene there.

In Isla Vista, CA, a shooter made homicidal and suicidal threats but did not meet criteria for mental health commitment immediately, and was able to keep his guns. He subsequently killed 6 people. If California had enacted the law they now have earlier, that is similar to this bill, those 6 individuals might well be alive today.

There is data to show how red flag laws like this Public *Protection* Order positively impact the outcomes of domestic violence incidents and how this law keeps law enforcement safer.

But my focus today is suicide. Nearly 3/5 of all gun deaths in the US are suicides - an average of 61 deaths every day. In ND, the number is alarmingly higher - 87% of all gun deaths are suicides.

When a person is in crisis and considering suicide, they often communicate warning signs of how they are feeling. Loved ones and law enforcement are often the first to notice these changes in behavior. And when people recognize these signs in a family member, they should be empowered to act to protect their loved one.

Firearms are a very effective means of self-harm. Between 2013 and 2017, *5.7%* almost 60% of all suicide deaths in North Dakota were carried out with a firearm.

Several studies concluded that simply having access to a firearm triples a person's risk of death by suicide.

But there are steps that we can take - like passing this bill - to keep North Dakotans safe.

We know that reducing access to firearms has a direct impact on suicide by gun - that's why states across the country are embracing this life-saving policy. In the 10 years after the Indiana legislature

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passed its Red Flag Law in (2005), The numbers of people who died by suicide with a gun went down 7.5 percent.¹

A recent study ^{And} shows that when Connecticut increased enforcement of its Red Flag law, there was a 14% reduction in the state's firearm suicide rate.

Since the Parkland shooting, 8 other states² have passed Red Flag laws that were signed by governors who are both Republican and Democrat. This isn't a partisan issue - it is an issue of safety.

We need a similar law here in North Dakota so that when a person is experiencing a crisis, when they are making violent threats, we can act.

I urge this Committee to give a DO PASS recommendation to HB 1537 to save the lives of your fellow North Dakotans.

¹ Kivisto AJ, Phalen PL. Effects of risk-based firearm seizure laws in Connecticut and Indiana on suicide rates, 1981-2015. *Psychiatric Services*. 2018; 69(8): 855-862.

² Delaware, Florida, Illinois, Maryland, Massachusetts, New Jersey, Rhode Island, Vermont. 13 Total: California, Connecticut, Delaware, Florida, Illinois, Indiana, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont and Washington.

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January 30, 2019

ND “Red Flag” Bill, NB 1537

This bill allows the court to issue two types of “public safety protection order,” plus a special proceeding allowing the issuance of a search warrant upon the application of a police officer (called a “seizure process”).

This is a bill with multiple concerns. Like many of these bills, it has a laudable goal that falls apart when you look into the actual mechanics, and the resulting erosion of civil liberties while failing to address mental health issues. I have serious concerns with the police procedure and the low standards required to get any order. These are included as comments in the analysis and I add some talking points at the end.

I’ll summarize each type of order and the process:

First -- the law enforcement “seizure process” at NDCC 12.1-31.3-02 (page 1, line 4). This is the most flimsy of all as it isn’t based on much “evidence” and is issued entirely ex parte. A law enforcement officer simply provides the court with an affidavit indicating the officer “believes” an individual is “dangerous” and has access to a gun. The officer’s belief doesn’t even have to be based on his own personal observations: the bill allows the officer to present the court with hearsay obtained from another person – who is not before the court – so long as the officer “believes” the information is credible and reliable. (This doesn’t rule out an anonymous tip.)

“Dangerous” is defined at page 4, line 24: the respondent must either pose an imminent risk of personal injury to self or others by possessing or having access to a gun, OR poses a “risk of personal injury to self or others in the future” if there is “documented evidence” that the individual has a “propensity for violent or emotionally unstable conduct.” The important things about this definition is that it rests on allegations of future harm; the risk is any injury (not “serious personal injury”); it doesn’t have a mandatory tie to violence with a weapon; and the “documented evidence” isn’t confined to a recent time period, which means a person who was a distressed and depressed teenager a decade ago can have that used against him or her in this proceeding. The effect of this is to stigmatize mental illness – the allegation of future harm can be based on these past instances of “emotionally unstable” conduct regardless of whether they have been treated or otherwise resolved.

There is no notice to the respondent and no opportunity to be heard. The court will issue a search warrant if there is “probable cause” to believe the respondent is dangerous and possesses a firearm. The search warrant must be executed within 48 hours, with a return to the court indicating which guns have been seized. This clearly extends to potential seizure of guns that are the property of other than the respondent (family member, roommate, spouse) because the bill, at page 3, line 30, indicates that a third party who is not subject to a gun disqualification whose guns are seized has to get the court to order their return.

There is no option for voluntary surrender, or surrender to other than law enforcement; the guns once seized might be covered by a transfer to an FFL or third party (page 12, line 12).

Following the issuance of the warrant, the court must set a date for a hearing on notice within 14 days (but this may be longer). The bill has no minimum notice period to the respondent before the hearing; it only says the respondent shall be notified (page 3, line 11). There is nothing in the bill which establishes the form of notice, either. Logically, this notice-service could be done at the same time the search warrant is executed, but the bill sidesteps that.

At this hearing, the state has to show by “clear and convincing evidence” that the respondent is dangerous. The court may then issue a gun ban order in effect for up to one year, and the guns seized pursuant to the warrant remain in the custody of law enforcement. This order lacks any requirement that the respondent actually be provided with a statement specifying the duration of the order: the mandatory contents of the order at page 4, line 4 **do not** include a statement as to the duration of the order or the order’s expiry date. This section also lacks any requirement that the order give notice to the respondent that he or she cannot possess or acquire guns while the order is in effect (and notice that he or she may be committing a crime by doing so).

While the initial duration of this order is “up to” one year, the bill mandates a second court hearing, with notice, 30 days before the order expires, to determine whether the initial order should be extended for an additional up to one year period (page 4, line 19). This procedure means that essentially, the initial order can turn into a lifetime ban, because each expiry is preceded with a hearing that can renew the order, without limit.

To summarize: The North Dakota Constitution, Const. Art. 1, § 12, provides, in part, that “No person shall ... be deprived of life, liberty or property without due process of law.” This bill lacks due process – there is no notice to the respondent or an opportunity to address the “evidence” until *after* the guns are taken. The law enforcement officer’s information setting this process in motion is simply a belief that the person is “dangerous,” which belief may rest on uncorroborated and unverified hearsay from a third party. The process, once initiated, may lead to a lifetime firearm ban, all without any proof that the individual has ever committed a crime (even or threatened to commit a crime) with a firearm.

Significantly, the ACLU in Rhode Island (a group that doesn’t usually align with the NRA position) opposed a “red flag” bill in that state because of the serious civil rights issues that were implicated by the bill. (See <http://www.riaclu.org/news/post/aclu-of-rhode-island-raises-red-flags-over-red-flag-gun-legislation>). One of these was the low standard the bill imposed before police could apply for and obtain a search warrant against persons, inviting the police to use this bill as a shortcut for a warrant against members of minority groups suspected of being gang members, or any other person the police suspect of possible crime:

What is to stop police from using this law ...in order to seize any lawfully owned firearms they have? Filing, and being granted, such a petition has the additional bonus of serving as a general search warrant that could conveniently allow police to “stumble across” evidence of unrelated illegal activity, because the bill allows police officers granted an [Extreme Risk Protection Order, the red flag order] to “conduct any search permitted by law”....

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The situation is even worse under this bill because law enforcement may directly apply for and get a search warrant on very minimal grounds even before a court addresses whether the “red flag” order should be issued. **The ACLU document is well worth a read** -- all of their concerns apply equally to the regime proposed by this bill.

The second type of order is the emergency temporary ex parte order at NDCC 12.1-31.3-05 (page 6, line 12). This is initiated using a petition described at NDCC 12.1-31.3-03 and 12.1-31.3-04, on page 5.

The bill appears to limit the persons eligible to seek this order to the state’s attorney or a “family or household member,” but the term “family or household member” is misleading as the petitioner need not be a family member or a person who cohabits with the respondent. The definition of this term at page 1, line 9, indicates this is a very large class: any person related by blood or marriage (by any degree), any current or former spouse, any current or former cohabitant, any persons who are or have been in a dating relationship, any person who has a child in common, and a catch-all – any person “the court determines has a sufficient relationship with the respondent.” There is no requirement for current or recent cohabitation or even actual contact with the respondent before a person qualifies as a petitioner.

(As an aside, this large and expansive definition backfires under the bill because there’s a requirement that a petitioner for a temporary ex parte order make a “good faith effort” to provide notice to “**all** family or household members of the respondent” before filing the petition, if there is an indication of a threat or act of violence against anyone in this class, and to list the efforts to provide this notice by affidavit – see page 6, lines 21 and 26.)

The process for the emergency temporary order is based on the petitioner showing “credible information” (an allegation) that the respondent poses an “imminent risk of personal injury to self or others by having a firearm...” (page 6, line 14). This doesn’t require that the harm be “serious personal injury.” The grounds the bill lists as supporting this “credible information” are likewise deficient: at page 5, line 25, the bill includes things like any arrest for stalking, harassment or other crimes, regardless of how long ago the arrest occurred and whether charges were laid or conviction resulted; prior reckless use of a gun (doesn’t even require an arrest); or any prior violation of a protective order, whether or not a weapon was involved.

Despite the requirement that the petitioner give notice to other family or household members before proceeding, the bill directs that the respondent not be given notice (this order “**must** be issued on an ex parte basis” at page 6, line 31).

Once a petition is filed and seeks a temporary ex parte order, the court must hold a hearing within 48 hours, generally, and may issue the order if there is “probable cause” to believe that the respondent meets the imminent risk standard. (Probable cause isn’t a demanding threshold). The court issues the order together with a search warrant directing the police to search the respondent’s residence and “any other places” where he or she might possess firearms. The order prohibits the respondent from possessing or receiving or acquiring guns, but as is the case with the police-initiated order, the order under this process lacks any requirement that the order provide the respondent with the effective date and the effect of the order (a prohibition on, and

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potential criminal liability for, possessing or receiving guns while the order is in effect) – page 7, line 24.

There is no option for voluntary surrender, or surrender to other than law enforcement (but there is a transfer option from the police to an FFL or third party once the guns have been seized (see “Regarding firearms seized” section below).

The duration of this order is ostensibly 14 days, because after the search warrant and emergency order are issued, the court must hold a second hearing on notice within 14 days (although this timing is flexible.) There is no minimum notice period to the respondent regarding this full hearing, which is the hearing under NDCC 12.1-31.3-06, and leads to the third type of order, the up-to-one-year order.

Summary: As is the case with the police-initiated process, this order must be ex parte, with no notice or opportunity to be heard. The basis for this order is “credible information” and the minimal probable cause, which means the order is very likely to issue because the court will hear only one side’s evidence. Any due process the respondent is entitled to under this bill is provided for only after property has been seized.

The third type of order is issued on notice under NDCC 12.1-31.3-06 (page 8, line 8). It may follow the issuance of a temporary ex parte order or not – if not, it results from the filing of a petition which alleges a risk of personal injury but not a risk of “imminent injury.” (See page 5, line 22). The persons eligible to seek this order are the state’s attorney or a “family or household member.”

