

Testimony before the Ohio General Assembly, Federalism Committee
Kevin Cronin, Cleveland Attorney
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Good morning Chairman Becker, Vice Chair Stoltzfus, Ranking Minority Member Miller, other Members of the Esteemed Committee, as well the public. Thank you for your legislative efforts on these issues. I also want to note the hard work of my Ohio Senator, Sandra Williams, on the “red flags” law that I will be discussing. My name is Kevin Cronin, I am an attorney in Cleveland, often working with children and families in Juvenile Court. Prior to returning home to Cleveland, I worked for a about a decade for the United States Congress, serving as a Counsel to a Committee, Associate Staff for the House Budget Committee and various members of the House and Senate. I also taught at Catholic University, Masters’ Degree Program in Presidential and Congressional Studies. Suffice it to say, I’ve done a great deal of public policy research, analysis and writing, including a range of legislation before you.

I oppose the current version of the legislation and urge reform by adopting “red flags” provisions, a plan that has drawn bipartisan support nation-wide and here in Ohio. “Red flags” laws have now been enacted in twenty-two states, have drawn supportive comments from Governor DeWine and should be enacted as soon as possible before delay contributes to inconsolable grief and harm to residents somewhere in the state.

My written testimony goes into greater background, but due to time constraints, you can refer to the written text on your own and I will focus on critical issues about:

- The inadequacy of Ohio law;
- Differences with “red flags” and “involuntary commitment,” a law process that imposes more intrusion upon those with mental health issues and less safety for the public; and
- The compelling need to adopt a “red flags” provision in Ohio.

I also want to encourage that this process in developing legislation does not demonize those facing mental illness; they deserve our help and support, not scorn or isolation. Those suffering with mental illness are not statistically more dangerous than others. However, Ohio legislature should debate this “red flags” option and consider how it may help address one facet of the varied and dangerous gun violence problem. It’s not a comprehensive solution, but a well-targeted solution to a narrow, yet dangerous, set of specific circumstances.

HOW “RED FLAGS” LAWS WORK:

The “red flags” law would create a **Protection Order**, as a final order or an *ex parte* temporary order granted by court. Protective orders are relatively common to Ohio courts, used for instances of risks of domestic violence regularly.

How Procedure Works: While versions vary, the process may be initiated by law enforcement, a “household member,” or others based on a sworn affidavit or court testimony providing personal knowledge (threats, acts, statements, mental health status, acts or threats of domestic violence/stalking and others) that the individual is a risk of causing injury to self or others as a result of access to a firearm. Court can order a mental health evaluation. The protection order process does not impede or delay any other lawful judicial process, action or search.

Ex Parte Option: Court must take up *ex parte* petition (petition filed without the knowledge or participation of the individual potentially subject to the order) immediately, on day petition is filed, and may issue temporary *ex parte* Protective Order and sets a full hearing with the individual in 14 days or reject *ex parte* Protective Order with clear explanation of decision. An *ex parte* order expires at the full hearing. Following an order, law enforcement takes possession of firearms, as well as any in plain sight or seized following a validly issued warrant. The protective order is limited to one year, although it may be renewed. The individual potentially subject to the court order can be represented by an attorney at any stage of the process. The law includes potential sanctions for violations:

- **Illegal to file materially false petition or petition intending to harass individual,** potentially facing misdemeanor, 3rd degree.
- **No person subject to Protective Order can acquire, possess or control a firearm,** a misdemeanor, 3rd degree; or for two or more acts of possession, a felony, 5th degree.
- **If convicted of possessing/controlling firearm while subject to Protective Order,** individual shall surrender firearm or dangerous ordinance and be prohibited from possession for five years after Protective Order expiration.

The United States Senate Judiciary Committee recently held a hearing on the subject, drawing bi-partisan support. For those concerned with abuse, the San Diego, California City Attorney contributed testimony that “our office has found California’s Red Flag law to be a powerful tool for protecting residents and police officers from senseless gun violence. Gun rights advocates closely monitor our work. They have yet to bring to our attention a case where they believe the law was improperly granted.” California enacted their “Red Flag” law in 2014.

