



Testimony **to amend** HB21-1298, Expand Firearm Transfer Background Check Requirements:

This bill (reengrossed version, 5/17/21) is likely to be found unconstitutional because it infringes on fundamental state and federal constitutional rights in violation of both the strict scrutiny and reasonable exercise tests.

The right to bear arms (and, in Colorado, the right to self-defense) are fundamental constitutional rights. Therefore, any statute that impinges upon their exercise must either (1) be supported by a **compelling state interest** and be **narrowly tailored** to meet that interest (the strict scrutiny test); or (2) be a **legitimate government end within the police power** and have a **reasonable fit between the statute's purpose and means** (the reasonable exercise test).

Section 2 identifies 12 misdemeanors and provides that those convicted of any of them cannot pass a background check to purchase a firearm for five years thereafter. It's likely that many of these are vulnerable to an overbreadth challenge. Because the 12 misdemeanors the bill identifies will likely fail to measure up under either the strict scrutiny or the reasonable exercise standard, a constitutional challenge is a serious concern.

The enumerated misdemeanors should be more narrowly tailored to pass constitutional muster, particularly in light of the fact that many of the offenses cited in the bill have numerous subsections that cover a wide range of conduct. Some of that conduct does not involve the use of force, deadly weapons, or violence.

CCDB is requesting amendments to narrow 11 of the 12 misdemeanor offenses enumerated in section 2 as outlined below:

- Page 4, lines 4-5: limit third degree assault to § 18-3-204(a);
- Page 4, line 6: strike misdemeanor menacing, as that offense never involves use of force or a deadly weapon (those elements make it an F5, not a misdemeanor) as accomplished by **L 027**;
- Page 4, line 7: strike sexual assault as described in § 18-3-402(1)(e). This is colloquially known as statutory rape/10 year age difference; the offense under this section only applies where the victim is at least 15 years old but under 17, and the actor is at least 10 years older. This offense should be removed because it does not involve use of force, firearms, or violence; therefore, it has no rational relationship to the general rationale behind depriving certain people of their right to a firearm;

- Page 4, lines 8-9: Unlawful Sexual Contact under § 18-3-404 should be removed. This misdemeanor offense never involves “force, intimidation or threat,” as that charge is a felony. Absent that element, it lacks a rational relationship here;
- Page 4, line 10: misdemeanor child abuse under § 18-6-401 includes a wide range of conduct, some of which involves no injury, violence, force, or weapons. It can be a very messy house, a child without proper car seat/restraint riding in a car, or a host of other fact patterns where no violence or injury is done to anyone. This should be limited to § 18-6-401(7)(a)(V).
- Page 4, lines 11-12: Violation of a Protection Order also includes a myriad of different ways to prove the offense, many of which don’t involve force, threats, or even contact with a victim. For example, § 18-6-803.5 covers temporary orders in a dissolution of marriage case (including a temporary order restraining a party from selling property). This should be limited to convictions “involving use of force or use of a deadly weapon,” consistent with the language in § 18-12-108(2)(c).
 - **L 030** will limit to VPO convictions under subsections (1)(a), “contacts, harasses, injures, intimidates, molests, threatens, or touches the protected person or protected property, including an animal, identified in the protection order or enters or remains on premises or comes within a specified distance of the protected person, protected property, including an animal, or premises or violates any other provision of the protection order to protect the protected person from imminent danger to life or health...” and (1)(c)(I), “violates a civil protection order issued pursuant to 13-14-105.5, C.R.S., or pursuant to 18-1-1001(9)(i) or 18-6-801(8)(i) by possessing, or attempting to purchase or receive a firearm or ammunition while the protection order is in effect.”
- Page 4, lines 13-14: At-risk persons crimes should be limited further in this bill. The only misdemeanors in § 18-6.5-103 are in (6)(a)—knowingly acts in a manner likely to be injurious to the physical or mental welfare of an at-risk person; (6)(b)—unlawfully abandoning an at-risk person; (9)(a)(I)—confines at-risk person in locked or barricaded room or other place as part of a continued pattern of cruel punishment or unreasonable isolation; and (9)(a)(II)—tying, caging, chaining or other physical restraints on an at-risk person. Of course, these crimes understandably evoke strong emotions, and while we do not condone the conduct, any misdemeanor offense should be limited to the use of force or use of a deadly weapon.
- Page 4, line 15: Harassment under § 18-9-111(1)(a) is strikes, shoves, kicks or otherwise touches a person or subjects him/her to physical contact. This should be limited to use of force cases. Note that if the “strike, shove, kick, or otherwise touches a person” results in bodily injury (any impairment of physical or mental condition, including pain) then it can also be charged as third degree assault.
- Page 4, lines 16-17: Bias-motivated misdemeanors under § 18-9-121 are knowingly causes bodily injury and by words/conduct places someone in fear of “imminent lawless action” to that person or their property. It should be limited to “knowingly causes bodily injury” only.
- Page 4, line 18: Cruelty to animals misdemeanors span a wide range of conduct, including abandoning a dog or cat (§ 18-9-202(1)(a)). Both for that subsection