If there is no preceding temporary ex parte order, the court must hold a hearing within 30 days of the filing of a petition (page 8, line 10). The standard for issuance of an order is “clear and convincing evidence” that the respondent poses a risk of personal injury to self or another (page 9, line 8). The onus of establishing this is on the petitioner.

The grounds that may be relied on in support are listed at page 8, line 10. These factors are generally not time-limited (they don’t have to be “recent” and can go back indefinitely), and include a grab-bag of irrelevant and totally legal conduct like “abuse of alcohol” (whether or not it is related to increasing any alleged propensity for harm), any “brandishing” of a firearm on “social media” (like pictures while hunting or at the range), and any “ownership of or access to or intent to possess a firearm” by the respondent. Other factors include the respondent’s “mental health history” (which should be protected as personal health information unless there’s a court order or other limited disclosure – see <https://www.nd.gov/dhs/misc/hipaa-privacy.html>). Please note that NONE of these factors are preconditions before an order may issue; all this section says is the court may consider evidence of these factors but none of them have to be present before an order is possible.

The duration of an order is up to one year, subject to the renewal provision (page 9, line 9). The order prohibits the respondent from possessing or receiving or acquiring guns.

The order is issued together with a search warrant to search the respondent’s home and “any other places” where he or she is likely to possess a firearm. The bill isn’t clear on what happens

if the respondent's guns have already been seized under a temporary ex parte order and are already in the custody of the police: the bill indicates that a search warrant and search after this order issues occur nonetheless.

This also has no option for voluntary surrender or surrender to other than law enforcement but there is a transfer option from the police to an FFL or third party once the guns have been seized (explained below).

The bill requires that these orders be subject to a further court hearing prior to expiry, at which point the court may renew the order for an additional time of up to one year. There is no cap or limit on the number of these renewals so long as the information before the court indicates there has been no change in the circumstances (page 11, line 4).

Regarding firearms seized pursuant to any of these orders, NDCC 12.1-31.3-08 (page 11, line 18) states that the return is governed by existing NDCC 62.1-01-02, unless otherwise directed by the bill. Significantly, NDCC 62.1-01-02 applies to "forfeiture of dangerous weapon or firearm by **person arrested and convicted of crime**," which isn't the case with a respondent under the bill. The extent to which that section applies in conjunction with what is in the bill isn't clear.

At page 12, line 12, at the time an order is in effect, a respondent may "request" that the police transfer the gun or guns to an FFL, to sell or to transfer the gun to "a qualified individual who is not a member of the respondent's "household" and who is qualified to possess firearms.

The bill directs that once an order is no longer in place, seized guns must be returned within "ten days" but only after a respondent provides documentation that the order is terminated or has expired, and passes a background check. The onus is on the respondent to initiate this restoration of his property; otherwise, the police have no obligation to return the guns. If the respondent fails a background check, he must petition the court to allow the transfer to an eligible person (page 12, line 1). This court application is entirely unnecessary: the police with custody of the guns are already allowed to make a transfer on written authorization from the respondent. This section also states the transfer can only occur to a person who does not share a residence with the respondent, and also requires that the person who is "protected by the order" gets notice. This doesn't make legal (or other) sense – the respondent can only seek his guns back if the order is no longer in effect. If the order has expired or is terminated and isn't in effect, any other person who isn't prohibited should be qualified to be a transferee. There is no "person protected by the order," because these orders issue in favor of the general public and not a specific person.

This bill also adds an entirely irrelevant provision that law enforcement must notify "an interested party" before the guns are being returned to the respondent, if so directed by the petitioner or the court. This has no limit on who an "interested party" may be – anyone qualifies.

No Service of Order. Under NDCC 12.1-31.3-09 (page 12, line 27), service of an order may be deemed to have occurred (be dispensed with) where the respondent attends a hearing. This is wrong: these orders give important information to a respondent: the basis for the order issuing, the duration) and information on how to appeal or apply to terminate an order. The respondent

can be served with a copy of the order at the hearing, but should be given a copy – especially since he or she will have to show proof of expiry to reclaim their guns.

Reporting of Orders and NICS Prohibition. These orders are forwarded for reporting into NICS based on page 13, line 15, but nothing in the bill amends NDCC § 62.1-02-01, the state firearm “prohibited persons” law, to include persons subject to “red flag” orders as prohibited persons. These orders aren’t necessarily within what is prohibited by federal law as a protective order.

Penalties. A violation of a “red flag” order is a Class A misdemeanor for the first offense (365 days of imprisonment, a \$3,000 fine, or both) and jumps to a class C felony for the second violation – please keep in mind that this is simply a possession violation; the respondent doesn’t have to do anything more than possess a gun to become a felon under this provision. By comparison, a person who actively misuses or abuses the red flag law by providing false information as part of a petition (leading to the ensuing loss of property and waste of court resources) commits a lesser crime, a Class B misdemeanor (page 6, line 28, and page 10, line 18).

Other. The bill has a safe storage requirement at page 14, line 20 that will affect any third party who resides with a respondent aged less than 18 years old.

Talking Points; Other Problems

No mental health treatment for the underlying condition. Although these orders refer to “risk” or “imminent risk” there is absolutely no requirement that the respondent be assessed by a mental health professional, be evaluated, or be treated as part of the proceedings. This does nothing to address the underlying causes of the apprehended harm. If the intention is to address a public safety crisis, the bill should mandate evaluation, treatment and counselling.

Does nothing to safeguard “public safety.” While these orders are called “public safety protection orders” they will do nothing to prevent “dangerous” people from getting any other “deadly weapon or dangerous instrument” or using knives or vehicles to injure others. This bill does nothing to ensure public safety -- a person who is too dangerous to have a gun under this bill is not evaluated or stopped from self-harm or harm to others using something other than a gun -- a car, a bomb, or a knife.

Lack of due process. As mentioned, two out of the three kinds of proceedings or orders under this bill are ex parte, without notice to the respondent and without an opportunity to attend and contest the entirely one-sided evidence. And allegations will be enough, because the foundation of these orders is something that has not yet happened and may never happen.

Flimsy basis. Apart from resting entirely on allegations of potential future harm, the bill allows an order without any evidence that a respondent has ever committed, or has even threatened to commit, an act of violence with a firearm. It allows the use of old or irrelevant information to support the issuance of an order. The factors listed as grounds for an order in the bill treat any

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time gap between the event and the petition as irrelevant, regardless how long ago the event occurred. The factors include entirely legal conduct (the acquisition of firearms, the consumption of alcohol) and none of these factors have to be found to exist as a precondition of an order being made. None of these factors are conclusive evidence of a “risk” of future harm, never mind an “extreme risk.”

To quote the ACLU regarding the Rhode Island bill: “The heart of the legislation’s ERPO process requires speculation – on the part of both the petitioner and judges – about an individual’s risk of possible violence. But, the ACLU analysis notes: ‘Psychiatry and the medical sciences have not succeeded in this realm, and there is no basis for believing courts will do any better. The result will likely be a significant impact on the rights of many innocent individuals in the hope of preventing a tragedy....’”

The process is stacked against the innocent party. Two of the three proceedings are ex parte and require seizure of guns without a chance to answer or rebut the allegations made against a respondent. Once guns are seized, the respondent has to hire an attorney and prepare for legal proceedings that may be costly, complicated and time-consuming. The respondent isn’t automatically entitled to service of a copy of the order made against him or her, and these orders don’t clearly advise a respondent of the consequences of an order and non-compliance. There is no automatic return of seized firearms. The respondent is limited to a single opportunity to challenge an order once it issues, under proposed NDCC 12.1-31.3-07(1). The duration of an order is up to one year, but because an order may be renewed indefinitely, this bill allows a lifetime ban on firearm possession without the person having been convicted of a crime or adjudicated as mentally ill. Finally, a person who violates an order faces greater punishment than a person who maliciously provides false information in a petition or at a court hearing to initiate a “red flag” gun seizure.

No protection for juveniles. The bill allows the issuance of an order against a person under 18 years old – as indicated by the storage requirement at page 14, line 22. The bill treats juveniles on par with adults: there is no requirement for notice to the juvenile’s parents or guardian, not is there a provision for a guardian ad litem to be appointed if the proceedings concern a juvenile.

Affects the rights of third parties. The bill allow the police to seize guns that are found at the residence or “any other places” where a respondent may possess guns. The bill would authorize the police to seize guns, found at such places, which actually belong to third parties – cohabitants, roommates, family members and others. These third parties have no right to notice and have no clear procedure under the bill through which to recover their property.

These orders don’t fill a gap or a loophole in the existing law.

Red Flag bill, Part 2

These orders don't fill a gap or a loophole in the existing law.

1. ND Law on Protective Orders

Chapter 14-07.1 deals with domestic violence. Any "family or household member" may apply for a protective order, and this class is broadly defined at § 14-07.1-01 to conform with the "red flag" bill's definition of "family or household member." Anyone (other than a police officer) who can get a "red flag" order is eligible to get a DV order. The grounds for a petition include "physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault." This doesn't require a physical injury, as infliction of fear of physical harm is enough. Once a petition for an order is filed, the court must set a hearing date within 14 days, with a minimum of five days' notice to the respondent. This is a full hearing, at which the court has the explicit authority to order a respondent to

surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides in the manner and at the time and place determined by that law enforcement officer. If the firearm or other dangerous weapon is not surrendered, the law enforcement officer may arrest the respondent pursuant to section 14-07.1-11 and take possession of the firearm or other dangerous weapon. NDCC § 14-07.1-02(4)(g).

The court may amend its order or agreement at any time upon subsequent petition filed by either party.

The ND law allows for a temporary protective order under § 14-07.1-03 if there is an allegation of an immediate threat of harm; this is issued ex parte pending full hearing. At § 14-07.1-03(2)(d), the court, on a temporary order, may direct a firearm relinquishment, ordering

the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or the chief of police, or the chief's designee, of the city in which the respondent resides.

The duration of a temporary order is 14 days, and a respondent must be served with the order “forthwith.” The regular order has no specified duration but the order can be extended by the court – there is caselaw in ND that a 20-year order is excessive and was replaced with a five-year order.

Note that this firearm relinquishment requires a finding by the court of probable cause to believe that the respondent is “likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence” as a precondition. This order also allows for voluntary surrender, and applies to guns in the immediate possession or control of a respondent. This provides more protection to a domestic abuser than to a person under a “red flag” bill, who isn’t actually required to commit any act of force or violence before the “red flag” order issues.

The state’s DV law also makes provision for “emergency relief”: pursuant to § 14-07.1-08, where an application may be made before a magistrate in an ex parte proceeding if it is deemed necessary to protect the applicant or others from an “immediate and present danger of domestic violence.” This order expires seventy-two hours after its issuance, unless continued by the court, or the local magistrate in the event of continuing unavailability of the court.

A violation of an order, after the defendant has been served with a copy, is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of any protection order is a class C felony; § 14-07.1-06.

If an individual charged with or arrested for a crime involving domestic violence, including a violation of a domestic violence protection order or an order prohibiting contact, is released from custody, a district or municipal court may require that electronic home detention or global positioning system monitoring be used for the individual as a condition of release; § 14-07.1-19.

