



New York State Conservation Council Inc.
8 East Main Street, Ilion, New York 13357-1899

MEMORANDUM OF CONCERN

Establishing extreme risk protection orders as a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

The NYSCC has serious concerns with parts of this proposal as currently drafted. We, as does the vast majority of the population, support sound policies and practices that prevent individuals who pose a verifiable risk to public safety from engaging in harmful conduct. These policies and practices must, however, be implemented in a manner that protects the rights of the targeted individual from unwarranted, ill-founded or vindictive enforcement actions.

Specific issues of concern:

Definition of petitioners. We are opposed to the inclusion of school personnel as eligible petitioners. There is no requirement that the named individual(s) have any particular qualification for making such decisions nor is there any formal supervisory structure to provide accountability their actions.

As with any citizen encountering a potentially dangerous situation of this type, school officials should report their concerns to law enforcement. Actions which have the potential to deprive an individual of their rights should be conducted within an organizational structure designed to insure appropriate safeguards. Giving this power to an amorphous group whose sole qualification is employment by a school district strikes us as capricious and arbitrary at best.

As stated in the *Watertown Daily Times* (01/13/19) "But we need to be cautious about handing this kind of authority to school personnel who may not be sufficiently trained to distinguish between careless rhetoric and legitimate warning signs of risk."

Ex parte proceedings. While ex parte proceedings conducted at the request of trained professionals operating in a supervised structure may be a necessity, the initiation of such proceedings by individuals outside of their professional role or individuals with undetermined objectives is not justified.

Erroneous, false or frivolous claims. No provision is made for compensating a respondent who is determined to have been the target of an unwarranted or even malevolent charge. Past experience with incidents arising under the provisions of the SAFE Act has shown that this is almost a certainty. Nor is any penalty imposed for the filing of a demonstrably false or malicious petition.

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Criteria vague overly broad. The criteria listed provide no reference to context. Stating that one is prepared to defend themselves against an unlawful murderous attacker or the lawful purchase of a firearm or ammunition do not in and of themselves constitute a threat.

Removal from databases. Clear responsibility must be established for removing individuals from databases of prohibited persons when the prohibition expires or is vacated. Again, our experience with the SAFE Act has shown that this is necessary. While many agencies were authorized to add records to such databases, when it came to removing them, the answer was often "not my job" or "no authority."

Dangerous person released. If the proposed process is carried to completion, the result would be that a person that has just been deemed "likely to engage in conduct that would result in serious harm to himself, herself or others" is stripped of their right to possess firearms and is then turned loose with no supervision, treatment plan or other follow-up.

These proposals attempt to address a range of serious behavioral issues solely as an opportunity for another gun control bill rather than grapple with the underlying problems. As a result, they offer a palliative exercise, not a preventive process. While firearms restrictions may be appropriate (and they are already provided for in many of instances cited), they would only reduce the potential for a single threat while leaving the causal issue or issues unaddressed.

With regard to school based incidents, examinations of virtually all recent occurrences have shown that the proximate cause has most often been the failure to act using readily available resources rather than being constrained by any lack of authority. The quest for political correctness has replaced the use of existing mental health and judicial system resources, often with tragic results.

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