specifically and the others, the rational relationship problem is evident. Only a felony conviction for this offense should apply.

- Page 4, lines 19-20: Possession of an Illegal Weapon under § 18-12-102(4) covers blackjacks, gas guns, and brass knuckles. This should be limited to illegal firearms.

CCDB is currently in an amend position, and would be neutral on this bill provided that the suggested amendments outlined above are adopted. We appreciate the efforts of the sponsor to address our concerns through L 027 and L 030, but we still respectfully request the bill to be further amended according to the analysis above to avoid constitutional challenges.

Tristan Gorman
Legislative Policy Coordinator
Colorado Criminal Defense Bar
720-988-5922
Tristan@gzdefense.com

Senate State, Veterans, & Military Affairs

HB21-1298 Expand Firearm Transfer Background Check Reqmnts

Typed Text of Testimony Submitted

Name, Position, Representing	Typed Text of Testimony
Angie Wuelling For Self	<p data-bbox="565 373 1476 443">Dear members of the Senate State, Veterans, & Military Affairs Committee,</p> <p data-bbox="565 485 1476 594">Thank you for allowing me to testify. Thank you to Representatives Judy Amabile and Steven Woodrow and Senators Julie Gonzales and Brittany Pettersen for bringing this life-saving bill to this committee.</p> <p data-bbox="565 636 1476 783">My name is Angie Wuelling. I am a wife, mother, speech-language pathologist, and small business owner. I strongly support HB21-1298 as it would help prevent people with recent violent histories from obtaining guns, as well as close the Charleston Loophole.</p> <p data-bbox="565 825 1476 1161">Over the past 17 months, I have lived through the sadness, anger, and anxiety of two shootings in community places that I frequent—the King Soopers on Table Mesa in Boulder, and the Circle K gas station on Kipling and 80th in Arvada. (A 14-year veteran with the Denver Police Department was shot at the gas station shooting, which occurred on 12/18/2019). Due to these shootings, I now always look for exits while in public. I have also had to explain to my 5-year-old that if we are in public and I say we have to “RUN” or “HIDE,” he must immediately comply.</p> <p data-bbox="565 1203 1476 1497">Before my son starts kindergarten, I will also need to emotionally prepare him for active shooter drills. I participated in these drills when I worked as a speech-language pathologist at a public preschool in Westminster. The teacher and I would usher 16 three- to five-year-olds into a dark classroom corner and huddle there for several minutes. We barricaded ourselves with nearby furniture. Many of the tiny, confused, and scared children—some of whom had significant disabilities—asked why we were hiding.</p> <p data-bbox="565 1539 1476 1759">In order to protect our loved ones and communities, we Coloradans must join the other 13 states who have some form of violent misdemeanor firearm prohibitions. These laws are associated with an 18 percent reduction in state homicide rates. In fact, if Colorado had a law like HB21-1298 prior to the Boulder shooting, the shooter could not have legally purchased a gun.</p> <p data-bbox="565 1801 1476 1898">HB21-1298 is also critical because it would close the Charleston Loophole. No one should be able to access a gun simply because their background check took longer than three days. This is crucial because</p>