2. Other Orders

North Dakota law has a “**Disorderly Conduct Restraining Order**” under Chapter 12.1–31.2. “Disorderly conduct” means “intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person,” and the persons eligible for an order are a victim of disorderly conduct or the parent or guardian of a minor who is a victim of disorderly conduct. On application, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order; this stays in effect until the full hearing, which is set for within 14 days. An order granted at the full hearing cannot exceed two years in duration. If the respondent knows of an order issued, violation of the order is a class A misdemeanor.

This chapter also has a separate “**no contact**” order at NDCC § 12.1-31.2-02, issued against an individual who is charged with or arrested for a crime of violence or threat of violence, stalking, harassment, or a sex offense when the person is released from custody before arraignment or trial. This has a specific firearm relinquishment:

If the court has probable cause to believe that the individual charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section

12.1-01-04 in any further act of violence, the court shall require that the individual surrender for safekeeping any firearm or specified dangerous weapon in or subject to the individual's immediate possession or control, to the sheriff of the county or chief of police of the city in which the individual resides.

As with the DV orders, this requires a finding that the person is “likely to use” the weapon; it isn’t an automatic condition of every order. If the court issues an order before the time the individual is charged, the order expires at the individual's arraignment or within seventy-two hours of issuance if charges against the individual are not filed. Otherwise, the court determines at the arraignment whether the order should be extended. An individual who violates a court order issued under this section is guilty of a class A misdemeanor.

There is also a “**sexual assault restraining order**” at § NDCC 12.1-31-01.2, which concerns any “nonconsensual sexual contact as defined in section 12.1-20-07” (this isn’t limited to sexual assault). Any individual who is the victim of sexual assault or the parent, stepparent, or guardian of a minor who reasonably believes the minor is a victim of sexual assault may seek an order. This likewise includes a temporary order that may be extended upon a full hearing by the court. The order may prohibit the respondent from contacting, harassing, stalking, or threatening the applicant, and from appearing at the applicant's residence, school, and place of employment. The duration is limited: Relief granted by the restraining order may not exceed a period of two years. If the respondent knows of an order, violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony.

3. ND Law on Treatment, Commitment

a. Emergency proceedings for evaluation and treatment. Under NDCC § 25-03.1-25 and 25-03.1-26, a police officer, mental health professional, or physician with “reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that individual, others, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate,” may cause the individual to be taken into custody and involuntarily detained at a treatment facility. The facility must conduct an evaluation and examination of the person “within twenty-four hours, exclusive of holidays, after admission or within seventy-two hours after admission, exclusive of holidays, if the individual is admitted with a serious physical condition or illness that requires prompt treatment.” If the examination reveals the person does not meet the emergency commitment standards, he or she must be released; otherwise, a petition with the court seeking involuntary commitment is made. A hearing must be held before a magistrate within 4 days, unless there is reason for an extension.

b. Involuntary commitment. Under NDCC § 25-03.1-08, **any** person aged 18 or older may seek an involuntary commitment for another individual – which means law enforcement, family members or concerned friends may apply. The application is made to the court by the state’s attorney or the attorney (if any) representing the applicant. The petition requires sworn information: the “petition must be *verified by affidavit* of the applicant and contain assertions that the respondent is a person requiring the treatment; *the facts, in detail*, that are the basis of that

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assertion; the names, telephone numbers, and addresses, if known, of any witnesses to those facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent.” The petition “may” also include statements from mental health professionals who have examined the respondent within the last 45 days, along with any other affidavit evidence.

Significantly, the law includes possible independent corroboration: the state's attorney may direct a mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. The report of this investigation goes to the state’s attorney and may be used either to support the petition or to derail the application, if it the state’s attorney finds it shows an insufficient basis for proceeding (and this decision is reviewable).

Once a petition is filed, the magistrate must be “immediately” notified and review the documentation; if it establishes probable cause, the magistrate orders service on the respondent of: the petition and supporting docs, a notice regarding proceedings, and of the right to a preliminary and a treatment hearing when in custody under section 25-03.1-25, and of the right to be present at the hearings; of the right to have counsel before the hearings and any court-ordered examination; of the right to an independent evaluation (where the respondent picks the evaluator) ;§ 25-03.1-09.

Further, once a petition is filed that does not include “a written supportive statement of a tier 1 mental health professional or a licensed addiction counselor who has examined the respondent within the last forty-five days,” the court must order that the respondent be examined by an expert examiner of the respondent's own choice or one appointed by the court. § 25-03.1-10. The time for this examination to occur is limited to a maximum of 72 hours.

If the expert examiner concludes the respondent is not a person requiring treatment, the court may, without taking any other additional action, terminate the proceedings and dismiss the petition. If the expert examiner concludes the respondent is a person requiring treatment, or makes no conclusion whether the respondent is a person requiring treatment, the court shall set a date for hearing. If the person is in custody, this hearing date must occur within 4 days of the date the respondent was taken into custody through emergency commitment under section 25-03.1-25 unless the respondent agrees to a delay or continuance or there is good cause.

During the hearing the petitioner and the respondent must have an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. If the court does not find probable cause to believe that the individual is a person requiring treatment, the petition must be dismissed and the individual must be ordered discharged from the treatment facility. If the court finds probable cause to believe that the respondent is a person requiring treatment, it must consider less restrictive alternatives to involuntary detention and treatment. It may order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if it finds that alternative treatment is not in the

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best interests of the respondent or others, it shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility. § 25-03.1-17.

Rep. Hanson: question about any lawsuits regarding “red flag” legislation

Answer: These bills have only been around since 2015, and I am not aware of any that were struck down (yet), but even California declined to extend their law, recently, to include coworkers as petitioners, because the ACLU, among others, opposed this expansion

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Good Morning Chairman Koppinger and members of the House Judiciary Committee. My name is Raymond S Morrell. I serve as Commandant of the Marine Corps League – Department of North Dakota. The Marine Corps League is the only Marine Corps-specific veteran service organization; established in 1922 and chartered by Congress in 1937. The Department of ND was re-established in North Dakota this past spring following the standing-up of four local detachments; with five additional local Detachments in work.

This Bill was introduced under the lights and cameras of a news conference. Its sponsors and supporters dedicated a portion of their talking points amplifying a need for this Bill to prevent suicides of military veterans. However, this Bill will cause veterans labeled with anything remotely near to an 'at-risk' personality to suppress themselves further. It will strip them of the one thing that gives them a form of freedom and even therapy.

There are already laws in North Dakota statute to address mental health evaluation and seizure of firearms. This Bill merely diverts the judicial process from an existing adjudicated format to a civil, back-door format.

ND Century Code 25-03.1 defines a "Person requiring treatment" as a person who is mentally ill or a person who is chemically dependent, and there is a REASONABLE EXPECTATION that if the individual is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that individual, others, or property. By definition - they don't have to actually harm someone to be committed. Is this Bill an effort to strip firearms; or is it an effort to help. If its intention is to help, there are much better methods available.

The implementation of this Bill will exercise conjecture and vindictive rational to a dispute between parties. In doing so, the accusations made to an individual 'at risk' initiated by outside parties places the 'at risk' person under the scrutiny to prove themselves as competent – this shifts the entire dynamic of being innocent until proven guilty.

As a veteran, and on behalf of other veterans, whenever a policy maker, a politician, or a celebrity on any level plays the 'veteran card', it is in very poor taste; especially if claiming action for veterans' gain when, in fact, the veteran community was never consulted. The impact of this bill within the veteran community will deliver more harm than it will bring good.

The mind of a military veteran, especially one of a battle-hardened veteran, is wired completely different from that of a lay-civilian. Veterans, especially combat-ready service members, are trained to kill; initiated in boot camp and enhanced through ongoing teachings and exercises. The training is then sustained and made habit by prolonged exposure of being in an environment of hypervigilance – not for seeking somebody to kill – but in seeking methods that keep the veteran, or their peers, from getting killed. At some point in time, the veteran has to pull a trigger on an opposing force – another human – disabling them – killing them; and again... and again. This will have an obvious impact on that service member, for life.

This is just 'one' action that causes what was once identified as shell shock, that became known as battle fatigue and is now referred to as Post Traumatic Stress (PTS) or Post Traumatic Stress Disorder (PTSD). Now, this veteran comes home from active duty and is told to adjust – back to the 'old self'. How?

As Commandant, I have the privilege of getting to know my Marines; several of them have opened up mentioning their conflict with suicide – or in the words of this Bill 'self-harm'. I have spoken with fellow Marines with self-proclaimed 'at-risk' behaviors that have contemplated suicide. Others were leaders of Marines with undetected 'at-risk' behaviors they had remedied by suicide – suicide beyond a fire arm. One fellow Marine presented information of ten troops that died by suicide – only one was with a firearm. They were not categorized as 'at-risk' either. Another gave example regarding two of his comrades that died by suicide while he, himself, confirmed efforts to commit suicide.

Three years ago and within an approximate four-month window, I was confronted on four occasions of North Dakota Marines that chose suicide, one of which; the family requested my Marine Corps League unit to serve as casket bearers. However, in the same breath, in this same time span, I was approached by three other Marines that were 'at-risk' and 'on the edge'. By simple intervention, we disabled the emergency and implemented follow through – and in none of these cases was a pre-identified diagnosis determined. Since that time span, my Marines have trust in me and our network of support; they will call, visit, and reach out. At times, we go out and shoot – live game, trap shooting, or just a visiting a gun range or neighboring hill to send rounds down range – because it is a therapy for these veterans. For a period of military service – it was a sound we heard; when it was over, we were still alive and so were our fellow Marines.

If this Bill becomes law, these actions will be suppressed – hard and fast. That Marine, or other veteran, will do all in their power to hide inside what eats at them – because their immediate reaction is that their 'freedom' will be stripped away – because an outside party 'thinks' they are a bad person, or - in the perception of the civilian – crazy – only because the civilian knows nothing of what's in the mind; or behind the eyes, of a veteran.

What we veterans refer to as hypervigilance – civilians call paranoia or schizophrenia. There is so much to learn from a veteran – if they are understood. This Bill does not understand veterans.

To quantify, please allow me relive a statement by one of my Marines, a suicide survivor: "I'm concerned this bill would actually have a detrimental effect on the veteran community. As a veteran who has PTSD and has been through therapies and counseling, I'm not sure I would have gone the same route if a law like this was in place; especially such a horribly written one at that. At every level and every step of help, you get asked, "Are you suicidal? Have you thought about hurting yourself or someone else? Do you own guns? Do you have access to

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guns? If you do, are they locked up?" These are the questions you get every time. These are questions you have to answer just to sit and talk to someone. Now, add a law like this and I can tell you nobody is going to seek help. My therapy is hunting and hitting the range. Take that away and I'm all but lost. You cannot use veteran suicide as a soap box to get a bill like this passed. We have felt the heart-ache of losing people close to us to suicide but the answer isn't taking guns away. Individuals who want to commit suicide will find a way to do it. The best thing for veterans is to be there for veterans. Hear them, let them cry; let them be vulnerable for once. Then, once they are done, [we] tell them to pull up their boots and get to work. Military occupational stress doesn't go away and veterans need to be able to seek help without worrying about all this other crap."

The wording of this Bill does not understand veterans; for example hypervigilance, rage, isolation, avoidance, startle reflex and more is common terminology within the veteran community..... There is so much to learn from a veteran, if only they would be consulted, especially in the area of veterans deemed to be 'at-risk'.

