

Written testimony for the House Public Safety Finance and Policy Committee hearing on HF 14, 15, 396 and 601. February 3, 2023

I am writing to express my opposition to all four gun control bills being presented in committee today. I urge the members to vote against this legislation. There are myriad reasons to oppose this legislation, but the overriding reason is none of these bills would do anything to stop real, actual criminals from doing real, actual violence. Each of these bills would, however, make criminals out of otherwise, and currently, law-abiding Minnesotans. In addition, there are significant constitutional questions about these bills, especially under the Bruen standard set out by the U.S. Supreme Court. Whether you agree or disagree with this decision, and other Second Amendment jurisprudence by the Court, this is the law, and blatantly disregarding it is legislative malpractice.

Governor Walz called for more gun control laws following the tragic shootings in California a few weeks ago. It is unfortunate that time and time again, after a deranged individual chose to commit evil acts, that politicians, many on the left, use these events to push for constitutional infringements. It should be noted that California has *all* the gun control laws the Governor has asked for, and more, yet this has not stopped mass shootings in the state, or done anything to curb the senseless violence and crime occurring in California's cities.

A focus on "gun violence" misses the greater problem in society. Firearms are used in only 8% of violent crime in this country. Enacting laws targeting this instrument misses 92% of violent acts. Shouldn't we target the real cause of violence, the criminals attacking and killing our neighbors?

HF14 – Universal Background Checks. This bill seeks to criminalize behavior that is currently lawful in Minnesota and much of the rest of the country. It adds language that give police chiefs or sheriffs discretion on issuing a permit. It creates a hurdle for lawful conduct and requires individuals to maintain for *20 years* paperwork on a transfer with friends and family. There is a backdoor creation of a firearm registry by removing the "Transfer report, not required" language from the current statute. Currently, a report is not required to be submitted if the transferee has a valid transferee permit. By removing this, it would require a report of the firearm transfer and demographic information on the transferee and firearm to be submitted to law enforcement. It also appears to create a waiting period by requiring the transferor to wait 5 business days for the chief of police to review the transfer report, which is now required to be submitted. It should be noted that federal law prohibits the creation of firearm owner registries by federal, state, and local governments (18 U.S. Code §926). Also, it goes without saying that the criminals, the very people you want to stop from purchasing firearms and the very people causing the violence we ALL want to stop, will not pursue private party transfer background checks, or apply for transferee permits. This will not stop crime. This WILL impede law-abiding Minnesotans exercising a constitutional right in a lawful manner. Furthermore, the NICS system is broken, with a vast majority of the initial denials being overturned, resulting in a very high false positive rate. In 2017 there were 112,090 initial denials (on 8.6 million checks), but that only resulted in 12,710 ATF referrals and 12 prosecutions. The rest of those denials were erroneous, or the government chose not to prosecute the crime.

HF 15 – Extreme Risk Protection Orders, or "red flag laws." These seem like a good idea, and on polling, most people do think it's a good idea 58%-29%, until you get in the weeds and explain what these laws entail, then support plummets to 30% in favor. They seem like a good idea because no one is looking at the constitutional violations enacted by these laws. In brief, the statute as written allows a "petitioner"

to ask the judge for the ERPO. The petitioner gets to remain anonymous to the accused. This sounds reasonable but violates the right to face your accuser. The court now has 14 days to have the hearing. So, for two weeks this person, who is so dangerous their rights need to be upended, can just go about doing whatever. Once the hearing happens, the petitioner needs to prove by a preponderance of the evidence that the respondent is a threat. In our criminal justice system, the accused is presumed to be innocent until proven guilty beyond a reasonable doubt. In the ERPO world, a petitioner just needs to prove, by a *lower* standard of evidence, that the accused may commit a crime *in the future*. The accused has now become guilty of a crime that has yet to be committed, by a lower standard of evidence than what is constitutionally protected. At this point, the judge gets to decide on his own intuition, if the accused should lose his rights for a minimum of 6 months up to 2 years. All for a potential crime in the future that was proven by a lower standard of evidence. Even better, the accused can appeal this order (but only once per year), and then *prove* by a preponderance of the evidence that he *is not a risk*. In this case, the accused now bears the burden of proof, again contradictory to all other aspects of criminal law, that he is *innocent!!* The accused must prove his innocence, of a crime that hasn't been committed. This concept flies in the face of all constitutional protections afforded a defendant in a criminal trial.

Aside from these glaring issues, namely that the accused is found guilty by a lower standard of evidence, of a potential future crime, in an *ex parte* hearing where he cannot face his accuser, resulting in the stripping of a constitutionally protected right, which he can appeal if he bears the burden of proof to prove he is innocent of a crime not yet committed, these laws have other practical issues. If a person is considered so dangerous that he cannot possess firearms, that person is *dangerous without firearms*. That individual needs help and needs to be removed from public. Psychiatric support and admission should be provided. Additionally, legal protections should be given to these people to help work through the system. Instead, this bill would simply just remove the firearms, allowing the individual to continue going about the world, and continue to be a threat to himself or others, with no medical or legal help. This is not the solution to "gun violence."

HF 396- Firearm and ammunition storage requirements. This requires firearms be stored unloaded with a "locking device" and separately from ammunition. First off, this would prevent the storage of a loaded firearm for home defense. Many, many people keep a home defense firearm loaded and secured. Even a firearm without a round in the chamber, and therefore incapable of firing, is considered loaded under this bill if it has a loaded magazine. This is simply a burdensome proposal, that is literally unenforceable, to impede on lawful behavior. Storage of firearms is a crucially important part of firearm ownership, but every individual needs to assess his or her unique situation. A household with small children has significantly different requirements than a single woman living alone. A home defense shot gun or AR-15 is different than the daily carry pistol on the nightstand. A requirement to store the firearm separately from its ammunition basically renders the firearm inert in a moment of crisis. At the base of it, this bill is simply the state telling the individual what to do in the privacy of his own home. The statute this looks to replace, 609.666 already makes it a crime to "negligently stores or leaves a loaded firearm in a location where...a child is likely to gain access..." We simply just don't need this as law.

HF 601 – Lost or stolen firearms. This bill seeks to punish and victimize people who have just been victimized by theft. If an individual does not report the theft of a firearm within 48 hours, they have now committed a crime. After a home robbery, the dwelling may be in shambles. It may be destroyed, and a lot of stuff may be missing. It is very easy to see how some missing property could be overlooked.

Nevertheless, this bill would punish the robbery victim for not reporting the stolen firearm within 2 days. There is literally no reason for this law.

In closing, I have briefly laid out the issues with these proposed bills and the effects on law-abiding Minnesotans. These bills will not deter criminals and will not stop crime. They will not stop gun trafficking, or straw purchases (which are already illegal). They will not stop dangerous people from doing dangerous things. They will not keep guns out of the hands of prohibited people. They simply just will not stop bad people. They will, without fail, infringe on the rights of the law abiding, as all gun control laws seek to do. I urge you to vote against these measures, for the good of the rights of Minnesotans. Thank you.

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