PROVIDING CONTEXT:

Guns were temporarily removed from at least 1,700 potentially dangerous people last year as “red flag laws” grew more widespread. The actual number is undoubtedly much higher since the Associated Press data was incomplete and didn't include the very large state of California. AP reported that twenty-two states have some form of “red flags” laws in place. The specifics of the laws vary among the states. In some, only police are able to file petitions, while others permit filing by members of the person's household, relatives, school officials, employers and health care providers.

Following the 2018 Parkland school shooting, Florida was one of nine states adopting a “red flags” law and has been most aggressive, approving more than 1,000 of the gun removal orders. As you may know, the young man accused in the Florida attack, Nikolas Cruz, was known to be mentally troubled by local police and had legal access to weapons, including the assault-style rifle used to kill seventeen students and staff members at Marjory Stoneman Douglas High School. Testifying in New York in support of “red flags” legislation, Linda Beigel Schulman, whose son Scott Beigel was a Parkland teacher and coach killed in the shooting, "Parkland would never have happened if Florida had a red flag law."

Connecticut adopted a red flags law in 1999, the earliest of the red flags laws, following a mass shooting at the state lottery office. Connecticut officials say recent attention to the law increased the number of warrants issued in 2018 to 268, the highest total on record.

While a great deal of discussion has addressed “red flags” laws and mass shootings in public space like schools, work sites and movie theaters, the biggest application has been in the context of suicide prevention. There are approximately 40,000 suicides and homicides in the US by firearm each year. Firearms are used in less than 10% of all suicide attempts, but they account for more than half of all suicide deaths. Restricting access to highly lethal tools, at least temporarily, during a time of crisis can prevent suicide. Even if an individual attempting suicide substitutes a different method, pills for example, they are far more likely to survive the attempt and the vast majority of individuals who survive a suicide attempt do not die from suicide in the future (John Hopkins School of Public Health). Analysis determined that the Connecticut law reduced gun suicides by more than 10% in recent years (Indiana experienced a 7.5% decline). By removing the most lethal option, “red flags” laws can save lives.

GAPS IN CURRENT LAW DEALING WITH GUNS AND MENTAL HEALTH:

Critics of “red flags” laws have argued that authority exists in Probate Court for treating the mentally ill and that "red flags" law are therefore unnecessary. Nothing could be further from the truth. Let me explain.

Ohio Revised Code has a provision, called “involuntary commitment,” for treating the mentally ill, in which an individual's mental health is evaluated, first by medical experts at the local-mental health board, a decision reviewed by Probate Court in a series of hearings. Following the investigation and recommendation of the mental health board, an individual may be required to be taken to hospital and held for further evaluation and medication, even against their will. ***Involuntary commitment is a very severe step, reserved for instances where a patient demonstrates a great public or personal safety risk, history of non-compliance or failure or anticipated failure with voluntary treatment.***

There is no involuntary commitment of an individual with red flags procedure. While a mental health review should result after a "red flags" court review and firearm removal order, the mental health follow-up recommendations may vary, based on the circumstances. There is no

requirement that a person has previously failed at compliance with treatment recommendations before removing a firearm. ***The "red flags" law creates a procedure to remove weapons, property, not a process to require confinement of an individual at a hospital against their will to strictly monitor compliance and enforce prescriptions -- there is no compulsory control of an individual.***

There are additional problems with the "involuntary commitment" option, that permit gun ownership, that I will discuss later.

An additional amendment proposed for "red flags" legislation would shift implementation from the local County Common Pleas Court to a Probate Court. I would urge you not to do that.

First, there are only 95 Probate Court Judges in Ohio. Assigning this new authority to them risks delays and backlog in protecting Ohioans and that's a threat to public safety. An individual or family member feeling at risk is far more likely to get a swift hearing that someone they know poses a risk to themselves or others. Further, the Judges of the Common Pleas Courts have substantial experience with guns and risks associated with gun violence. They are in a better position to review the testimony, evaluate the risks and concerns and weigh the issues.

The use of the Probate Court risks confusing two very different tools for addressing mental health, the involuntary commitment of individuals to mental health hospitals and the "red flags" authority to remove a firearm from a dangerous situation. The involuntary commitment is a very powerful, intrusive tool, requiring a person with severe mental health issues to remain at a mental health hospital and comply with medical recommendations, that could include forced administration of powerful psychiatric drugs. This very severe step takes control over an individual to require compliance with mental health recommendations for an individual who has failed, or is considered by the board as likely to fail, with voluntary programs and is a threat to self or public. By contrast, the "red flags" law creates a process to address a specific risk, temporarily removing a gun, property, from a potentially dangerous circumstance, and opens the door for mental health services, evaluation and counseling.