So I present a cliché – which is it; the chicken or the egg? Is it the mere intent of this Bill to strip a firearm because of a perceived notion the fire arm will cause harm? Or, is the intent of this Bill to enable a person deemed to be 'at-risk' to be administered proper, relevant mental health treatment? If they wanted to do harm – they will find a way.

Senator Diane Feinstein stated during a different gun bill that went through Congress, "The problem with expanding this is that, you know, with the advent of PTSD, which I think is a new phenomenon as a product of the Iraq War, it's not clear how the seller or transfer of a firearm covered by this bill would verify that an individual was a member or veteran and there was no impairment of that individual with respect to having a weapon like this. [...] I think we have to – if you're going to do this, find a way that veterans who are incapacitated for one reason or another mentally, don't have access to this kind of weapon."

I think her ignorance of veteran issues and well-being speaks volumes in this statement; the proposed ND HB 1537 has the same potential for ignorance. Furthermore, I repeat myself, it is very seldom that a Veteran uses the "Veterans' card", even more so when compared against political will. It is in poor taste to use Veterans for gain of an agenda – especially when they haven't even been consulted.

Red Flag laws are in 13 other states. In 1999, Connecticut was the first followed by Indiana (2005), California (2014), Washington (2016), and Oregon (2017). California was the first state to pass a red flag law allowing family members to petition courts to take weapons from persons deemed a threat; the California law also permits law enforcement officials to petition for an order for the removal of firearms from an individual for up to twelve months. Does that sound familiar? The California Legislature passed a measure in 2016 to allow high school and

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college employees, co-workers and mental health professionals to file such petitions, but this legislation was vetoed.

Since 2018, that number more than doubled when Florida, Vermont, Maryland, Rhode Island, New Jersey, Delaware, Massachusetts, Illinois, and Washington, D.C. enacted such laws. Notice that there isn't a single Midwest state mentioned in this roster. Supporters of this Bill presented several statistics in their talking points; unfortunately, statistical information can be extracted to favor either side of any argument. I pose a question for statistical data: What percentage of persons that died by suicide were under some form of medication? What type(s) of medications? How could this medicated society develop 'self-harm' or 'at-risk' tendencies?

Mr. Chairman and members of this committee, the pretense of this Bill erodes the very effort that it is intended to resolve. Do we have a mental health issue in North Dakota? Yes; but strengthening and supporting the mental health resources within North Dakota is a much better use of energy and effort that is guaranteed to generate a positive outcome. Not exerting a tool of surrendering firearms.

The Marine Corps League stands strong in unified opposition; we ask that you give this Bill a DO NOT PASS recommendation.

- who deems dangerous? Police + family - not qualified / opinion based
- no where does it show any forewarning of seizure - so punishment with ^{#6 HB 1537} ~~1-30-19~~ ^{no crime 5th amendment}
- too easy for family set up - especially vets who can be pushed
- too hard to prove that family lied when it is just their opinion
- can't forewarn because they will either load up or hide weapons
- if person actually checks these dangerous definitions why not involuntary ^{incarceration?} ^{commitment - ch25?} ^{incarceration} stated this step before that - what happens to get involuntary
- in interview stated that other things happen before this but not stated in law - no mental health ^{mentioned}
- why not find a way to change ^{services} the adjudicated mentally ill or amend it so that they can see lesser forms and get their guns back - should be a lot less paper work as same requirements as commitment
- amendments violated from ~~wide~~ broad scale: 2nd guns / 4th search and seizure ^{not} deprived of liberty w/o due process

- no requirements of gun care for LEOs
- Dangers

bed's in danger
 man already killed - thought goal was to save
 treated like child
 killing family member
 mass killing with bombs
 suicide other ways

- have invaders can look online for defenseless homes
 - extreme case if someone wants you dead - set up and kill within 100 days

if you want safety for yourself/public take responsibility for it - if you choose to defend yourself w/o a gun that's on you do not punish the ones who have may not be gun grabbing effort - give you that - but it does offer work arounds for it to happen

Rep Karla Rose Hanson / Commandant Raymond Marrell HB 1537

- other states are not ND - maryland man was killed within 1 month because he defended his right - put officers at risk

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Public safety is subjective and can be slowly removed P2.

● reasonable belief = subjective

- stats of reduction in suicide - what went up?

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1-30-19

From: Bret Weiland
To: House Judiciary Committee
Re: DO NOT PASS recommendation for HB 1537
Date: January 30, 2019

My name is Bret Weiland. I am here to encourage you to give HB 1537, the Red Flag" bill, a DO NOT PASS recommendation for this piece of legislation. This bill, dubbed the "Red Flag" bill flagrantly defies the 2nd, 4th and 5th Amendments of the United States Constitution. It's obvious that it defies the 2nd Amendment because it strips one of his firearm(s). What is more insidious however is the blatant violation of the 4th Amendment. This bill requires the unreasonable search and seizure of one's firearms, despite there being no crime actually committed. The seizure of firearms can occur without anyone being charged with a crime. Due Process of the law is turned on its head, a clear violation of the 5th Amendment, and now gun owners will find themselves being deemed guilty and then have to prove their innocence.

It is not enough to say that the person whose rights are being violated will be given a day in court. You also have the possibility of a vindictive ex who can get revenge by abusing this law. Or how about the possible abuse by law enforcement if an officer of the law is in a quarrel with a neighbor, becomes fed up and takes it out on his neighbor via this piece of legislation? That is unconscionable. But these are just a sample of the possible abuses of this legislation that may occur.

I can understand the idea behind this bill. Tragedies involving guns are always a terrible thing to hear about, whether it's on the news or heard from friends and family. But the fact of the matter is, this bill if made law, is ripe for abuse. We cannot give in to the fear. Our legislature must not be swayed by emotion and allow such a defiance of the Constitution of the United States. Our Legislature must uphold the rule of law. As stated before, I ask that the House Judiciary Committee give HB 1537 a DO NOT PASS recommendation, and I ask that every legislator oppose this bill.

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From: Dustin Wayde CGM <wayde.cgm@gmail.com>
Date: January 30, 2019 at 12:44:29 PM CST
To: kkoppelman@nd.gov
Subject: HB 1537 Do Not Pass

From: Dustin Amundson

To: House Judiciary Committee

Re: Do not pass recommendation for HB 1537

Date: January 30, 2019

America's founders understood human nature and they knew history. When they established our Constitution they understood that eventually, people with bad intentions would hold the reigns of power. Their intent was not only to secure the blessings of liberty to themselves, but also to their posterity.

This is why they separated powers, set up checks and balances, ensured the right of due process, and it is why they specifically told government that it could not infringe on the right of the people to keep and bear arms.

Now I like you guys, and I know that you would never abuse the powers in this bill to attempt to disarm innocent People in North Dakota. My problem is, I don't know who our legislators will be in 30 years.

I'm not sure that they will be as upstanding and freedom loving as you are. How can I trust them not to amend this bill behind closed doors. How can I know that future courts will not interpret the words in this bill to suit their agenda.

Unless you can guarantee that future legislatures will never tamper with the language in this bill, or amend it in any way that can be used to disarm innocent people, DO NOT PASS IT

Unless you can guarantee that future courts will not interpret the language (or amended language) in any way that can be used to disarm innocent people, DO NOT PASS IT

As John Dickinson said: "Honor, justice, and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us."

Our grandchildren and great grandchildren deserve the right to life, liberty and property, together with the right to support and defend them in the best manner possible.

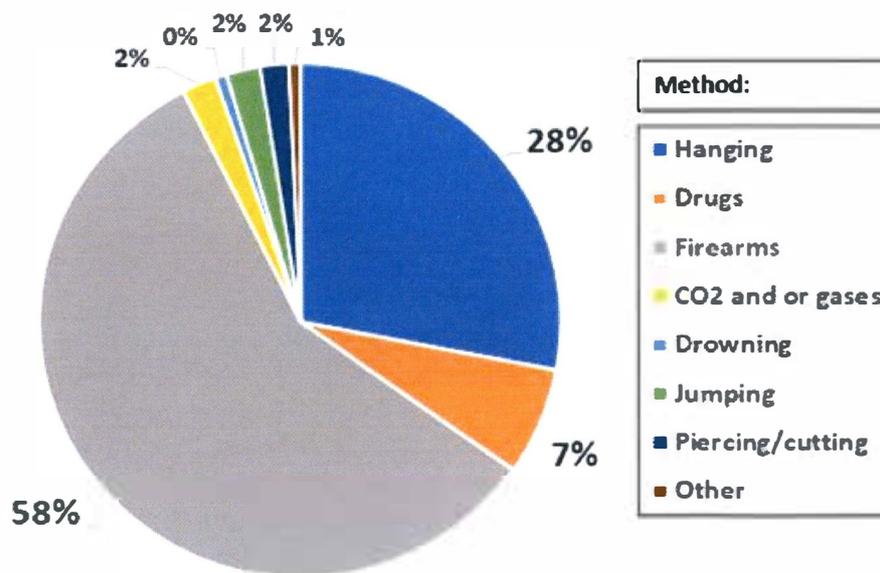
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Good morning, Chairman Koppelman and members of the House Judiciary Committee. My name is Alison Traynor and I am the Suicide Prevention Program Director for the North Dakota Department of Health (NDDoH). I am here to provide informational testimony relating to House Bill 1537.

In 2017, suicide took a record-breaking 148 lives across all age groups in North Dakota. A report released in 2018 by the Centers for Disease Control and Prevention indicated that North Dakota's suicide death rate had increased more than any other state, rising 58 percent since 1999. Suicide has consistently been the second leading cause of death for North Dakota youth and young adults. While women attempt suicide more often than men, men are three times more likely to die by suicide than women. Working-age men make up the largest proportion of suicide deaths in the state.

In North Dakota, the largest percentage of suicide fatalities is from firearms, accounting for 58 percent of the deaths in 2016-2017. (NDDoH Vital Records)

2016-2017 North Dakota Suicide Deaths



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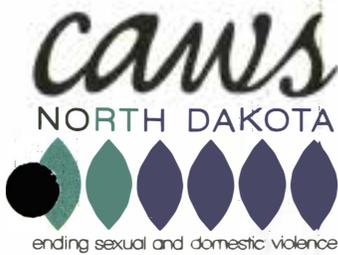
Firearms are more lethal than other suicide means. A study that examined suicide in eight states revealed that like North Dakota, suicide attempts by firearms were most likely to result in death, while other suicide methods such as drug overdose, poisoning and cutting had the lowest rates of fatality. (Harvard School of Public Health)

National suicide research suggests that suicide is often impulsive. In one study, one in four people (24%) who survived a suicide attempt reported deciding to take their own life within five minutes of their suicide attempt. (Houston Study, Simon 2005)

For these reasons, suicide prevention experts have started focusing on policies and practices that put time and distance between people at risk of suicide and the most deadly means they could use in a suicide attempt. A number of studies reported by the Harvard School of Public Health have indicated that when lethal means are made less available or less deadly, suicide rates by that method decline, and frequently suicide rates overall decline.

We are experiencing a suicide crisis in North Dakota. The causes of this are complex. Effective suicide prevention must, therefore, be comprehensive and include multisector partners and approaches. While access to lethal means is not a root cause of suicide, it is a risk factor for suicide. "Means reduction" (reducing a suicidal person's access to highly lethal means by putting time and distance between them and the most deadly means they could use in a suicide attempt) is an important part of a comprehensive, public health approach to suicide prevention.

