

Testimony before the House Judiciary Committee – HB 4145

March 8, 2023

Good afternoon Chair Breen, Vice Chair Edwards, members of the House the Judiciary Committee and distinguished guests. My name is Tracey Yokich and I am here today in support of HB 4145 introduced by Representative Puri which establishes the Extreme Risk Protection Order Act. I am currently serving in my 20th year as a circuit court judge in the family division of the 16th Circuit Court for Macomb County. My docket includes both domestic and juvenile cases, and requests for and the enforcement of personal protection orders.

And although I am a past president of the Michigan Judges Association and currently co-chair of our Legislative Committee, I appear here today only to share my personal support and suggestions for implementation of HB 4145 – as the Michigan Judges Association has not yet had the opportunity to timely meet and consider this proposal.

Just 15 months ago, we experienced our first mass school shooting event in Michigan at Oxford High School and now the tragedy at our beloved MSU. Sadly, most everyone one of us has been touched personally by gun violence. With a population of approximately 878,000, Macomb County has seen an extraordinary rise in gun violence. Annually I review between 750 to 1,000 PPO requests of which more than half alleged credible allegations of gun violence. In the last five years, the Macomb County Prosecutors Office has seen a 200% increase in felony firearm charges, specifically

First, Section 5(7) limits where a person can seek an ERPO to the county in which plaintiff or defendant resides. To the contrary, you may file a petition for a PPO in any circuit court in the State. Allowing parties to seek an ERPO in any circuit court would *significantly* improve access to justice for those most in need.

Second, Sec. 7(3) requires that when an ERPO is issued without a hearing or *exparte*, the Court is still required to conduct a hearing within 14 days of service or when the Defendant receives actual notice. No such requirement exists in the PPO statute – and I truly believe it is not necessary here. I review anywhere between 750 to a 1,000 PPO requests a year. Almost all involve threats of gun violence or assaultive behavior. Mandating a hearing if the ERDO is issued *exparte* could have a huge impact on a judge's ability to manage a docket timely. A full hearing can be held if the restrained individual wants one by filing a motion to terminate the ERPO under Sec 7(4).

In addition, 99% of the litigants in PPO hearings are self-represented - which usually requires the court to take a more active role in the hearing – which translates into a longer hearing because we have to be so careful to remain impartial in our questioning.

And to my knowledge, there has been little outcry or litigation regarding the lack of a mandatory hearing when a PPO is issued *exparte*. And certainly – one's personal liberty which is being restrained when a PPO is issued – is significantly more important – that the seizure personal property. All I believe is necessary, is that the Defendant have a timely right to a hearing to terminate the ERDO.

Third, if you adopt my suggestion to eliminate a mandatory hearing upon issuance of an ERDO, Sec. 7(5) needs to be modified as well. It currently provides that it is the Respondent's burden to demonstrate at a hearing to terminate an EDRO that they are no longer a threat to themselves or others. I am sure this section was drafted in this manner

with the assumption that the Petitioner had already met their burden at a prior hearing. But if the ERPO can be issued without a hearing as I suggest – then the Petitioner **should** have the initial burden of showing that issuance was proper and then allow the burden to shift to defendant to terminate. That’s how it works under the PPO statutory scheme and in my opinion, it works well.

Fourth, I also hope you will also look at Sec. 9(2) and consider modifying the proposal to allow the EDRO to become **effective upon issuance** by the court as we do with PPOs. I can think of no other circumstance where an order becomes effective upon service or actual notice. Certainly, in the rare circumstance that a defendant is alleged to be in violation of the ERDO, any finding of contempt or criminal conviction would have to be based on defendant’s actual knowledge and intent to violate the court’s order. So there is no prejudice to giving the order immediate effect – and I know I am uncomfortable with the thought that there is an order with my signature – that is not effective until served or actual notice, especially when most individuals are attempting to navigate the judicial system without the assistance of counsel.

Fifth, Sec. 10 speaks to bringing a Respondent into compliance. The statute allows law enforcement or a Petitioner to file an affidavit and then allows the Court to find the Respondent in contempt and then issue an arrest warrant. **The court does not have the authority to hold an individual in contempt without a hearing for behavior occurring outside the court’s presence.** I would be **very** reticent to issue an arrest warrant based upon a sworn statement by a Petitioner and I think we may have some serious constitutional issues to work through as well. With PPO’s - Respondent can be ordered to come to court and show cause why they should not be held in contempt for violating the ERPO. If Respondent fails to appear – then we issue a bench warrant.

Finally, with regard to Sec. 16, I would suggest it should be stricken all together. If a defendant is a danger to themselves or others – firearms in the home or workplace, even if secured - I believe still present a significant danger. Locks can be broken. I see very little prejudice to others in having firearms removed from the home until the expiration of the order or the individual is no longer a danger to themselves or others. We do so regularly in divorce proceedings and I can't recall a case where a 3rd party came to court and objected to the order.

We find ourselves at a pivotal time in Michigan history. Like the Personal Protection Order Act, I firmly believe that passage of the Extreme Risk Protection Order Act will save lives.

In closing, Chair Breen and committee members, I want to thank you for your service - yesterday, today and tomorrow. We ask a lot of our public servants – and you face challenges that few of your predecessors would have ever imagined. As distressed and as devastated as I am by the senseless gun violence in our communities and the unnecessary deaths of our young people and children - I am equally overwhelmed and heartened by your courage and commitment to being part of the solution.

Thank you for your time today and I am happy to answer any questions you may have.

Respectfully submitted,

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