

Written Testimony Before the Ohio General Assembly, Federalism Committee Kevin Cronin, Cleveland Attorney (June 26, 2019)

Good morning Chairman Becker, Ranking Minority Member Miller and other Members of the Committee. I am Kevin Cronin, a Cleveland attorney, often working with children and families in Juvenile Court. Prior to returning home to Cleveland, I worked for 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 urge you to oppose the current version of HB178, which missed an opportunity to adopt important "red flags" provisions. The Legislature and Governor DeWine should adopt a strong and compassionate "red flags" law. "Red flags" laws have now been enacted in twenty-two states and should be enacted as soon as possible before delay contributes to inconsolable grief and harm to residents somewhere in Ohio.

I testified last month on this subject, so my comments today will supplement those, and focus on the opportunity for a meaningful "red flags" provision. I reiterate that this process in developing legislation should 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. ***A "red flags" law can 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 regularly to address risks of domestic violence.

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 and services. The 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 the day the 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 decision explanation. An

ex parte order expires following the full hearing decision. 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, a 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 and be prohibited from possession for five years after Protective Order expiration.

SHORTCOMINGS OF HB 178 REPORTED BACK TO THIS COMMITTEE:

HB178 reported back to the committee missed the opportunity to adopt a meaningful and fair “red flags” law and will **make matters worse**. The current provision will discourage people from coming forward to seek protection; risk delay by relying on a potentially overwhelmed Probate Court; cut short meaningful mental health care, releasing people to re-create the public safety risk and mental health crisis; and allow for evasion by selling or parking firearms with gun dealers as if on a consignment sale. Law enforcement and courts are to protect the public, not enrich gun merchants or encourage gun sales. Let me elaborate with my concerns:

Site for Review Should Not Be Probate Court: HB178 requires a “red flags” petition to start in County Probate Court. There are only 95 Probate Court Judges in all of Ohio, many of whom double up as a Juvenile Court or Domestic Relations Court Judges. In Florida, after the red flags law was created in 2018, there were more than 1,000 firearm confiscation orders. Red flags protection petitions could easily overwhelm Ohio’s Probate Courts and cause delays in hearing petitions and **delays put petitioners at risk**. Imagine a family member filing a petition against a spouse or child over age 18 and waiting for the order for removal. The delay could itself contribute to a violent and lethal response.

The “red flags” process, when administered through Probate Court, would serve as intake for their more stringent involuntary commitment process. This will discourage family members seeking a less harsh step removing a gun from a dangerous situation and refer an individual for counseling. Under this HB 178 provision, the “red flags” process is no longer focused on removing property, a firearm, from a dangerous situation, but can lead directly to the denial of liberty for an individual through harsh confinement and medical treatment under Probate Court involuntary commitment authority. If a family feels overwhelmed and wants to remove the individual, the involuntary commitment process is already available. If a family wants an interim step, less harsh and focused on care not removal from society, a stronger red flags version should be available, benefiting families, as well as the courts and law enforcement. There must be a bright line separating red flags and involuntary commitment processes.

The Petition: The red flags version of HB 178 includes a long list of items for petition to file, including some things not likely in petitioner's possession (history of any mental health court order or other court order, inventory of guns). The current bill would require a written affidavit "or any other admissible evidence petitioner chooses to produce" (which presumably could include the live sworn testimony of a concerned family member). The text also needlessly requires that testimony must related to "recent" activity, defined as within past six months. If a mentally ill individual stopped taking prescription medicine nine months ago and behaved incoherently, that should be reliable if a family member believes the individual is going off medicine again and posing the same risks.

The current bill provides that the petitioner can be police, family/household member, but the committee may wish to add others. I would recommend adding school officials, who observe students regularly and are in a strong position to recognize risk such as teen suicide.

HB 178 Makes A Mistake to Abandon *Ex Parte* Provision: By abandoning the *ex parte* process, petitioners are at risk. Further, the respondent can request an additional continuance, providing more delay. These changes will increase safety risks for the public:

- 1) Increases risk as a delayed hearing adds tension to the already volatile situation involving firearms and risk to self or others;
- 2) Petitioners are at greater risk as there is a time period in which respondent knows of the concerns raised by filing and the ultimate resolution of that concern;
- 3) Petitioner may perceive that they would be exposed to risk while waiting for a hearing and not want to put themselves in further danger and be unwilling to file for an order at all, placing the public at risk;
- 4) A filing petitioner has identified themselves as a source for a respondent potentially feeling pressured by the added burden of a hearing and potential firearm confiscation. If the petitioner were not already in jeopardy, they would be after respondent receives a hearing notice.

Requirement for Extension: Under HB 178, the confiscation order is valid for 180 days, potentially extended twice by Court for 80 days each. Petitioner may return to court and offer recent (past six months) evidence to justify order for an additional 180 days. This requirement is an added burden for the petitioner, forcing the petitioner to refile and bring recent evidence, which diverts attention to the issue of whether the respondent is still a risk to self or others. The six months requirement for new evidence may be difficult to meet, as a respondent involved in counseling or therapy under a court order has, relatively speaking, more incentives and an easier challenge in behaving well. The respondent would need to complete the path of counseling and support and be on their own, before the real test of wellness can occur.

Creation of Voluntary Surrender Option: This version creates a new authority for a respondent to voluntarily surrender their firearms to law enforcement or a licensed gun dealer at any stage. This option presents two glaring weaknesses:

- The voluntary surrender of the firearms cannot be used to evade the issuance of a protection order by asserting that the surrender of the firearm removes the public risk. Red flags law is a significant effort to address an individual who may have mental health needs. The goal of the law is to remove a risk, but also create an opportunity for mental health support that is not as intrusive as the loss of liberty through involuntary commitment. Consigning firearms to a dealer does not change the need for social services and the less intrusive option.
- This voluntary option needlessly involves a private business in a court/law enforcement function. The red flags process is not a consignment shop for resale. If a respondent wants to surrender their guns, they can do so, but they should surrender firearms to law enforcement for proper disposal, not sale or parking, awaiting their return.

While public discussion of “red flags” laws focus on mass shootings in public spaces, the biggest application has been in the context of suicide prevention. 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 moment 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). **By removing the most lethal option, “red flags” laws can save lives.**

CONCLUSION:

An effective "red flags" law focuses on the threat, removing a firearm, from a potentially dangerous circumstance for the individual or others and opens the door for mental health services. The Committee should make important changes: retaining the *ex parte* option, restoring jurisdiction to County Courts of Common Pleas, clarifying evidence required for the petition and extensions to reduce burdens on petitioners coming forward, prohibit the parking or consignment sale option and adding educators as potential petitioners. 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.

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