I am happy to answer any questions you may have.



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Testimony on HB 1537
House Judiciary Committee
January 30, 2019

Chairman Koppleman and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1537.

In 2011, the ND Legislature passed a law that allowed the ND Attorney General to establish a Domestic Violence Fatality Review Commission (DVFR) under NDCC 14-07.1-20. The DVFR Commission reviews domestic violence deaths that have occurred in the state, recommends policies and protocols to prevent the incidence of domestic violence and resulting fatalities, and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence.

As you can see from the DVFR report from 2017 between 1996 and 2017, 45% of deaths due to homicide involved domestic violence. Seventy seven (77%) of female homicide victims were killed in domestic violence incidents, compared to 31% of males. In 2017, 4 of 12 homicides were domestic violence. Forty six (46%) of female deaths in domestic violence incidents involved firearms. Persons killed in domestic violence incident were more likely to be killed with a firearm, than those killed in non-domestic violence incidents.

In many instances, the perpetrator should not have possessed a firearm at the time they committed the offense either because they had a misdemeanor conviction of domestic violence or were the respondent in a domestic violence protection order.

As you may recall, during the 2017 legislative session, this committee passed HB 1402 which filled a gap within the law by giving law enforcement discretion and control over how and when firearms are surrendered - IF the court order didn't specify those details.

As you can see, HB 1537 provides law enforcement yet another tool to remove firearms from domestic violence offenders. We know that the most dangerous time for a DV victim is right

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after a separation occurs, and we also know that more law enforcement officers have been killed in the line of duty in domestic violence cases than any other single type of service call.

The process for requesting relief (or submitting a petition) to the court outlined in HB 1537 is parallel to the process used in the protection order process under Chapter 14-07.1-02. Firearms can be removed by law enforcement if ordered to by the court in the DV protection order. A unique and important provision under HB 1537 would allow law enforcement to remove firearms at the scene with a warrant if the offender is at risk of harming themselves or others including the responding officer or the victim. This addition would fill a gap in the current law.

The presence of a gun in a domestic violence situation makes it five times more likely that the victim will be killed. Common sense laws that require offenders to relinquish the guns in their possession make sense and keep victims safe and ultimately prevents the ultimate form of domestic violence: homicide.

Ultimately, I believe HB 1537 is a small change with potentially significant impacts on the lives of victims and offenders in DV cases, and therefore urge a DO PASS recommendation.

Thank you.

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— NORTH DAKOTA —

DOMESTIC VIOLENCE FATALITY REPORT 2017



Between 1998-2017, 45% of deaths due to homicide involved domestic violence. 77% of female homicide victims were killed in domestic violence incidents, compared to 31% of males.
In 2017, 4 of the 12 homicides in North Dakota were domestic violence related.



Persons killed in domestic violence incidents were more likely to be killed with a firearm, than those killed in non-domestic violence incidents.

46%

of female deaths in domestic violence incidents involved firearms compared to 30% of female deaths in non-domestic violence incidents

DOMESTIC VIOLENCE HOMICIDES IN 2017



Established in 2011, the Domestic Violence Fatality Review Commission reviews domestic violence deaths that have occurred in the state and recommends policies and protocols to help prevent future incidents of domestic violence and resulting fatalities (N.D.C.C. 14-07.1-20)

DOMESTIC VIOLENCE IN NORTH DAKOTA

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“In One Day”



295 VICTIMS SERVED IN ONE DAY *September 13, 2017*

122 domestic violence victims found refuge in emergency shelters or transitional housing provided by local domestic violence programs.

173 adults and children received non-residential assistance and services, including counseling, legal advocacy, and children’s support groups.



71 HOTLINE CALLS ANSWERED

Domestic violence hotlines are a lifeline for victims in danger, providing support, information, safety planning, and resources. In the 24-hour survey period, domestic violence programs answered more than 6 hotline calls every hour.



10 UNMET REQUESTS FOR SERVICES IN ONE DAY

6 (60%) were for housing.

Victims made requests for services that could not be provided because programs did not have the resources to provide these services.

2017 NORTH DAKOTA DOMESTIC VIOLENCE FACTS

5,787
INCIDENTS OF
DOMESTIC VIOLENCE
were reported to crisis
intervention centers in
North Dakota

4,722
NEW VICTIMS
received services from
crisis intervention
centers in
North Dakota



In at least 39% of cases, the abuser had a history of abusive behavior with other adults including prior partners.



In at least 37% of cases, the abuser had a history of abusive behavior with other adults including prior partners.



Weapons were used in at least 14% of the cases identified. Guns were used in 14% of the cases and knives were used in 16% of the cases involving weapons.

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FINDINGS & RECOMMENDATIONS



DOMESTIC VIOLENCE COURT

Several factors were common in all fatality review cases that have been reviewed by the DVFR Commission since 2011 including one or both parties having a history of domestic violence incidents (in the current and previous relationships); the majority of the incidents resulted in involvement with law enforcement and the criminal justice system. In many instances, multiple judges heard and made decisions about cases involving the same victim and offender and may have missed opportunities to make connections or determine lethality in cases.

Domestic Violence Court is a dedicated domestic violence criminal court that includes all felony and misdemeanor cases involving one or more allegations of domestic violence occurring between intimate partners, including relationships that involve current and former dating relationships, cohabitating couples or people with children in common. The criminal court utilizes civil protective orders as a tool to disarm batterers.



RECOMMENDATION

Pursue the legislative and policy changes necessary to create a domestic violence court pilot program in North Dakota.

RESULT: 65th Legislative Assembly

SB 2309 Domestic violence court. (N.D.C.C. 14-07.1-08.1.)

The district court may require an individual who has committed a crime involving domestic violence, as defined in this chapter, or who has violated a domestic violence protection order to complete domestic violence treatment under the direction of the domestic violence court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with chapter 12.1-32.

<https://www.legis.nd.gov/assembly/65-2017/documents/17-8163-02000.pdf>

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FINDINGS & RECOMMENDATIONS



FIREARMS REMOVAL

As previously noted, persons killed in domestic violence incidents were more likely to be killed with a firearm than those killed in non-domestic violence incidents.



RECOMMENDATION

Enhance statute related to the authority of law enforcement to remove firearms in domestic violence incidents and protection order violations.

RESULT: 65th Legislative Assembly

HB 1402 - Surrender of firearms or other dangerous weapons pursuant to domestic violence protection orders (subsection 4 of section 14-07.1-02.)

<https://www.legis.nd.gov/assembly/65-2017/documents/17-0836-02000.pdf>
accordance with chapter 12.1-32.

NOTICE AND SERVICE OF ORDERS

Victims often apply for or receive three types of orders in domestic violence incidents—domestic violence protection orders (NDCC), disorderly conduct restraining order (NDCC), or a criminal no contact order or order prohibiting contact as a condition of bond. Currently, there is no process for streamlining the transmission of an order from the court to the agency responsible for entering it into a database, serving the order and providing notice (LE) which leads to a gap in safety for victims.



RECOMMENDATION

Pursue the legislative and policy changes necessary to create language and the process to require submission of data related to all orders into a statewide system.

RESULT: 65th Legislative Assembly

(SB 2309) 12-60-23. Bureau to maintain registry of protection orders, orders prohibiting contact, and restraining orders.

<https://www.legis.nd.gov/assembly/65-2017/documents/17-8163-02000.pdf>

#1 HB 1537
2-419
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FINDINGS & RECOMMENDATIONS



DOMESTIC VIOLENCE OFFENDER TREATMENT

Under current ND law, judges are mandated to sentence an individual charged with an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, to complete a domestic violence offender treatment program unless the court makes written findings for the record explaining why such an order would be inappropriate. Although we know many domestic violence offenders are arrested for crimes under the sections listed above the number of offenders ordered to attend group varies widely across judicial districts management programs that may be inappropriate for the crimes committed.



RESULT

SB 2004. DOMESTIC VIOLENCE OFFENDER TREATMENT PROGRAM.

Provide an appropriation of \$300,000 to the department of health to provide grants to organizations that provide domestic violence offender treatment as a part of a graduated range of sanctions used by judges to hold offenders accountable for their criminal actions and for changing their behavior. The treatment programs shall either be in compliance or in the process of working towards compliance with the ND Adult Batterer's Treatment Standards.

<https://www.legis.nd.gov/assembly/65-2017/documents/17-0512-05000.pdf>



Handwritten notes: #2, HB 1537, 2-4-19, P1

City of Watford City

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Watford City, ND 58854

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2/4/2019

10:30 AM – Prairie Room

Urge a DO NOT PASS Recommendation for HB 1537

Chairman Koppelman and members of House Judiciary,

Thank you for the opportunity to share our concerns with HB 1537 with you today and to ask you to oppose this bill. Some will call this a tool in their toolbox. It may be, but in my professional opinion, it is not a good tool. There are some unintended consequences of this bill as well as some confusion of already available law that should be considered and reviewed before enacted a new section of NDCC 12.1-31.3. Both NDCC 25-03.1-08 and -09 regarding involuntary commitment and NDCC 14-07.1 regarding domestic violence protections should be reviewed prior to enacting additional sections of law under NDCC 12.1-31.

It is concerning to create a public safety protection or 'red flag order' without a civil involuntary commitment procedure attached to it. This is the time to point out that if the existing civil involuntary commitment procedure is improved with a firearms restriction or removal clause in it that may be a better tool in the public safety toolbox than a 'red flag order' would be. Effectively removing due process and adjudicating someone as a danger to themselves or others without a mental health evaluation or criminal prosecution is a burden that will impact how law enforcement agencies prioritize and respond to calls. This is an unintended consequence of HB 1537. These types of orders without civil commitment or prosecution attached put law enforcement officers and the public at unnecessary risk. Each 'red flag order' served will require extensive evaluation of case-by-case basis without attached civil commitment or criminal prosecution. Each red flag order will require tactically sound response plans due to the level of unknown risk. Red flag orders without commitment or prosecution will disrupt priorities and principles that ground agency response and SOPs.

Again, I encourage review and reconsideration of existing portions of NDCC 25-03 and NDCC 14-07 to improve the civil involuntary commitment process and the domestic violence protection order and process. Do not remove someone's due process with this bill and in the process of doing so unintentionally upend the apple cart known as Law Enforcement Priorities of Life Guiding Principles.

Thank you for the opportunity to urge you to recommend a DO NOT Pass on HB 1537.

Shawn Doble, Chief of Police
Watford City
sdoble@nd.gov

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Good Morning Chairman Koppelman and members of the House Judiciary Committee. My name is Jody Ranisate. I am a resident here in Bismarck and been in ND most of my life. I am here opposing the HB1537.

I want to explain a few things as to some they don't understand why I am opposing this because I have been deeply affected by suicide from a handgun. I have lost 3 very important people in my life to suicide including my baby brother SGT. Rocky Littlewind who died October 23rd, 2016. He was a Marine who was no longer active and struggled with PTS and other traumatic issues in life. I do believe the night of his death, alcohol was a huge factor and that he honestly didn't even realize he had pulled the trigger. My aunt Kay was a hotshot firefighter who jumped into forest fires from planes. She took her life August 1998, I was barely 18 when she died in front of the biggest Redwood tree in Oregon. My aunt was one of the hotshots who was involved in the 1994 Storm King Mountain fire where they lost 14 members of their crew.