	<p>background checks that are delayed more than three business days are four times more likely to result in a denial.</p> <p>I ask you to consider my testimony and vote “yes” on this life-saving, common sense bill.</p>
<p>Kay Harmsen For Self</p>	<p>Hello,</p> <p>As long time resident of Boulder, Colorado (21 years), my family and I support all legislation to curtail use of assault weapons, first and foremost, and the development of a research body to aid in depth of understanding as to what we can do as a community to keep guns off the streets.</p> <p>Prevention of gun violence is necessary, violations have gone on too long, lives lost, too little done to remedy, and now at our King Soopers, our longtime grocer since our children were little, it all hits too close to home. We support this bill in hopes that we can lend much needed support to our communities in keeping them safe.</p> <p>Best regards and tk you for the good work you are doing to take of the well being of all in our community.</p> <p>Kay Harmsen - Wilson</p>
<p>Kathleen Hagen For Moms Demand Action</p>	<p>Chair Gonzales and members of the Committee,</p> <p>Thank you for allowing me to testify today. Thank you Representatives Amabile and Woodrow, and Senators Gonzales and Pettersen for bringing this important bill to this committee. My name is Kathy Hagen. I live in Erie, am a small business owner with my husband, and have two sons who are college students. I strongly support House Bill 1298.</p> <p>I joined Moms Demand Action a few years ago, after the Parkland shooting and then the Colorado STEM school shooting. Sending my boys to high school, I felt helpless at the time, realizing that no school is immune to gun violence. I wanted to do something.</p> <p>When I joined Moms Demand Action, I didn’t consider myself a gun violence survivor. I didn’t know anyone who had died of gun violence.</p> <p>On March 22nd, I became a gun violence survivor. On that day, the Boulder mass shooting occurred. That King Soopers is next door to my father-in-law’s apartment and in the neighborhood I grew up in. I went to Fairview High School. While trying to absorb the horrific news of the shooting in my community, I received a phone call informing me that a very close friend of mine shot and killed himself. That morning, he kissed his wife and 17-year-old daughter goodbye, went into the woods, and took his life.</p>

	<p>In one day, I became a gun violence survivor. Many of you here may not have had gun violence touch your life, but all it takes is one day, and your heart can be ripped out by a terrible tragedy like mine. The heartbreak is unbearable.</p> <p>The good news is that we have brave legislators who are willing to put forth common sense gun legislation, like House Bill 1298, that can and will keep our communities safer. If this policy had been in place, the King Soopers shooter would not have been able to legally purchase his firearm, because he was convicted of violent misdemeanor assault in the past 5 years.</p> <p>Please consider all the kids who go to school and have to do active-shooter drills. All the people who were scared to go into a grocery store after March 22nd. All the people who are gun violence survivors. The heartbreak is unbearable. Please pass this bill into law.</p> <p>Thank you.</p>
<p>Megan Mars For Self</p>	<p>I support HB21-1298. The lives of people in this country are being neglected because of the lack of gun control. HB21-1298 is a common sense measure that is a positive step in the direction we need to go. I am a mom of a young daughter and I need to keep her safe. This is one way the government can help.</p>
<p>Amy Iacopi For Moms Demand Action for Gun Sense in America</p>	<p>Good afternoon chairperson Gonzales and committee members. My name is Amy Iacopi and I'm testifying today in support of the three gun sense bills introduced by the Colorado Democrats. Specifically, I'm writing in favor of HB21-1298. While I grew up with guns in my own household as my father is an avid sportsman, I didn't realize that people could use them to hurt humans until I was 9 years old. In 1989 a man in my hometown of Stockton, California walked into Cleveland Elementary School and shot and killed five people and wounded over 30 others. This violent and emotionally disturbed man had over ten years of criminal history including but not limited to unlawful ownership of weapons, court order violations, underage drinking and drug usage, armed robbery, and racist behavior. Sadly, these kinds of shootings are now an everyday occurrence in our country and I feel completely paralyzed as a parent to create change for my own children and broader community. If this man had been flagged after any of his violent misdemeanors, he could have received much needed care and the public would have been safer around him. I believe that everyone deserves a second chance but it takes time and effort to get there. This bill truly improves public health by implementing a five year ban on any weapons purchase after a violent misdemeanor. Thank you for your time.</p> <p>Amy Iacopi</p>

