



Refuting and Responding to Arguments Against
 HB18-1436
 Zackari Parrish, III, Violence Protection Act

In March, a no-compromise gun rights group circulated talking points to senators and representatives against the Extreme Risk Protection Order bill then being written. The following is a deconstruction and discussion of their arguments against the bill. We will grant that they didn't know the final structure of the bill at that time, nor did we.

- 1) The proposal .. involves a court entering a "secret order" banning someone from possessing firearms....

13-14.5-107 (page 16, line 16) There is nothing secret about the order. It is presented to the respondent. There is nothing secret about who is the petitioner, as this person is named on the order.

13-14.5-104 (6) (page 9, lines 13-16) The petitioner is named in the summons, but in the case that the petitioner is fearful of harm to family or household, his or her address may be omitted from all court filings.
- 2)and confiscation of firearms that individual already has.

Actually, the bill provides for temporary removal of firearms to protect both the respondent and others while the individual is in crisis. Firearms will be returned when the ERPO is terminated.
- 3) Persons who would initiate the request for this order are the family and ex-lovers of the person.

13-14.5-102 (2)(b) and (2)(c) (page 3, lines 13 and 17-18) Ex-lovers would only be included as petitioners if they a) have a child in common, or b) resided with the respondent in the last six months.
- 4) For many people those two categories (family and ex-lovers) are going to be full of people who now dislike them and would be motivated to lie to the court. Additionally, the bill provides no penalty for lying to secure a GVRO (ERPO).

It is a sad state of affairs if one views one's family to be "full of people who dislike them." Evidence from other states is to the contrary, ERPO has not been used to be spiteful.

13-14.5-103 (page 4, lines 10 and 17) Included in the petition is an affidavit, signed under oath and penalty of perjury. For law enforcement, it is a sworn affidavit. There is a penalty for lying as the affidavit is an oath, and a false affidavit may result in prosecution.
- 5) Without any notice in advance to the subject of the order. You would find out when the SWAT team comes to your door to collect your guns.

For the safety of law enforcement in dangerous situations, it is better that the respondent doesn't have prior warning. Law enforcement's plan is for a more subdued intervention. These have been done in other states without the SWAT team approach, and without creating ambushes and shootouts.
- 6) The order may be issued using the very weak "reasonable suspicion" standard of evidence.

ERPOs are civil, not criminal procedures. "Reasonable suspicion" is not an evidentiary standard used in civil cases. Rather the standards are "preponderance of evidence" and the higher standard of "clear and convincing evidence."

13-14.5-103 (3) (page 5, line 2) For a temporary ERPO (which is done without the presence of the respondent), the standard is "preponderance of the evidence. The temporary ERPO is only for 7 days.

13-14.5-105 (2) (page 11, lines 6-7) For a full ERPO the standard of evidence is the higher "clear and convincing evidence."

13-14.5-108 (2)(e) (page 19, line 12) For renewal of ERPO, the standard of evidence is the higher "clear and convincing evidence."

- 7) The court would report the issuance of these order to the FBI within two days.

13-14.5-111 (2) (page 25, lines 9-11) Actually, CBI is to be notified on the same day as the ERPO is issued. Additionally, CBI upon receipt shall enter the order into the National Criminal Instant Background System (NICS).

- 8) The court is to have a hearing within 30 days of the initial order .

13-14.5-103 (5)(a) (page 5, line 14) Temporary ERPO – a hearing must be held in 7 days.

13-14.5-104 (1) (page 8, lines 1-2) Full ERPO "with enough advance notice to allow for participation or attendance"

- 9) Firearms belonging to other persons besides the respondent are subject of the order, and are seized if police think the subject can access them.

As stated repeatedly throughout the bill, all firearms must be surrendered which are in the respondent's custody or control. Aware that a person may have firearms that he or she has borrowed or is keeping for another, the bill provides for return of firearms to the rightful owner.

13-14.5-109 (5) (page 23, lines 3-14) If another person claims title to the firearms and law enforcement determines that person to be the rightful owner, the firearms shall be returned to him or her if a) the lawful owner agrees to store the firearm so that the respondent does not have access, and the firearm is not otherwise unlawfully possessed by the "lawful owner."