My best friend Dane also February 21st, 2007 took his own life while stationed at Ft. Campbell KY. The Blackhawk that his battle buddies were on were shot down and he was here stateside (he was suppose to have been overseas) and had survivors guilt believing that he should have been there with them. He was put on suicide watch and hours after being deemed okay... took his own life in his apartment.

These three deaths especially my brothers has taken me through a whirlwind and I am still very much struggling with my brother's death, but I know that if they were all alive today... they would be opposing this bill especially my brother who lived for shooting his guns and had a very avid gun collection. His therapy was shooting his guns.

The VA failed my brother, the time when he was finally willing on his own to get some help... they told him that unless he was an absolute threat to himself or others, he would not be able to see someone for mental health for at least 3 months. I didn't know about the Marine Corps League, nor did I know much about the Vet Centers at that time. The hardest part for me is my failing them. While mindfully I know that I didn't, my heart says differently... With my aunt, we didn't even know she was having any issues. There was no indication.

I am a supporter of the 2nd Amendment. My family are all gun owners including my son who has owned a gun since he was 4 years old. I am not against gun control. I am against a bill that has so many loopholes and too many gaps in there to protect our due process and a person's right to bear arms. I own guns, I have been seen by mental health most of my life. I had a very traumatic childhood and was also in a very controlling marriage that was very unhealthy. If my ex-husband who currently has custody of my younger three children and has done a very wonderful job alienating my children... he could pull this card and get my guns taken from me just because he wants to keep my kids away from me more. This bill will not protect me or anybody else from this without a lot of repercussions including loss of firearms, proving that we are mentally fit, court fees and attorney fees and the stigma of supposedly not being fit to having our firearms. Because I have seen a counselor for my mental health is not enough grounds to say I am not mentally fit to have my guns and that I am a danger to anybody else.

I am an advocate for veterans and have been for a long time, well before losing my brother. My concern is that this will hurt our veterans especially if a family member or ex or even a neighbor or a mental health advocate just has a feeling that they are a danger to themselves or to others. I've had many

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veterans already messaging me about this. They are scared because there mental health is the shooting range.

Let me also make this clear: I am a major advocate for Suicide Prevention and Awareness, but I feel and have seen the ramifications in North Dakota that we are lacking in services for Mental Health and let's not forget our Meth/Opioid Drug problem.

There are glitches in all of our systems not just here in ND, but all states including where a member of the air force was able to purchase firearms after he was charged with a domestic violence charge and then proceeded to shoot up a church in Texas. This happens in many situations to where there are glitches in the system. Instead of writing a bunch of new laws, Lets fix the ones that we have currently on the books.

We need to revamp the mental and behavioral health system and also redo the background check system in North Dakota. In a poll in February 2018 by Quinnipiac University- 97% of Americans including 99% of Democrats, 97% of Republicans, and 97% of gun owners support requiring background checks on all gun sales. Strong support has come from NRA members with at least a 74% supporting comprehensive background checks which is something that ND doesn't do.

In at least 90% of cases, firearm background checks processed through NICS are determined almost immediately. Since the federal background check requirement was adopted in 1994. Over 3 million people were legally prohibited from possessing a gun which includes convicted felons, domestic abusers, and the severely mentally ill have been denied a firearm transfer or permit. 2017 alone, 181,000 attempted gun purchases were denied.

But... like I mentioned... the system has glitches and that needs to be corrected including North Dakota. For instance. I had a protection order on my Ex fiancé and he managed to break into my home when I wasn't there and was staying in my basement (which I was in the process of moving out of so I didn't go down there till I was moving my stuff out) but finding that out was scary because I didn't know what he was capable of at that time due to our split, but there wouldn't have been anything that law enforcement could do (we called and they said it was a civil issue)

In Maryland, the red flag law went into effect last year in October, there have been over 300 protection orders across the state, and many of the individuals who have had their guns taken are still fighting the system to get them back and a 61 year old man, Gary Willis, was shot and killed as a result of this red flag law when law enforcement went to remove his firearms. The niece stated that he was a very nice man, who honestly didn't deserve to die... The question I have is... did he understand why they were there and could this have been prevented. He obviously felt his life was in danger. There isn't much more to this story in the articles as it states that an aunt requested this, but there are no reasoning's why.

I know many people who have depression and have been diagnosed with it, that doesn't mean they are going to turn it on somebody else or themselves which is another reason I don't believe that this bill is right. There's talk that the laws will be harsh for those who lie about whether they are in danger or having falsified a report... with the glitches that we already have in the system... this will end up being a slap on the wrist and we all know this as the court system here in ND is and can be a joke.

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I am in complete agreement of keeping people safe. That is not on trial or being questioned here. Let's improve Mental Health, stop prescribing so many medications- which has so many horrible side effects which most of them include suicidal ideations or tendencies and you usually have to take another one to counteract the side effects to the first or second one.

We also live in a state that honestly is depressing in the winter time with many being diagnosed with Seasonal affective disorder. Writing more bills is not going to stop the suicides. Improving people's lives, improving mental and behavioral health, educating, not prescribing so many medications and looking at more holistic approaches to helping others and correcting the background checks we have here in ND would definitely help.

Let me tell you a story: A friend of mine just a little over a year ago lost his 11 year old to suicide. He had legally purchased this handgun, put it in his safe (he's an OTR truck driver) and while he was sleeping... his daughter went and got his keys for the safe and took her own life in her closet. Her dad was a law abiding citizen... What else could he have done? Her best friend several months later hung herself. Trigger Locks were mentioned. I wish my son was here today to prove that they are packable.

I wish I could say that all suicides are preventable, but deep down... I am not sure, but it doesn't mean I'm against suicide prevention and awareness. I am on the front lines of trying to educate and help anybody who feels that suicide is the answer. If they are bent on doing it... they will find a way. No matter what... I feel that this bill is only going to harm so many including our veterans who are going to seclude even more and not talk about their struggles.

Several Months after my brother died... I wanted to die. I had my firearm sitting on my end table by my bed... Instead I sat on the floor against the wall, drunk with a big bottle of rum and a knife to my wrist. As emergency personnel- I knew exactly where to cut to make sure that I succeeded. Because of the Veteran Community I am part of and some amazing friends... I am here today. My story and my brothers is not done. I share my story and my brothers as much as I can. My release is also gun therapy. This law had it been in law when I wanted to take my own life... I would have lost my firearms potentially for a year. I could not have afforded to go to court, see a mental health professional (mine of 30 years died in 2015 to a heart attack)

I am begging for this bill to be opposed and for us to fix the glitches we have in the bills here in ND and work on the background checks we have here in the state of ND. Thank you

Testimony on HB 1537
House Judiciary Committee – February 4, 2019

~~HB 1537~~ #4
HB 1537
2-4-19
Handled out by Rep. Rands
P. 1

My name is Thomas Thompson. I was born and raised in Dickinson and graduated from high school there. I received a Bachelor of Science in Civil Engineering from the University of North Dakota in 1982. I am a registered Professional Engineer in the State of North Dakota. I've lived in North Dakota almost my entire life except for 1 1/2 years when I was just out of college and 2 years in Billings, Montana, (Fall 1989 - Fall 1991). I worked for the Federal Government as a civil engineer for 37 years. I retired last May, and I continue to reside in Bismarck. I will always be a North Dakotan.

I attended the hearing on the proposed House Bill No. 1537 this past Wednesday, January 30, 2019. I think Mr. Gosch gave an excellent discussion of the shortcomings of this proposed legislation. After reading this bill again, I can say this does not contain due process. Or, due process only begins once the government has seized a person's firearms - this is not due process.

Anyhow - I wish to make a point that was not covered at the hearing concerning "Violence or cruelty toward an animal;" (the paragraph from the proposed legislation is copied below - specifically line 30 of Page 5 of the proposed legislation)

12.1 31.3 04. Content of petition

1. A petitioner may file a petition for a public safety protection order upon receipt of credible information the respondent poses a risk of personal injury to self or others by having a firearm in the respondent's custody or control or by purchasing, possessing, or receiving a firearm.
2. A petition filed pursuant to this section must allege the respondent poses a risk of personal injury to self or others by having a firearm in his or her custody or control or by purchasing, possessing, or receiving a firearm.
3. A risk of personal injury to self or others may be shown by:
 - a. An act of violence or threat of violence to self or others within the last twelve months
 - b. Conviction of or arrest for domestic violence, sexual assault, stalking or harassment;
 - c. **Violence or cruelty toward an animal;**

My problem with this sentence concerning "Violence or cruelty toward an animal" is that this statement is very broad. Now - I'm not one to go around treating animals violently or cruelly, however, I do hunt. And while many of my neighbors or most of the other folks that live in North Dakota probably don't think hunting is cruel - I think there are a lot of groups out of our state - many of them animal rights groups - that do not think the same. A piece of legislation (should it become law) like this could be used by a lot of groups to make life fairly miserable for those of us that own firearms and choose to hunt. One might find themselves having to go to court, hiring an attorney, etc., and spending a lot of their own money to get their property back.

In addition, I wonder what livestock producers might feel about this sentence in this proposed legislation. I could see this as a tool for animal rights groups to go after some livestock producer they may not agree with just to make their point - and make life a little miserable for the producer as he or she has to again, hire an attorney and go to court to get their property back.

Although the proposed legislation intends to limit the actions of a petitioner, or who file a petition, I would not put it past these animal rights groups to have someone act on their behalf. These groups seem to have a nearly inexhaustible supply of money from their donors - more money than myself, or a livestock producer will probably ever have. I don't think they would have to work hard to find someone to act on their behalf even if that person might be subject to a penalty.

This is just a small point of my disagreement with this legislation. The bigger issue I have, as so many pointed out at the hearing, it is a violation of the 2nd and 4th amendments, and a lack of due process. I respectfully request that you vote DO NOT PASS from committee. Thank you.

Thomas Thompson Bismarck, ND

#4 Handout 2-2-19
HB 1537 P2

NDLA, H JUD - Shimek, Delores

From: Potter, Christopher <Christopher.Potter@k12.nd.us>
Sent: Tuesday, January 29, 2019 8:02 PM
To: Becker, Rick C.; Buffalo, Ruth; Hanson, Karla R.; Jones, Terry B.; Karls, Karen; Koppelman, Kim A.; Magrum, Jeffery; McWilliams, Aaron; Paulson, Bob L.; Paur, Gary A.; Roers Jones, Shannon; Satrom, Bernie L.; Simons, Luke; Vetter, Steve M.
Cc: NDLA, H JUD - Shimek, Delores
Subject: In Support of HB 1537

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Mr. Chairman, members of the House Judiciary Committee:

My name is Chris Potter, I am a school counselor at the Richland #44 Public School District. I recently retired from a 25-year law enforcement career, the last 12 years serving as a school resource officer and campus police officer at Fargo South High School, NDSU, and Maple Valley Public Schools. I am a co-founder of the North Dakota Association of School Resource Officers (www.ndasro.org) and currently serve as our association's president.

