



March 1, 2023

Chair Lalonde and honorable members of the House Judiciary Committee:

My name is Alison Shih and I serve as Counsel for Everytown for Gun Safety where I'm responsible for supporting state legislative efforts in Vermont. Everytown is the largest gun violence prevention organization in the country, with more than 10 million supporters including moms, mayors, veterans, survivors, gun owners, and everyday Americans fighting for public safety measures that can help save lives. I want to thank you all for allowing me to testify in support of H 230.

We commend the legislature for considering concrete solutions to address Vermont's firearm suicide crisis. Nationally, nearly 60% of all firearm deaths are the result of firearm suicide.¹ But the crisis is even more acute in Vermont, where approximately 90% of gun deaths are the result of firearm suicide.² We know that one of the most effective ways to save the life of a person in crisis is to put time and space between that person and access to a firearm – preventing them from acting on a suicidal impulse and making a decision they can never take back. The provisions of H. 230 would do just that.

We know that these laws will save lives because studies show analogous policies in other states are saving lives. Twenty three states and DC have some form of firearm storage law, including every other state in New England. As a recently released RAND review found, certain storage laws reduce intentional and unintentional firearm injuries and deaths among children.³

Secondly, waiting period laws effectively create a buffer between temporary suicidal ideation and firearm access, which can be the difference between life and death. Nine states and DC have waiting period laws, including the nearby states of Rhode Island and New Jersey.⁴ These laws range in length from three to 14 days. With the 72 hour waiting period prescribed in this bill, Vermont would be one of the three shortest waiting period laws in the country. Several states require buyers to obtain a permit before purchasing a firearm or handgun, and in these states, the processing time for the permit approval process creates a cooling off period similar to a waiting period for buyers. These states include Connecticut, New York, Massachusetts, and Maryland. Waiting period laws are associated with reduced suicide rates. In a study that analyzed the time period between 2013 and 2014, these laws were correlated with a decrease in suicide rates in the states with mandatory waiting period laws, while states without these laws saw an increase in suicide rates over the same time period.⁵

¹ Centers for Disease Control and Prevention, National Center for Health Statistics. WONDER Online Database, Underlying Cause of Death. A yearly average was developed using four years of the most recent available data: 2018 to 2021.

² Vermont Department of Health, "Firearm Injury and Death," January 2022, <https://www.healthvermont.gov/sites/default/files/documents/pdf/HSRV-Injury-Firearm-2022.pdf>; Centers for Disease Control and Prevention, National Center for Health Statistics. WONDER Online Database, Underlying Cause of Death. A yearly average was developed using four years of the most recent available data: 2018 to 2021.

³ RAND Corporation, "Evidence About Effects of Gun Policies Grows and Supports Laws Intended to Restrict Child Access to Guns," Press Release, January 10, 2023, <https://www.rand.org/news/press/2023/01/10.html>

⁴ CA, FL, HI, IL, MD, MN, NJ, RI, WA

⁵ Michael D. Anestis, Joye C. Anestis, and Sarah E. Butterworth, "Handgun Legislation and Changes in Statewide Overall Suicide Rates," *American Journal of Public Health* 107, no. 4 (April 2017): 579–81, <https://doi.org/10.2105/AJPH.2016.303650>.



Thirdly, 19 States and DC have a law akin to Vermont’s Extreme Risk Protection Order law. Fifteen of these laws allow family or household members to directly petition a court to temporarily separate a person in crisis from firearms.⁶ Vermont is currently only one of five states that do not allow family or household members to directly petition courts.⁷ And indeed these laws have saved lives. After Connecticut increased enforcement of its law, there was an associated 13.7% decrease in the state’s firearm suicide rate.⁸ Another study estimated that one suicide was averted for every 10 to 11 gun removals carried out under the law.⁹ Indiana’s law was associated with a 7.5% decrease in the state’s firearm suicide rate.¹⁰ Several states, like Vermont, that have existing ERPO laws have expanded eligible petitioners to family, dating partners, or former spouses with children in common, including Connecticut, California, and Illinois. It’s a common sense way to ensure that loved ones, who are the most likely to identify early warning signs, have a tool they can use to help save the life of a person in crisis.

I want to take a moment to address some questions that the Committee may have in the wake of last summer’s Supreme Court decision in *New York State Rifle & Pistol Association v. Bruen*. Right now, we are in a moment in time where many of our foundational public safety laws are being challenged anew across the country. The *Bruen* opinion ruled unconstitutional New York’s “proper cause” requirement of their concealed carry permitting law and impacted New York and the six other states with similar standards. It did not evaluate any other kind of firearm restriction.