- 10) After 30 days, third party person can ask the court for the firearms.

The bill has no delay for the return of firearms to the lawful owner who is not the respondent, other than the time for law enforcement to determine ownership and compliance with the provision noted above.

- 11) Under such legislation, family members who oppose the Second Amendment could use something as simple as a pro-gun Facebook post to assert that a family member should have their gun rights stripped and their firearms confiscated.

13-14.5-103 (3) (page 5, line 2) A court will decide on" the preponderance of the evidence" for a temporary ERPO.

13-14.5-105 (2) (page 11, lines 6-7) A court will decide on "clear and convincing evidence" for a full ERPO.

It is difficult to imagine that the court would view a "pro-gun Facebook post" as rising to these evidence levels unless the post held an implicit threat to self or others.

- 12) Disgruntled current or former roommates would also be able to initiate the process.

13-14.5-102 (page 3, lines 17-18) It is true that a current roommate, disgruntled or not, could initiate an ERPO. But that roommate may be the person most in danger. A former roommate could only initiate an ERPO if he or she had resided with the respondent in the last six months.

- 13) Individuals can be denied their right to self-defense based on any number of emotionally-charged personal disputes, where no crime has been committed and no probable cause exists that a crime might be permitted.

ERPO is a civil procedure, not a criminal one. The court can only issue a temporary ERPO on "preponderance of the evidence" and a full ERPO on "clear and convincing evidence." Furthermore, firearms are not the only means one has for self-defense. In the National Crime Victimization Survey data for 1992-2001, of more than 27,000 crimes with personal contact, 0.9% of the victims used a gun in self-defense, but twice as many used another weapon, while most victims attempted to protect themselves through some other means (screaming, running, struggling, etc.).

- 14) The subject...may be limited to a single hearing, where if the subject loses, they may not request a new hearing, even if new evidence becomes available or their life circumstances no longer warrant such a prohibition.

13-14.5-108 (1) (page 17 lines 27 – page 18 line 3) During the 182-day period of the full ERPO, the respondent may request one hearing. Rather than tie up the courts with repeated requests for termination, the legislation envisions that the respondent carefully review his or her situation before filing and get his evidence in order for persuading the court. The temporary ERPO is only for 7 days, and the full ERPO is for 182 days. Renewals may be for up to a year, but the court must make its judgement on clear and convincing evidence.

- 15) Subsequent orders can be renewed indefinitely barring the names individual from purchasing a firearm (one year a time) and having their guns returned to them (three years at a time).

13-14.5-108 (2)(e) (page 19, line 19) It is true that the court can renew the ERPO for up to a year at a time, but this is only with "clear and convincing evidence." Let us remember that ERPO is to protect both the respondent and others from lethal violence.

13-14.5-110 1) (page 24, lines 7-20) There is no provision for 3 years for return of weapons. Upon the termination of ERPO, firearms must be returned if requested by the respondent, provided he or she successfully passes a criminal background check.

- 16) Any attempt to buy a gun by someone subject to an ERPO is a crime.

13-14.5-112 (page 26, lines 21- page 27, line 2) This is true. As the purpose of an ERPO is to separate a dangerous person from firearms, it stands to reason that penalties should be applied if that person purchases or possesses firearms. A person who is under an ERPO or temporary ERPO and who purchases, possesses or receives firearms is guilty of a class 2 misdemeanor.

- 17) This bill does not say what happens to confiscated firearms if they are not returned to the owner or the owner does not arrange for them to be transferred to a dealer for sale. Would they be destroyed, resold or otherwise disposed? Would the accused be compensated for the taking of their property?

13-14.5-110 (page 24, line 7 – page 25, line 1) Return of firearms is explicitly stated. Upon the termination of an ERPO or temporary ERPO, law enforcement and licensed federal firearms dealers will return the firearms upon a request from the respondent, providing that he or she passes a background check. Firearms that remain unclaimed in the custody of law enforcement after the termination of the ERPO shall be disposed of in accordance with the law enforcement agency's policies.

13-14.5-109 (1)(a)(I) (page 20, line 5) The respondent may sell or transfer possession to a firearm federally licensed firearms dealer.