On behalf of the NDASRO board of directors, I humbly ask that you grant a **do-pass** recommendation to HB 1537, colloquially known as the Red Flag Public Safety Protection Order. As school safety stakeholders we recognize there is no "one-solution" or quick fix to ensuring the safety of our children. We subscribe to the philosophy that having a "toolbox" of options is necessary to mitigate a wide variety of safety threats in a dynamic world. We believe this proposed legislation will be a valuable tool for protecting kids and schools.

NDASRO's support of HB 1537 is not taken lightly by our membership, and has spurred many strong conversations about gun rights, due process, and balancing individual liberties with public safety. We believe HB 1537 strikes a vital balance among these interests, and should receive a do-pass recommendation from your committee.

Thank you for your consideration of this testimony, and your service to the great state of North Dakota.

Respectfully,

Chris Potter

cc: Delores Shimek - Please include this testimony in the record, thank you!

Chris Potter
PK-12 School Counselor
Richland #44 Public School District
christopher.potter@k12.nd.us

Richland Junior & High School – Colfax, ND
Office: (701) 372-3713 Fax: (701) 372-3718

Richland Elementary School – Abercrombie, ND

Office: (701) 553-8321 Fax: (701) 553-8520

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2-4-19
p.3

"Go confidently in the direction of your dreams. Live the life you imagined."
-Henry David Thoreau

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2-4-19
Handouts p. 4

Vetter, Steve M.

From: Tom Reiten <tomreiten@gra.midco.net>
Sent: Monday, January 28, 2019 12:32 PM
To: Vetter, Steve M.
Subject: House Bill No. 1537

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Representative Steve Vetter:

My name is Thomas C. Reiten. I live at 4620 Loamy Hills Pl., Grand Forks, ND. I am writing in regard to House Bill No. 1537. Except for the five years, I served in the U. S. Army, I am a life-long resident of North Dakota. I have taught the hunter safety course for the North Dakota Game and Fish Department for over forty years. I am a certified rifle, pistol, shotgun and home firearms safety instructor. I am a concealed carry test administrator for the North Dakota Bureau of Criminal Investigation.

I oppose the passage of the House Bill No. 1537 (Bill) on the following issues:

- First, let me establish that I feel the Bill violates the second and fourth amendments to the US Constitution, but if enacted the courts will have to decide that issue.
- The Bill permits the seizure of an individual's firearms on the grounds of hearsay or supposition of what an individual might do in the future, which is not clear and convincing evidence.
- The definition of "Family or household member" is overly broad and opens the process to retribution in all manner of relational disputes. Additionally, from personal experience, I can attest that there are people who are just afraid of firearms without any rational basis, and there are individuals who feel no one should have firearms regardless of the constitutional guarantee and anyone who does is an imminent risk.
- The Bill permits the seizure of an individual's firearms without permitting the individual a hearing prior to the action.
- The individual whose firearms have been seized under the Bill has the burden of proving by clear and convincing evidence that he or she is not a risk after the seizure has already occurred, which will for most individuals entail the cost of hiring an attorney. If the individual cannot afford an attorney, they are denied their rights and access to their property, while the petitioner is exempted from any cost in this process.
- The Bill gives law enforcement powers based on what they think you are going to do, which flies in the face of being "innocent until proven guilty".
- If enacted law enforcement has neither the interest nor the facilities to properly store and protect the firearms that would be seized under this Bill. Remember these firearms are not evidence in a crime. We are a state where the majority of homes have firearms. Many individuals or families have multiple firearms or even "collections" which could be seized under this Bill. The value of the seized firearms can easily run into tens of thousands of dollars. Who is going to liable for any damage incurred in the seizure and storage?

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2-4-19

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Based on these and the other fatal flaws in this Bill I ask that you vote not to pass it from committee.

Sincerely yours, Thomas C. Reiten





Adventure Team

RAX Adventure Team
128 Bear Creek Trail
Moreland, GA 30259
1-770-755-6406
RAXadventureteam@hotmail.com

#4 Handcut 2-4-19
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P6

Chairman and members of the Judiciary Committee:

My name is Clayton M. Pederson, representing the RAX Adventure Team, based in Moreland Georgia, with members across the United States in Alaska, Virginia, Texas, Florida, Georgia, South Dakota, Wyoming, Vermont, and NORTH DAKOTA. I am the Vice President of RAX Adventure Team and reside in Sioux County of North Dakota along the ND/SD border. I also am the Retired National Rifle Association Sr. Field Representative for North & South Dakota (2007 – 2016). I currently own and operate our cow/calf production on our Sioux County ranch with my wife and children. It is unfortunate that I cannot attend today's hearing, but wanted to submit my written testimony on House Bill 1537 for the record.

RAX Adventure Team has met and discussed this issue of House Bill 1537 which has been introduced and want to encourage a DO NOT PASS recommendation on this bill and want to explain why we give this recommendation.

This bill does not afford the Constitutional Due Process rights we as citizens are all guaranteed under the 5th Amendment, where it is stated "No Person shall be....deprived of life, liberty, or PROPERTY, without due process of law;...". This bill will do exactly this. There would be no actual crime committed, no actual arrest being made, and the assumption of guilt will be applied, not by a jury of peers, but by a representative of the "state", such as a Law Enforcement officer, who upon their signature alone of an affidavit would be able to submit this to a single judge, who has the sole discretion to issue a Public Safety Protection Order which is good up to 1 year with no representation in a court of law, just 1 person making a decision based on what could be truthful, skewed, untrue, even vengeful statements by another individual. It is really alarming that with this bill, a warrant could be issued and a person's PRIVATE PROPERTY can be searched, invaded, and even confiscated with NO CRIME having been committed or the accused being charged. This would even violate the 6th Amendment as there would be no "speedy public trial" as there, again has been no criminal charges with forth to have a trial. Just he said/she said accusations that may or may not be true. This bill if passed would also in turn make a person GUILTY until proven INNOCENT, which is the exact opposite of what were born with as rights and as US Citizens. We are to be presumed INNOCENT until proven GUILTY. That is it, and House Bill 1537 does the exact opposite, violating the US Constitution in numerous instances.

House Bill has been "tagged" as the Red Flag Law, and held as an example (poor on in my opinion) as a way to stop an array of events that haven't happened yet, as if this bill will somehow help see the future of what a person will do. What it says is this...if someone you know, with broad definitions of a sufficient relationship of which the COURT will determine, can make an accusations out of any emotional whim and in essence make that person's life miserable for a year,

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possibly more, costing that person endless stress, money, hours, and pain all because of “assumed guilt” with no crime – no victim. The ND School Superintendent came out in support of this bill, which is ironic because she herself was in the news not so long ago because of her own personal issues of domestic dispute....maybe she should be put under “RED FLAG” assumption. Yet that seems to have been forgotten and now she is out there telling others how the LAW should apply to them, when she can’t even keep her own personal issues in check.

The biggest issue here is also the fact that you could have a situation of “revenge” between an ex boyfriend/girlfriend, ex-wife/husband, disgruntled roommate, etc. They could “swear” that you are a threat to them, others or yourself, lie about just about anything (who could image a person lying..lol), to make a formal accusation and convince those in authority to issue the order. This would then start the ball rolling and depending on where this takes place in ND, could result in a Law Enforcement officer and/or Judge who is unfriendly to the Constitutional and especially to the 2nd Amendment, issuing the Public Safety Protection Order. Think it can’t happen? Think we don’t have dishonest people in our Judiciary and Enforcement system? Today Jan 29th 2019, there was a Burleigh County Sheriff’s Office employee sentenced for just that, dishonesty, drugs, theft, and total disregard for the public. They do exist, and to give them that kind of “power”, is irresponsible and truly Un-Constitutional.

In closing, this is nothing more than a back door firearms confiscation ploy, defended and supported by those that have been unable to win in the “court of public opinion” and in past legislation attempts. The goal here isn’t really about saving lives, it’s about control and depriving a person of their CONSTITUTIONAL RIGHTS, especially that of due process and confiscation of personal property. We urge a NO VOTE and a DO NOT PASS on House Bill 1537 today.

Clayton M. Pederson

**Vice President – RAX Adventure Team – Hunting/Shooting/Sportsmen’s Organization
ND/SD National Rifle Association Sr. Field Rep (Retired)
Concerned North Dakota Resident of Sioux County**

*Clayton Pederson
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Theshootist93@gmail.com*

#4 HB 1537
2-4-19
Handouts p8

North Dakota's Red Flag Bill is Authoritarian

HB1537, known more informally as North Dakota's "red flag" Bill, has spurred quite a bit of controversy. The legislation seeks to create a process to remove firearms from the homes of people who are rumored to be dangerous to themselves or others. The bill's proponents cite this as a possible way to help combat mass shootings and suicides. However, the truth is far more damning.

The Fifth Amendment of the U.S. Constitution mandates that no one shall be "deprived of life, liberty or property without due process of law." Although this should be clear to anyone with a basic comprehension of English, it's often ignored by judges and politicians. Depriving people of a constitutional right before a trial and without charges tramples on the notion of *innocent until proven guilty* and severely degrade the core values of justice.

Proponents argue due process is respected by allowing the deprived to appeal to the courts to reinstate their rights. However, this backward process would imply that the second amendment is a privilege, not a right. Furthermore, the instances of state agents finding cause for a warrant and subsequently seizing private property while denying access to a constitutional right seem to be a perfect setup for a kangaroo court system. There is a serious risk that citizens found guilty of nothing and charged with no crime will be paying expensive fees to petition the courts to restore what should be their constitutionally guaranteed rights. Such concerns aren't just wild superstitions. Our nation's history of the corrupt process of civil asset forfeiture gives ample reason to believe the aforementioned outcome is more likely than not.

If the open assault on our rights and criminal justice system wasn't a reason enough to reject red flag laws, one should note the paternalistic tone of the advocates. Proponents are selling this bill as a way to reduce suicides. Let's take a step back and think about the core of this argument. We have authority figures claiming they need the means to deny you of your constitutional rights in order to protect you from yourself. This disturbingly authoritarian doublespeak implies that some of our elected officials believe that people can't be trusted with their rights. This clear attempt to coax ordinary citizens into surrendering their rights should be rejected as the incursion on free society that it is.

North Dakotans should also pay very close attention to states that have implemented these laws. In places like Maryland and Florida, success isn't measured in lives saved. Intuitively, it's impossible to determine how many lives were saved or if lives were ever truly at risk; thus the only practical measure of success for such a law is the number of guns seized and people denied their rights. North Dakotans should resist the trend of assumed guilt and demand elected officials to vote no on this horrid legislation.

Raheem Williams - Policy Director North Dakota Young Republicans





GUN OWNERS OF AMERICA

8001 Forbes Pl Suite 202, Springfield VA 22151
703-321-8585 / gunowners.org

January 16, 2019

North Dakota State Capitol
C/O Rep. Sebastian Ertelt
600 E Boulevard Ave Dept 110
Bismarck, ND 58505

GOA Opposes HB 1537

Dear Representative Ertelt:

Gun Owners of America opposes Red Flag laws, which are better known as Gun Confiscation Orders.

Under these Orwellian Gun Confiscation Orders, a "secret court" can strip a gun owner of his constitutional rights based on a showing as low as "reasonable" suspicion that the person is "dangerous."

But that claim of "danger" need only be a subjective belief in the mind of the accuser.

