

# WRITTEN TESTIMONY SHEET

DATE: 03/15/2019

NAME: Fred Koch

SB/HB # and Title: HR19-1177

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PRIME SPONSORS: Tom Sullivan

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WRITTEN TESTIMONY:

*see attached*

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

House Bill HB19-1177

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March 14, 2019

Thank you, my name is Fred Koch, I am here to testify in opposition to HB19-1177

I am particularly concerned about Petitions for Extreme Risk Protection Orders / Search Warrants that are initiated by Law Enforcement Officers. In criminal proceedings the ultimate goal is to secure a prosecution of the lawbreaker. Indiscriminate and improper use of search warrants often do not result in successful prosecutions, failure is apparent as such they tend to be self regulating. (often referred as "Fruit from a poisonous tree") In case of Extreme Risk Protection Orders I can see no such regulating. History has shown that power without checks and balances leads to wholesale abuses. This bill as written will lead to abuse.

The HB19-1177 uses the terminology "Law Enforcement Officer or Law Enforcement Agency", "Law Enforcement Officer or Agency", "Agency", "Police". This Bill if it becomes Law will be a State Statute which appears to be enforced primarily by County or City Law Enforcement. I do not know **who** the agency is; is it the Chief executive Law Enforcement Officer, the Chief of Police, the County Sheriff, is it the Judge, who is the agency? Could this include FEMA, the FBI, EPA? If the state is infringing on a person's second amendment rights, most certainly it should not be line staff making decisions about a person's constitutional rights. The word "Agency" should never be allowed to be construed as any federal agency or world organization; Agencies that remove a person's constitutional rights by FIAT.

Why should the courts be able to continue a hearing for Termination of ERPO especially if it appears that the court would likely grant the Termination of the EXTREME RISK PROTECTION ORDER.

There is no set number of renewals for an ERPO or limits in attempts to issue an EPRO if it was denied the first time. This is a direct violation of our 5<sup>th</sup> amendment rights pertaining to double jeopardy.

Court's Ruling on the People v. Disher RELATIONSHIPS have been interpreted broadly to include almost anyone who knows the RESPONDENT; certainly anyone the Respondent has dated. It is amoral that a casual date could lead to your rights being taken away.

Furthermore, **Temporary extreme risk protection orders.** (...ATTESTING THAT THE PETITIONER IS A FAMILY OR HOUSEHOLD MEMBER.). under **13-14.5-102 (g)** almost any Tom, Dick or Harriet that says they know the Respondent can legally attest they are a FAMILY MEMBER. We as a society use the term FAMILY MEMBER as "the people who we trust the most; who have our best interest at heart" It should never be defined using terminology that includes every Tom, Dick or Harriet .

As I understand HB19-1177 if the Petitioner is not a Law enforcement Officer (or an informant working for Law Enforcement) probable cause does not exist for the issuance of a search warrant. Hence 13-14.5-108 (2) (a) "..... A TEMPORARY EXTREME RISK PROTECTION ORDER IN WHICH THE PETITIONER WAS

NOT A LAW ENFORCEMENT AGENCY OR OFFICER, SHALL **REQUEST** THAT THE RESPONDENT IMMEDIATELY SURRENDER ALL FIREARMS IN HIS OR HER POSSESSION .....

I am assuming that the refusal of the REQUEST for surrender of the firearms would escalate the encounter to issuance of a search warrant by the court or perhaps the court would issue an anticipatory search warrant which has its foundation based on preponderance of the evidence in an ex-parte hearing. Would that be legal?

The invasion of ones' domicile to exercise a search warrant is a violent and dangerous act for the citizen as well as Law Enforcement. Having deadly weapons pointed at one's person or family is a traumatic experience. Law Enforcement Officers have and will continue to have accidental discharges of their weapons yet they continue to exercise behaviors that would result in a civilian being prosecuted for reckless endangerment. What appears to be missing in this Bill is a tiered approach to obviate unnecessary force in the surrender of firearms to Law Enforcement. Before I retired I had a career in public service, I had the opportunity to read numerous million dollars contracts and participate in a number of dispute resolutions. I know it is what is written in the contract that counts. Similarly it is what is written in the Law that counts. Hyperbole from a Sheriff that he will just wait until the Respondent goes to the grocery store means nothing and gives me no confidence that innocent people are not going to come into harm's way because of this Bill.

In the case of mental illness it would seem that families who live and care for loved ones with serious mental illness have a history of behaviors (evidence and history) to give to the court so that appropriate planning and actions can be taken to minimize the level of legal and physical violence needed to provide for the health welfare and protection of all parties.