It did, however, state that the two-part test courts had been used to assess the constitutionality of gun laws since *Heller* was the wrong analytical tool. In its place, the court announced a new text-and-history test by which all firearm laws will be evaluated going forward. The court described this new test, but provided very little detail on how it ought to be applied. This new approach to evaluating laws will be unpredictable until we see much more evidence of how lower courts, and in particular federal appellate courts, who are only now beginning to weigh in, put the new analytical framework to use in assessing the constitutionality of gun safety laws.

In the months since *Bruen* was decided we have seen a flood of litigation around the country. Last month, we saw one of the very first opinions delivered by a federal Court of Appeals applying a *Bruen* analysis. But we are still a long way away from seeing whether and if there are splits between circuits, and whether and when the Supreme Court of the United States decides to grant *cert* to resolve any potential disagreements among the circuit courts on any particular gun violence prevention policy or the proper use of the *Bruen* test generally. We believe the majority of gun safety laws will survive these renewed challenges if the new *Bruen* test is properly applied.

However, until we learn more about how lower courts—and, ultimately the Supreme Court—will give the new test substance as contour, we face a period of uncertainty. We saw the same thing happen after the *Heller* decision in 2008. While we think the *Bruen* decision was wrongly decided and reckless, the

⁶ CA, CO, CT, DE, DC, HI, IL, MD, MA, NV, NJ, NM, NY, OR, WA

⁷ The other states that allow only law enforcement petitioners are RI, IN, FL, and VA.

⁸ Aaron J. Kivisto and Peter Lee Phalen, “Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981–2015,” *Psychiatric Services* 69, no. 8 (August 2018): 855–62, <https://doi.org/10.1176/appi.ps.201700250>.

⁹ Jeffrey W. Swanson et al., “Implementation and Effectiveness of Connecticut’s Risk-Based Gun Removal Law: Does It Prevent Suicides?” *Law and Contemporary Problems* 80 (2017): 179–208.

¹⁰ Jeffrey W. Swanson et al., “Criminal Justice and Suicide Outcomes with Indiana’s Risk-Based Gun Seizure Law,” *Journal of the American Academy of Psychiatry and the Law* 47, no. 2 (June 2019): 188–97.



opinion certainly does not stand for the proposition that common sense policies like those contained in H.230 must be struck down for violating the Second Amendment. We can't know how long all of this litigation will take, but it's critical that it doesn't deter or intimidate you from carrying on your important work to pass laws you know can keep people safe from gun violence. Indeed enacting this lifesaving legislation (and the litigation that will, as always, surely follow) will help put the vital question of their constitutionality before the courts—giving them the chance to assess this carefully crafted language and affirm that common sense gun laws like these are consistent with our nation's history of firearm regulation and not incompatible with the Second Amendment.

There is strong evidence that the provisions of H. 230 would withstand challenge under the historical inquiry analysis required under *Bruen*. The analysis according to the *Bruen* decision “requires only that the government identify a well-established and representative historical analogue, not a historical twin.”¹¹ The [Duke University Repository of Historical Gun Laws](#) lists 193 historical laws, several tracing back even before the nation's founding, related to firearm storage, five of which were in the great state of Vermont. These Vermont storage laws included a city ordinance providing requirements for safely storing gunpowder and other explosives to protect the public and levied a fine for violation. The ordinance even included specifications for storage containers.

Likewise, there are several dozens of historical laws related to limiting access to firearms by people deemed dangerous, just as ERPO laws do. Similarly there are nearly 80 historic laws regulating aspects of sale and manufacture of firearms. There's no shortage of historical analogs for courts to parse through if and when any provision of H.230 is challenged. And the responsibility for that analysis will be on the judges deciding these cases and the litigators that are challenging and defending the laws. The role of legislators, in contrast, is to pass smart, effective, carefully crafted laws that will save lives. You all can feel confident that the provisions of H.230 have been well-drafted to withstand constitutional challenges and are good policy.

Thank you very much for the opportunity to testify in support of this important legislation. I am grateful for your efforts to address the epidemic of firearm suicide in Vermont in these targeted and highly effective ways.

Sincerely,
Alison Shih
Counsel
Everytown for Gun Safety

¹¹ *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ____ (2022).