The gun owner doesn't even have to be accused of committing a crime. And yet, he can have his Second Amendment-protected rights suspended -- in truly *Minority Report* fashion -- even though he or she was NEVER going to commit a crime.

And this gun confiscation will be done without a jury trial ... without legal representation before the court ... without facing one's accuser or being able to challenge the accusations -- in short, without any Due Process.

In an *ex parte* case, when only the accuser is in the room, a judge will sign virtually any gun confiscation order that is put before him.

A New Mexico judge, for example, entered an *ex parte* order against [David Letterman](#) because a housewife alleged that he was sending her coded signals over her TV screen.

A study of Gun Confiscation Orders in Seattle, Washington, found that only [one request](#) has ever been denied.

And in Massachusetts, a liberal state representative, Barbara Gray, indicated why protective orders tend to be granted so easily: "I think judges grant the restraining orders without asking too many questions."

So the "secret court" proceeding will provide the excluded gun owner with no protection whatsoever against the suspension of a wide variety of constitutional rights.

The first thing the gun owner learns of the obliteration of his Second, Fourth, Fifth, and Fourteenth Amendment rights is the "knock-on-the-door" in the middle of the night by police, ready to ransack his house, and, if he resists, to arrest or kill him.

Sadly, we've already seen the police shooting of 60-year-old Gary Willis of Ferndale, Maryland, who was shot to death when he answered his door at 5:17 a.m.

Mr. Willis is dead because of Maryland's Gun Confiscation Orders. His niece said, "I'm just dumfounded right now. My uncle wouldn't hurt anybody."

Yet even while these Gun Confiscation Orders infringe upon the rights of the law-abiding, they would not have stopped the mass shootings that our country so tragically experienced last year:

* **Thousand Oaks, California (November 2018)**. California has a red flag law, and yet despite a mental health task force visiting the killer's home, they did not take his weapons from him.

* **Santa Fe, Texas (May 2018)**. Not only has Governor Greg Abbot has stated there were no "red flags" in the life of the school shooter, the killer stole his weapons -- which means he would have evaded any gun control law designed to disarm him.

* **Parkland, Florida (February 2018)**. A red flag law would have been ineffective in preventing the Valentine's Day killer -- given that the family defended his emotional state to authorities during the dozens of times he was investigated prior to the shooting, and since authorities consistently found him to be a "low risk."

Again, Red Flag Gun Confiscation Orders have been and are an utter failure, even while they can be maliciously used to disarm law-abiding and unsuspecting gun owners.

For all these reasons, Gun Owners of America strongly opposes any Red Flag Gun Confiscation Order legislation such as HB 1537.

Sincerely,

Erich Pratt
Executive Director

There are four types of orders that address contact in North Dakota: **Domestic Violence Protection Order (DVPO)**, **Disorderly Conduct Restraining Order (DCRO)**, **Sexual Assault Restraining Order (SARO)** and **Criminal Order Prohibiting Contact (No Contact Order)**. It is important to know the differences between the four. Below the SARO is explained. The DVPO, DCRO and No Contact Order definitions can be found in our *Understanding Disorderly Conduct Restraining Orders* brochure.

Type of Order	Sexual Assault Restraining Order (SARO)
North Dakota Statute	12.1-31-01.2
Who obtains the order?	The petitioner (victim) applies for the order through civil court.
How is the order obtained?	The petitioner (victim), or the parent, step-parent or guardian of the minor child who is the victim, applies for the order through civil court.
What relief is available?	Prohibits the respondent from contacting, harassing, stalking, or threatening the applicant, and from appearing at the applicant's residence, school, and place of employment.
Is there a hearing?	The hearing is held within 14 days to determine if the court will extend the temporary sexual assault restraining order and grant a sexual assault restraining order.
Are firearms or other weapons removed through this order?	There is no requirement for the removal of weapons.
How long does the order last?	An SARO can be granted for up to two years.
Violation of the order	A respondent may be subject to immediate arrest or arrest upon the establishment of probable cause.
Is there a charge for applying for the order?	There are no filing or service fees for an SARO.

NORTH DAKOTA ORDERS DEFINED

#1 Handout 2-4-19
HB 1537

P12

There are three types of orders that address contact in North Dakota: Domestic Violence Protection Order (DVPO), Disorderly Conduct Restraining Order (DCRO) and Order Prohibiting Contact (No Contact Order). It is important to know the differences between the three; please review the following chart below for more information regarding each order.

Type of Order	Domestic Violence Protection Order (DVPO)	Disorderly Conduct Restraining Order (DCRO)	Order Prohibiting Contact (No Contact Order)
North Dakota Statute	14-07.1-02	12.1-31.2-01	12.1-31.2-02
Who obtains the order?	The petitioner (victim) applies for the order through civil court.	The petitioner (victim) applies for the order through civil court.	The state/court orders it through a criminal court appearance.
How is the order obtained?	An order is obtained by a victim who can show actual or imminent domestic violence - must be a family, household member or any other person who can establish the relationship between the person and abuser is sufficient to issue a DVPO.	A victim who is seeking relief from disorderly conduct as defined by statute (unwanted acts, words or gestures that are intended to adversely affect the safety, security or privacy of another person) may obtain an order. This order does not require a relationship.	The court may order a defendant who is charged with a crime of or threat of violence, stalking, harassment or sexual offenses.
What relief is available?	Additional relief may be included, such as temporary custody/ visitation and possession or return of property.	This order only addresses contact between the two parties.	This order only addresses contact between the two parties.
Is there a hearing?	There is a hearing in civil court where the judge hears from both parties and makes a decision. An advocate may accompany you to the hearing.	There is a hearing in civil court where the judge hears from both parties and makes a decision.	The order is included in a criminal proceeding to address the defendant's bond conditions.
Are firearms or other weapons removed through this order?	Respondents may be restricted from possessing or obtaining any firearms if there is a DVPO in place and the surrender of all firearms or dangerous weapons to law enforcement for the length of the order.	There is no requirement for the removal of weapons.	The state/court can require firearms or other weapons to be surrendered.
How long does the order last?	There is no length of time specified for the order. It is determined by each individual judge in ND.	A DCRO can be granted for up to two years.	This order is most commonly in place through the length of the criminal case.
Violation of the order	A respondent may be subject to immediate arrest or arrest upon the establishment of probable cause.	A respondent may be subject to immediate arrest or arrest upon the establishment of probable cause.	If a defendant violates the order, he/she may face revocation of bond or arrest.
Is there a charge for applying for the order?	There are no filing or service fees for a DVPO.	There is an \$80 filing fee for a DCRO, which may be waived in special circumstances, such as domestic violence.	There are no fees associated with this order.

HB 1537
2-11-19
Handouts p1

Vetter, Steve M.

From: Kevin Fire, Ph.D. <kfire@hearingnd.com>
Sent: Sunday, January 27, 2019 9:41 PM
To: Vetter, Steve M.
Subject: HB 1537

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Dear Representative Vetter,

My name is Kevin M. Fire. I live at 921 Reeves Drive, Grand Forks, ND. I am writing regarding House Bill No. 1537.

I have been a resident of North Dakota for the last 29 years. I own two audiology clinics, one in Grand Forks, ND and one in Lakota, ND. I am also an emeritus professor at the University of North Dakota.

I am a Hunter Safety Instructor for the North Dakota Game and Fish Department and have done this for the last ten years. I am a USA Shooting Certified Rifle Coach. I am also a Certified Shotgun Coach and a Level I Range Safety Officer certified by the National Range Officer Institute. I am a trapshooting coach for Grand Forks Central High School. I am also a competitive shooter in a number of disciplines at the local, state, and national level.

I oppose the passage of the House Bill No. 1537 (Bill) based on a number of issues:

- My interpretation of the Bill as written is that it would violate the second and fourth amendments to the US Constitution.
- The Bill would allow both family members and non family members to initiate an action which would lead to the confiscation of private property without due process of law. This would allow situations such as in an acrimonious divorce, or a dispute with current (or former) family members, to lead to seizure of privately owned property.
- The Bill permits the seizure of an individual's firearms without permitting the individual a hearing prior to the action.
- The Bill permits the seizure of an individual's firearms on the grounds of hearsay or supposition of what an individual might do in the future, which is not clear and convincing evidence.
- The individual whose firearms have been seized under the Bill has the burden of proving by clear and convincing evidence that he or she is not a risk after the seizure has already occurred, which will for most individuals entail the cost of hiring an attorney. If the individual cannot afford an attorney, they are denied their rights and access to their property, while the petitioner is exempted from any cost in this process.
- The Bill gives law enforcement powers based on what they think you are going to do, which does not follow the legal tenet of being "innocent until proven guilty".
- If enacted, law enforcement very likely has neither the interest nor the facilities to properly store and protect the firearms that would be seized under this Bill. An important point to remember is that these firearms are not evidence in a crime. In North Dakota, the majority of homes have firearms. Many individuals or families have multiple firearms or even "collections" which could be seized under this Bill. The value of the seized firearms

(particularly in the case of rare, antique, or collectible firearms) can potentially run into tens or even hundreds of thousands of dollars. Who is going to be liable for any damage incurred in the seizure and storage?

- How will ownership be established in the case of jointly owned firearms?
- What if multiple family members own firearms? Will all firearms in the residence be confiscated, or only firearms that are clearly and individually owned by the respondent?

A common refrain heard in arguing for bills of this type is that “If it saves just one life, it is worth it!” An analogy can be drawn in the case of alcohol. For example, a citizen is known to have alcohol legally in their home. They are overheard (within the last year, as is written in this Bill) that they are going to substantially imbibe this alcohol. A person who overhears this statement is concerned for the safety of the person with alcohol in their home, as well as the safety of others if this person drinks and drives. Would it be appropriate for law enforcement to impound the respondent's privately owned vehicles to ensure that they do not drive drunk, thereby endangering themselves and others? Should the respondent then be required to attend a legal proceeding, to provide clear and convincing evidence that they should receive their vehicle(s) back, as they are not a danger to themselves or others? After all, if it saves just one life...

(In fact, if the intent of this bill is to protect ND citizens, a comparison of alcohol-related vehicle deaths and homicides in ND is in order. According to the CDC, in 2017 (the last year for which data is now available) there were 12 homicides in ND from **all** means (the number of these 12 homicides due to firearm violence was not reported) In the same year, 2017, there were 55 alcohol-related deaths on the roads and highways of North Dakota).

Based on these facts, and the legal and procedural flaws in this Bill, I ask that you vote not to pass it from committee.

Kevin M. Fire, Ph.D., CCC-A, FAAA
Clinical and Educational Audiologist
Fire Audiological Services, P.C.

Associate Professor Emeritus of Audiology
The University of North Dakota

19.0337.04002
Title.

Prepared by the Legislative Council staff for Representative Hanson
February 4, 2019

#1
HB1537
2-13-19
B.1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1537

Page 6, line 28, replace "B" with "A"

Page 10, line 18, replace "B" with "A"

Page 14, line 24, after "depository" insert "or install a trigger lock on the firearm"

Page 14, line 25, replace ", safe" with ":

a. "Safe"

Page 14, after line 29, insert:

"b. "Trigger lock" means a commercially available device that is operated with a key or combination lock that prevents a firearm from being discharged while the device is attached to the firearm. The term includes devices that obstruct the barrel or cylinder of the firearm and devices that immobilize the trigger."

Renumber accordingly