PROBLEMS WITH INVOLUNTARY COMMITMENT PROCESS:

If you want to fix a problem involving guns and mental health, consider addressing gun access that can occur during the involuntary commitment process. **The current involuntary commitment process is flawed, allowing access to guns for the mentally ill.**

The involuntary commitment law doesn't reach, and is not intended to reach, everyone with a mental health problem. Where mental health has contributed to mass shootings, the shooter may not be so far off their mental health needs as to be invoking the involuntary commitment standard of being a danger to self, others and not likely to improve with any other treatment mode. These individuals may be angry, aggrieved, hurt and violent, with access to a firearm, but that is not the standard for removal from society through involuntary commitment.

Ohio law provides for the involuntary commitment in treating the mentally ill, in which an individual's mental health is investigated by the local mental health board and the individual should be required to be transported to the hospital and held for further evaluation and medication, even if against their will. The individual can challenge the commitment, receiving both an initial and full hearing, which would take place at the hospital, setting out the terms of the involuntary commitment, which would be reviewed by the Probate Court.

Because the involuntary commitment process results in confinement of an individual against their will, strong protections exist for fairness. However, despite the requirement for two hearings, the process may allow an individual to continue to have access to guns and that can be a dangerous situation for themselves and the public. Here are three examples:

Waiver: If the individual waives the required initial hearing and agrees to treatment, the confinement is considered voluntary and the terms of the commitment restrictions imposed are accepted voluntarily. Following completion of the confinement and treatment term, the record is expunged. There would be nothing on the individual's record to prohibit purchase or possession of a firearm.

Completion: If an individual waives the required first hearing, but does not agree to the terms, but the proceeds to completion of the treatment requirements, there will be no referral to any federal data base and nothing to prohibit an individual from acquiring or owning a firearm.

In both cases, the process does not result in final adjudication against the individual and there would be no restriction for the individual on purchasing a firearm from a registered dealer, the ownership of any previously purchased firearm, as well as no restrictions in which background checks don't apply, such as public gun shows.

Confinement in the Home: Involuntary commitment can in some circumstances be addressed, not by confinement in a hospital, but by returning the individual to their residence through Assisted Outpatient Treatment (AOT). AOT may apply, for instance, when no hospital space is available for treatment. The individual is still subject to the involuntary commitment requirements, still under the control of the Mental Health Board and can still be forcefully required to take treatment and medication. **AOT has no requirement for the removal of a firearm, though the individual may be returned to the home and would not have completed treatment.**

Gun access is important as someone under voluntary commitment or discharged from the hospital upon completion may be considered to no longer be at risk when compliant with the prescription regimen. However, it is one thing to be compliant with prescriptions when under hospital supervision and a very different matter to be compliant when released to self-care. Individuals may stop taking medicine for a number of reasons – they may feel they no longer need the drugs, perhaps they don't like the way they make them feel tired or washed out or

perhaps they have no insurance and drugs are expensive. Gun access in these circumstances is potentially a very dangerous situation as the individual's psychotic state begins to decline.

Involuntary commitment by Probate Court is a very severe step to take control over an individual to enforce compliance with mental health board requirements and is reserved for instances where an individual demonstrates a great risk to self or public, history of non-compliance or failure with voluntary treatment or is anticipated that they would fail in a voluntary program.

By contrast, a "red flags" law just focuses on the threat, the removal of a firearm, from a potentially dangerous circumstance for the individual or others and opens the door for mental health services. There is no detention or commitment of the individual. There is a world of difference between the two processes. Each has its role, but they should never be considered interchangeable.

CONCLUSION:

Thank you for the opportunity to present my thoughts on these important issues. I wish you well in your development of legislation and am certainly available to assist you and your staff in working through these difficult gun violence challenges. If you have questions for me at this point, I am more than happy to be responsive.

For Further Information, Contact:

Kevin Cronin, Attorney at Law
The Brown Hoist Building
4403 Saint Clair Avenue
Cleveland, Ohio 44103-1125
www.kevincronin.us
ph) 216 377 0615; e) kevin@kevincronin.us