HB21-1298 Firearm Transfer Background Checks

5/25/2021 Keith Emerson Testimony before assigned Senate Committee

My name is Keith Emerson and I am testifying on my own behalf.

Before I begin with suggested changes I'd like to point out to you the Opinion article in today's Wall Street Journal titled "It's 'Open Season' in Minneapolis". The writer claims that in that city shootings are up 153% over last year, with black people (emphasis on "people") representing three-quarters of the victims. Crimes are up in Colorado too. To claim that these increases in violence are due to or even affected by the restrictions passed by this legislature in 2021 is ludicrous. Please don't pass further restrictions on the rights of regular firearm owners, like the preemption bill to allow Boulder to virtue signal or this bill that really isn't needed. With that preamble:

Page 4 lines 1-22 – ***The list of additional offenses for refusing a firearm transfer should be further limited and a distinction made between convictions for violent versus non-violent offences*** in the list of misdemeanor offenses resulting in failing the background check. For instance, while heinous, a conviction for abandoning a dog or cat (Section 18-9-202) does not imply someone will become a mass murderer.

Page 4, Lines 23-26 – Implies that a transfer can be held up until the Colorado Bureau of Investigation has completed its work and no determination will be made in the meantime. There is no time limit for this investigation to be completed, meaning that if the CBI sends a request to a third party and doesn't hear back from them, the transfer application can be held up indefinitely. ***Whether you think the current time limit of 3 days is incorrect or not, there needs to be some time limit or other requirement to force the CBI to complete its part of the process.***

Page 5, Line 4 – With the investigation already done and an appeal made, 60 days more days are allowed for CBI to check further and make an administrative decision. Two months is too long for ***the CBI's to complete its appeal review and the time limit should go back to the original 30 days.***

Page 5, Lines 9-12 – The note that having a pending case is not a reason to delay a firearm transfer has been struck and needs to be restored. In this country the hope is that a person is innocent until proven guilty.

But to close let me say that the single biggest change needed is a time limit for the CBI investigation.

Thank you for your time.

Boulder County supports evidence-based legislation that prevents gun violence and death in our communities and across Colorado and respectfully requests your support of HB 1198 today.

- As you know, the United States suffers from an epidemic of gun violence unparalleled in any other high-income nation.
 - [Americans are 25 times more likely to be killed in a gun homicide than people in other high-income countries](#)
 - Research has demonstrated that the U.S. does not have a higher prevalence of crime than other developed countries, but it does have more lethal gun violence (suicides and homicides) than all other developed nations.
- Opponents to gun violence prevention laws argue that any limit to the type or number of firearms available for civilian use would lead to more deaths in our communities.
 - However, research and data tell us otherwise...
 - [Data from the Centers on Disease Control and FBI demonstrate](#) that states with more guns have more gun deaths, and states with tighter gun control laws have fewer deaths.
 - This data analysis also revealed that laws banning people convicted of violent misdemeanors from possessing firearms are significantly able to reduce gun-related deaths.
 - [Additional research has found that states with more permissive gun laws had a higher incidence of mass shootings](#)
- House Bill 1298 provides a proven approach to preventing tragedies in our county and across the state.
 - By closing the Charleston loophole, Colorado will ensure that firearms are not in the hands of people who have committed violent crimes.
 - The existing “default proceed” provision allowed more than 4,800 prohibited purchasers to buy guns in 2017 nationwide before a background check cleared.⁶
 - Many default proceed cases require extra time and attention precisely because the firearm purchaser has a long record of dangerous red flag and
 - According to additional data default proceed sales are eight times more likely to involve a prohibited purchaser than other background checks.⁷
 - In cases where a sale went through under the default proceed procedure and the ATF was ultimately able to complete a background check, the FBI has reported that nearly 25% of the individuals investigated were

