

Senate Judiciary Committee Testimony

Re: Senate Bill 221 – An Act Relating to establishing Extrem Risk Protection Orders

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How does this committee do Extreme Risk Protection Orders in a Vermont way, not simply the way they do it in other states. The reasons we see our culture, our constitution, our people, our schools as unique and precious is because of these unique Vermont characteristics. As they say, I cannot tell you exactly what they are, but I know them when I see them.

And let me say for the record that this unique character or spirit is what leaves me resentful that we meet here today with all the gun control frenzy swirling around us outside this room. I feel this room may be the only sanctuary in that storm. I do not believe this bill is a gun control bill as those stirring the tragedy in Florida would have us believe. Bloody shirts and caskets are a poor foundation for good policy.

How will the Due Process necessary for the removal of a Civil Right protected under the 2nd and 14th amendment be provided by the law, being that the Family Court does not provide for eligibility to Public Defenders? As property, the possession firearms is the necessary tool for the exercise of the right, confiscation is essentially a "gag order" of the right? In VT and most states, the exercise is not subject to the "prior restraint" of a purchase or possession "license". NOTE 1st amendment rights are similarly situated and restrictions are usually subject to "strict scrutiny". Here also are dire 4th amendment questions of search and seizure – cited:
<https://supreme.justia.com/cases/federal/us/480/321/case.html>. Arizona v. Hicks (1987) Justice Scalia for the decision.

What if any defense will be provided in Ex Parte proceedings; will someone be notified such as a Pro Bono attorney to monitor procedure and challenge the evidence? Note that Ex Parte merely means that the defendant likely can't be located in time which does not indicate guilt. Time should allow for the attendance of someone like this but Family Court procedure does not appear to do so.

The evidentiary standard is similar to that of severing contact, custody or requiring "supervised" visits in child custody. Is there a parallel of that level of "peril" of state action to "peril" of restricting of a Constitutionally protected individual right confirmed by 2nd and 14th amendment in SCOTUS decisions? I doubt it.

Not to diminish child custody cases but they don't rise to, say, the level of *Roe v. Wade* or *Skinner v. Oklahoma* where "privacy" and personal autonomy are immediately and permanently at risk. Custody is a readily modified condition which does not preclude the exercise of such "inalienable" individual rights. I note that *Brigham*, the famous VT education case says we are entitled to equal opportunity, not a guaranteed outcome. It also says that education and the other individual rights are protected by the Common Benefits Clause. Article 16 is in that list.

We at VT Traditions Coalition concur with the current amendments suggested by the committee members consensus.

First, the reversal of the evidentiary burden for extension of ERPO orders back to the state at the time of expiration is an excellent move towards recognizing the gravity of suspending an individual civil right.

Second, we concur that the representation of the affidavit should be prepared by and presented at court by the State's Attorneys office. This will likely prevent reversals and provide the protections that come with the standards and practices inherent with the office.

Third, we agree that the Ex Parte "appearance" will also benefit from the attorney prepared affidavit when the defendant appears later on.

Fourth, we concur that the committee should reconsider the one year term for the initial order. As a practical matter, any parallel tracks such as RFAs, criminal charges or mental health related involuntary orders can be well under way in much shorter period. With the ability for the state to extend the order with an abbreviated process under the bill, we believe that 60-90 days is more appropriate and sufficient for the purposes stated by the bill. We also strongly urge that the language specify "up to" that limit and encourage the Court to restrict itself to the minimum needs of each case. Again, with the extension readily available this seems reasonable to us.

In conclusion, we suggest that the process prescribed by S.221 with the limited due process protections for the defendant could be greatly improved by moving the ERPO process to the criminal court venue.

To this I would add that a Fiscal Note could be prepared in the meantime outlining fiscal impacts to the already overburdened Family Court system.