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STATE OF COLORADO
DEPARTMENT OF LAW

February 21, 2019

The Honorable Mike Weissman
Chair, Committee on the Judiciary
House of Representatives
Colorado General Assembly
State Capitol
Denver, Colorado 80203

RE: House Bill 19-1177 (“Concerning Creation of an Extreme Risk Protection Order”)

Dear Representative Weissman:

As the House Committee on the Judiciary today receives public testimony on House Bill 19-1177, “Concerning Creation of an Extreme Risk Protection Order”¹ (“HB 19-1177”), please accept my apologies for not offering thoughts on this bill in person as I am travelling in Southern Colorado. I respectfully submit the following points for the Committee's consideration as it weighs this critically important legislation.

First, I would like to express my gratitude to the bill's House sponsors. 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. I am also grateful for 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 extreme risk protection order (“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.

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

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

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. I commend the sponsors' awareness of this issue and their effort to remedy this problem in the context of ERPO proceedings.

In today's hearing, I anticipate the Committee will discuss questions of constitutionality and defensibility of HB 19-1177, should it become law. Our conclusion is that HB 19-1177 is constitutional. The U.S. Supreme Court 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.

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

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.

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.

facilitate cooperation and adoption of best practices by law enforcement agencies across the State. Finally, we are committed to evaluating HB 19-1177 as it operates in practice to inform policy-makers and law enforcement personnel, and 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.

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.

Sincerely,

A handwritten signature in cursive script that reads "Phil J. Weiser".

Phil Weiser
Attorney General

cc: Representative Leslie Herod, Vice-chair, Committee on the Judiciary, Colorado House of Representatives
Committee on the Judiciary members, Colorado House of Representatives
Representative Tom Sullivan, Colorado House of Representatives
Representative Alec Garnett, Majority Leader, Colorado House of Representatives
Senator Lois Court, Colorado Senate
Senator Brittany Pettersen, Colorado Senate
Speaker KC Becker, Colorado House of Representatives
President Leroy Garcia, Colorado Senate
Mr. Bo Pogue, Legislative Council Staff
Ms. Natalie Hanlon Leh, Chief Deputy Attorney General, Department of Law
Mr. Eric Olson, Solicitor General, Department of Law
Mr. Kurtis Morrison, Deputy Attorney General for Intergovernmental Affairs, Department of Law