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DEPARTMENT OF LAW

Thank you, Chairman Foote and members of the Senate State Affairs Committee for this opportunity to testify about House Bill 19-1177, “Concerning Creation of an Extreme Risk Protection Order”¹ (“HB 19-1177”).

First, I would like to speak to the process for developing an Extreme Risk Protection Order (ERPO) measure here in Colorado, acknowledging the leadership of two Representatives who sponsored this bill. As this Committee knows, Representative Tom Sullivan’s leadership on this issue comes from the heart and a most painful lived experience. In Colorado, our ability to take the pain from tragedies at Columbine High School, Aurora, and Parkland, and to translate that pain into positive action, is as meaningful as it is powerful. When authentic leaders like Rep. Sullivan speak from the heart and harness their experiences to solve problems, we are doing our part to make our democracy work. I’m very grateful for his contribution to this bill, and for giving of himself to the People of Colorado.

Let me also acknowledge Majority Leader Alec Garnett and his tireless work on this important issue. Working across the aisle with Rep. Cole Wist in 2018, and in again pursuing this goal in 2019, Rep. Garnett demonstrates the type of collaborative problem solving that Coloradans stand for. I have seen him listen to those with concerns on how an ERPO would operate in our State, and it is evident that he is committed to developing the best bill possible. The thoughtfulness and hard work that went into HB 19-1177 by these two public servants, and their collaborative engagement with leaders like Douglas County Sheriff Tony Spurlock, are the right way to make public policy.

Second, on the merits of the bill, I acknowledge that even with the many hours devoted to this effort, the final result is unlikely to reach absolute perfection. As in most cases, however, perfection is not the standard. What is essential to keep in mind is that HB 19-1177 is designed to save lives and that it *will* save lives. According to one study that evaluated ERPOs in other states, researchers estimated that one life was saved for every 10 to 20 ERPOs issued by the courts.² For this reason above all others, I strongly support HB 19-1177.

It is clear that the bill sponsors thought carefully about how they could improve the predecessor bill to HB 19-1177. On that front, I am most impressed by the bill’s addition of provided counsel for persons facing an ERPO petition. This is a sound improvement to ensure respondents have the opportunity for proper legal representation to safeguard their rights and interests during an ERPO proceeding. This addition reflects the listening and learning conducted by the sponsors. As this Committee appreciates, we have an existing problem with access to justice in our State. As one unfortunate example, a person can lose access to his or her children without representation (using the same burdens of proof used in this context). I commend the sponsors’ awareness of this issue and their effort to remedy this problem in the context of ERPO proceedings.

Third, let me speak to the constitutionality and defensibility of HB 19-1177, should it become law. The Attorney General’s Office has concluded that HB 19-1177 is constitutional. The U.S. Supreme Court

¹ H.B. 19-1177, 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019).

² Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Laws: A Look at Connecticut’s Risk-Warrant Law*, Jul. 2018, http://efsgv.org/wp-content/uploads/2018/07/Data-behind-Extreme-Risk-Laws_July-2018-5.pdf.

addressed the question of state and local regulations over firearms in 2008 in *District of Columbia v. Heller*.³ In the Court's majority opinion, Justice Antonin Scalia noted that the Second Amendment, like other amendments in the Bill of Rights (including the First Amendment), does not create an unlimited and absolute right.⁴ After all, as Justice Holmes famously remarked on the First Amendment, there is no constitutional right to yell fire in a crowded theatre.⁵ As to the Second Amendment, the *Heller* Court's majority made clear that reasonable restrictions on categories of persons, including those struggling with mental illness, are permissible under the Second Amendment. The court stated:

. . . nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.⁶

In light of the above, and the successful implementation of ERPO-like measures in several states, we believe that HB 19-1177, as drafted, is a proper and appropriately drafted regulation that is consistent with the Second Amendment's requirements.

Fourth, I pledge to you that the Department of Law is committed to doing our part to support the successful implementation of HB 19-1177 when and if it is enacted into law. In particular, we stand ready to support its implementation, partnering with the Colorado Association of Chiefs of Police, the County Sheriffs of Colorado, and the Colorado District Attorneys Council. In so doing, we will make every effort to work with law enforcement leaders across our State, such as Douglas County Sheriff Tony Spurlock. The Department will also work to implement HB 19-1177 through our role in developing appropriate peace officer training through the Peace Officer Standards and Training (POST) program. We will also strive to facilitate cooperation and adoption of best practices by law enforcement agencies across the State. This includes evaluating HB 19-1177 as it operates in practice to inform policy-makers and law enforcement personnel; as necessary and appropriate, we will offer recommendations to the General Assembly for continued enhancements and improvements. In short, we are committed to working hard to implement this effort to keep our communities safe and protect the due process rights of all Colorado firearm owners.

Finally, let me address the fact that a number of Colorado jurisdictions have passed resolutions denouncing this measure and suggesting that they might not implement it. At the end of the day, I view these statements as part of the legislative debate over this measure. As some sheriffs in those jurisdictions have stated, such resolutions cannot and do not override a valid judicial order implementing state law, such as one issued under a Colorado ERPO law. Our nation and state depends on the rule of law and all law enforcement officers swear an oath to uphold the rule of law. I am confident that when and if the time comes, all law enforcement officials will follow the rule of law.

I am most grateful to you and the Committee for their thoughtful consideration of this critically important bill, and am very proud to support HB 19-1177. This bill provides a valuable tool for law enforcement, and will save lives. I am even more proud of the spirit and approach brought by the sponsors. House Bill 19-1177 represents Colorado's collaborative problem solving at its best, and is a sterling example of how we work together in our State. Thank you for your consideration.

³ *D.C. v. Heller*, 554 U.S. 570 (2008).

⁴ *Id.* at 595 (“There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. Of course the right was not unlimited, just as the First Amendment's right of free speech was not . . . we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*.”).

⁵ *Schenck v. United States*, 249 U.S. 47, 52 (1919) (“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”).

⁶ *Heller* at 626-27.