EVERYTOWN
FOR GUN SAFETY

March 14, 2023

Chair Lalonde and honorable members of the House Judiciary Committee:

My name is Alison Shih and I serve as Counsel at Everytown for Gun Safety where I'm responsible for supporting state legislative efforts in Vermont. Thank you for the opportunity to testify again in support of H.230.

I have previously provided testimony on the evidence that the provisions of this bill are effective for suicide prevention and how the provisions have been well-drafted to withstand constitutional challenges. Today, I would like to provide some further detail on some of the questions that have since been raised in committee hearings.

I understand there is curiosity about how the firearm storage provisions of H.230 compare with those of other states that have these laws, and specifically how the penalty structure compares. As I laid out in my previous testimony, twenty-three states and DC have some form of firearm storage law, including every other state in New England.[1] Nine states and DC have laws that provide penalties for failing to store a firearm securely regardless of whether a child or prohibited person gains access to the firearm.[2] Nearly all of those jurisdictions provide criminal penalties when a person fails to store a firearm securely, even when no unauthorized user has accessed the firearm and when no harm has occurred.[3] Fourteen states[4] have laws that only assess penalties if a child or prohibited person actually gains access to, or causes harm with, an unsecurely stored firearm. All of those states, with the exception of New Hampshire, provide for criminal, rather than civil penalties, in those instances. The penalty in Oregon's law is more akin to H.230, as it contains only a civil fine penalty for instances when a person fails to store a firearm securely and no unauthorized person has gained access to the firearm.

We feel that H.230 would give Vermont one of the most thoughtfully drafted laws in the country, as it will establish a proactive responsibility for gun owners to lock up their firearms around children and people who are legally prohibited from owning guns, but is careful, in doing so not to over-penalize gun owners for minor violations. H.230 wisely provides for graduated penalties and ensures that unless unauthorized access or harm occurs, violations are only punishable by a modest $100 fine. This will help to reinforce that responsible gun ownership is a core value for Vermont without overly imposing criminal penalties on gun owners who fail to secure their firearms—unless and until those unsecured weapons are actually accessed by children or a person prohibited from possessing a firearm or used to do harm.

I also want to address some misinformation concerning the constitutionality of firearm storage laws. The Supreme Court of the United States did not invalidate firearm storage laws in *District of Columbia v. Heller,* as the decision itself made clear.[5] *Heller* invalidated a law that, as interpreted by the Supreme

[1] CA, CO, CT, DE, FL, HI, IL, IA, ME, MD, MN, NC, NH, NJ, NV, NY, RI, TX, VA, WA, and WI.
[2] MA, OR, CO, MN, VA, NV, and NY.
[3] MA, CA, CO, MN, VA, NV, NY (in some cases), and DC.
[4] DE, FL, HI, IL, IA, ME, MD, NH, NJ, NC, RI, TX, WA, and WI.
[5] *District of Columbia v. Heller,* 554 U. S. ____ (2008), "Nor, correspondingly, does our analysis suggest the invalidity of laws regulating the storage of firearms to prevent accidents."

Court, required people to keep guns unloaded even if under attack in their homes, which is not what the bill you're considering would do (and not what any other states' existing firearm storage law does). Indeed, courts considering secure storage laws after *Heller* have upheld state secure storage laws, including the Ninth Circuit Court of Appeals in *Jackson v. City of S.F.*[6] All twenty-four storage laws across the country remain in effect and enforceable. None have been struck down as unconstitutional based on the holding in *Heller*.

Secondly, I want to assuage any concerns that enacting a waiting period law, without an exception for gun shows, would functionally prohibit the operation of gun shows in Vermont. We know that not to be the case based on the experiences of other states who have adopted this policy. For example, Illinois has a mandatory 72-hour waiting period law that does not contain an exception for gun shows.[7] The state of Illinois is still host to several gun show events each month.[8] Waiting periods are not incompatible with gun shows. If a gun show is set to conclude prior to the end of the waiting period, the seller could simply ship the firearm to a licensed dealer near the purchaser to finalize the sale. This is already a process both licensed dealers and private sellers are familiar with at gun shows because it is the process they follow for many out of state purchasers.

Lastly, I would like to address the misrepresentation that New York courts have invalidated the state's Extreme Risk Protection Order law. In December of 2022, a trial court judge presided over a case involving a petition from an individual respondent where the judge opined that New York's ERPO law is unconstitutional.[9] The state was not a party and the Attorney General was not involved in the litigation. The decision has no binding effect on other courts in New York. Indeed all 20 ERPO laws, including New York's,[10] remain in effect across the country as they have since the first ERPO law was passed in Indiana nearly two decades ago in 2005.

And we do not expect any state highest courts will strike down any ERPO law. As with all court orders that impact individual liberties, ERPO laws contain robust due process protections. The process in ERPO laws is designed to ensure both public safety and the due process rights of all parties involved. These laws establish clear and appropriately high standards for the showings that must be made before a court issues an order, making clear the factors a court must consider and the burden the petitioner must meet before an order can be issued. These petitions must be sworn to under oath and contain specific factual allegations to support the claim that a person poses a significant danger to themselves or others. These petitions cannot be based on mere conjecture or speculation. There are safeguards in these laws to protect against abuse and punish those who seek orders maliciously. Anyone who knowingly files a false petition or files a petition with the intent to harass or annoy the respondent is subject to criminal prosecution.

These laws also ensure that all parties have an opportunity to be heard on the merits of a petition. Only in the most serious cases, where an *ex parte* order is necessary to prevent imminent harm, can an order be issued before a full hearing. In Vermont, those orders can last only up to 14 days, at which point a final

---

[6] *Jackson v. City of S.F.*, 746 F.3d 953 (9th Cir. 2014)
[7] 720 Ill. Comp. Stat. 5/24-3(A)(g)
[8] https://gunshowtrader.com/gunshows/illinois-gun-shows/
[9] *G.W. v. C.N.*, 2022 NY Slip Op 22392 (Monroe County Sup. Ct. 2022)
[10] CA, CO, CT, DE, DC, HI, IL, MD, MA, NV, NJ, NM, NY, OR, VT, and WA.

hearing must be held. No final order can be issued before the respondent has an opportunity to be heard and to present evidence as to why the order is not necessary. These laws also give respondents opportunities to petition the court to terminate the final order after one has been issued.

In short, the provisions of H.230 are well-established and constitutional, as evidenced by the implementation of similar laws across the country. Thank you for the opportunity to testify and lend support to your efforts to address the epidemic of firearm suicide in Vermont.

Sincerely,
Alison Shih
Counsel
Everytown for Gun Safety