



Chaffee County Board of Commissioners

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March 21, 2019

Dear State Senators,

The Chaffee County Sheriff and Board of County Commissioners appreciates the public safety intent behind HB 2019 – 1177 (“Bill”): Extreme Risk Protection Orders, but we have serious reservations about the bill as written. We have four areas of concern: legal issues; fiscal issues; lack of emphasis on mental health; and impacts to law enforcement.

Legal Issues

- 1) **Standard of Proof:** The admission of hearsay evidence is a lower standard than used in criminal law and this lower threshold will facilitate the filing of false or malicious complaints. Weak bill language on the prosecution of malicious complaints encourages corruption of the process and will lead to falsely accused citizens ultimately becoming the victims.
- 2) **Due Process:** The respondent receives less civil recourse than those actually accused of a crime. There is no initial cross examination of the complainant as the respondent is not present at the first hearing. The warrant can be executed without the respondent’s knowledge or an opportunity to respond to the allegations. The ERPO is approved by a single judge who may or may not have any familiarity or training pertaining to mental health. There is no provision for dissolution of the order at the request of the petitioner.
- 3) **Permanent Records:** In this digital age, the very filing of a request for an ERPO will become a part of an individual’s record, whether the claim is found to have merit or not. This, coupled with the broad investigative and search-and-seizure provisions, creates a high likelihood of damage to a respondent’s reputation. Due to the sensitive nature of these types of proceedings, the Bill does not classify whether ERPO court records are protected court documents. Additionally, it is unclear whether Colorado’s expungement statutes would allow a Respondent to expunge a Temporary ERPO, an ERPO and any associated legal proceedings from the Respondent’s record.

Fiscal Issues

- 1) **Implementation:** There is no adequate funding associated with this bill for implementation at the county level or for training of local law enforcement.
- 2) **Legal Representation:** Since ERPOs are treated as a civil matter, legal counsel for law enforcement is provided by the county attorney. Small rural counties lack large legal

departments and have not selected attorneys for expertise in mental health, search warrants, or criminal-type actions. Such counties will have to hire/retain additional specialized counsel.

- 3) **Lawsuits:** Due to the legal issues above, one can anticipate civil lawsuits against local law enforcement and would suggest language not imposing civil or criminal liability on any governmental entity who in good faith enforces any provision of this Bill. This represents significant exposure for smaller counties.
- 4) **Storage:** There is no funding for secure storage of confiscated or surrendered firearms.
- 5) **Mental Health Costs:** There is no funding for mental health evaluation of respondents or for costs of commitment. There is no funding for designation of mental health beds in local facilities or for increasing capacity to accommodate mental health commitments.

Lack of Emphasis on Mental Health

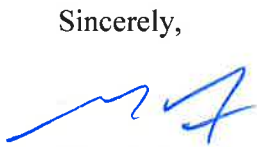
- 1) The bill fails to adequately address the underlying fundamental problem of mental illness.
- 2) The bill does not require a dual assessment of the respondent by a mental health professional under the Emergency Commitment statutes. It does not provide standards for respondent assessment regarding disposition of firearms.
- 3) If whatever subjective threshold for an ERPO is met, there is no accompanying order from the judge initiating any sort of continuum of care for the respondent.

Impacts to Law Enforcement

- 1) The aggressive protocols described in this bill will inhibit honesty in mental health investigations from both the respondent and family/household members.
- 2) The perceived low standard of proof, lack of due process, and broad search and seizure authority will create an adversarial situation that will be more likely to escalate to violence. The attempt to forestall mental health-driven violence will actually increase its likelihood.
- 3) By forcing law enforcement into this form of intervention, hostility toward law enforcement will increase. This is contrary to the public health and welfare and will manifest in unfortunate ways throughout the community.

All four of us are extremely concerned about mental health in Colorado and Chaffee County. And we acknowledge that mental illness is a significant contributor to gun violence in our communities. However, this bill, as written, has serious deficiencies that undermine its intent and will likely place it at risk of judicial review and/or lawsuits. We urge the legislature to slow down and take the time needed to develop an approach that addresses these deficiencies, to put more funding toward supporting rural mental health, and to propose solutions that work for all of Colorado.

Sincerely,



Greg Felt

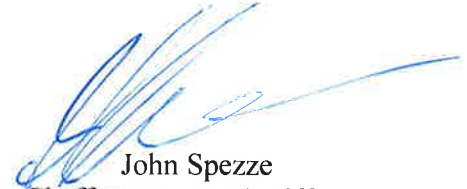


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