determined to be legally prohibited from purchasing or possessing a firearm.⁸

- 1298 prohibits the sale of firearms to people who have been convicted of some violent misdemeanors, and as stated earlier, the most effective laws in preventing gun violence are those that limit access to firearms among people who have been convicted of violent crimes.

- Denny Stong, Neven Stanistic, Rikki Olds, Tralona Bartkowiak, Suzanne Fountain, Teri Leiker, BPD Officer Eric Talley, Kevin Mahoney, Lynn Murray, and Jody Waters were lost to their loved ones and our community to senseless, preventable violence. These ten Boulder County residents are among hundreds of Coloradans that lose their lives senselessly to gun violence each year.

- HB21-1198's provisions are proven to prevent gun violence overall in the states where they have been enacted.
 - Boulder County respectfully requests your aye vote today in committee. Please don't hesitate to reach out to us with any questions.

Summer Laws; Policy Advisor, Boulder County Commissioners; 720-665-7095

Expand Firearm Transfer Background Check Requirements

Good evening, Members of the Committee. I'm Vincent Atchity, President and CEO of Mental Health Colorado. Mental Health Colorado is a non-profit organization working to achieve healthier minds across the lifespan for all Coloradans.

Mental Health Colorado fully supports this bill. Our community's prolonged epidemic of gun violence has normalized an unacceptable state of dis-ease.

We have been trapped in a repetitive waking nightmare. Parents send their children off to school and can't keep themselves from wondering whether they will survive the day. Worshippers of a peaceful and loving God can't keep themselves from wondering whether their holy hour of prayer may be interrupted by horror. Moviegoers check theaters for pathways to exits, just in case. And lately my own wife has admitted that a trip to the grocery store with our new baby begins with a check for the rear exits and ears alert for the sound of gunfire.

This is not healthy. This is not what we've set out to establish in forming a union, in creating a civil society.

We live in a state of disease, anxiety, and fear. We need to put an end to this repetitive waking nightmare and accomplish the civic purpose of *establishing and upholding the security of our Free State*.

Gun violence can and must be prevented.

The FBI's National Center for the Analysis of Violent Crime asserts that "*Prevention is not and cannot be a passive process. It requires a strong and overt commitment by communities to prioritizing public safety.*"

Experts agree that "The best predictor of future violence...is past violence" and list problematic behavioral history...such as history of stalking, harassing, threatening, or menacing—as a risk factor.

This bill will close a foolish timeframe loophole in background check requirements. And it will prohibit the transfer of firearms to individuals with a recent history of harassing, menacing, assault, sexual assault, child abuse, and cruelty to animals among other behaviors indicative of brutish and uncivilized disregard for the well-being of others.

That people with an adjudicated history of these kinds of behaviors, under existing law, are permitted to acquire firearms boggles the mind, really.

It certainly doesn't suggest that there is anything *well-regulated* about our approach to the keeping and bearing of arms.

"Well-regulated" and "security"—these are the words of the scarcely read and generally misunderstood 2nd Amendment that leap out at me. The amendment is protective of our security as a people, not of the rights of violent and antisocial individuals.

This bill makes an important and long-overdue move to regulate firearms for the sake of our security and our overall well-being.

Allowing menacing individuals to acquire firearms is not good regulation and undermines the security of our Free State.

We are grateful to the bill sponsors for their leadership in promoting the health and well-being of our community so that we may be hope to be free of this dis-ease.

Thank you for your support of this bill.