

House Committee on Ways and Means  
Representative Jeffrey Sanchez – Chair  
Room 243  
State House

Dear Chairman Sanchez and Members of the House Ways and Means Committee,

We write to express our concerns with existing “Extreme Risk Protection Order” (ERPO) legislation before your committee; but with support for the principal of helping those who are suicidal, protecting the public from those who are truly ‘extreme risks to society,’ and ensuring that only those with the appropriate mental capacity and demeanor are able to own and possess firearms.

The first premise of ERPO legislation is for the reduction of suicide. Regrettably, rather than connecting one with substantial services, current ERPO language does little more than removing an individual’s legally owned gun when identified as experiencing a temporary treatable crisis. This does not substantially address the issue of suicide in MA; it is simply a means to remove only one modality of suicide from a troubled individual. The MA Department of Public Health has reported that 93% of women and 78% of men who successfully commit suicide do not use a firearm.<sup>1</sup> In Massachusetts, suicide by “hanging/suffocation” is substantially the leading means for those committing suicide. We believe that if this legislation is going to take strides to address suicide it must take substantially more action to connect individuals with service.

The second, and more public, goal of ERPO legislation is to prevent mass murder by those who suffer from “extreme” mental health issues. Once again, however, the current language falls short. As we have seen far too frequently, simply taking away legal guns from people intent on doing harm is not an effective means to prevent all violence. If one is truly deemed an ‘extreme risk’ we believe that more needs to be done than simply removing their firearms and releasing them back into society with no support or service.

In fact, this effort of ERPO to remove firearms is redundant to those processes already available. Under current law in MA, local firearms licensing authorities have the discretion under the License to Carry (LTC) suitability clause (Chapter 140, Section 131) to assess an individual’s suitability to possess a firearm with the ability to revoke an LTC and obtain a warrant to remove firearms from those deemed unsuitable or who are experiencing temporary mental health crisis. Further, under the new Firearm Identification (FID) laws (Chapter 140, Section 129B) established under Chapter 284 of the Acts of 2014, local licensing authorities can petition a court to revoke an FID card for reasons not covered in section 129B. Additionally, the law currently removes one’s Second Amendment rights either for involuntary mental health commitment (Chapter 123, Section 12) or involuntary substance abuse commitment (Chapter 123, Section 35). Such revocation of one’s right to own firearms at a licensing authority’s discretion or when held against their will due to instability is one of the proclaimed goals of ERPO legislation; however, these measures are already in practice in MA.

For the reasons stated above, we offer for the Committee’s consideration the enclosed language for a comprehensive piece of legislation that will substantially address the needs of suicide prevention while taking steps to potentially stop the next violent mass-casualty incident.

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<sup>1</sup> <https://www.mass.gov/files/documents/2018/03/28/suicide-update-winter2018.pdf>

The proposed alternative language would take action on the following three areas:

*1- Preventing suicide;*

1. Establishes a *Friends and Family Suicide Prevention Hotline* – this would include a web resource and text capability to ensure that people are able to access much needed information.
  - a. The hotline will be staffed by people who are trained in suicide prevention, intervention, and mental health crisis management; and who are additionally specifically trained on the legal programs and systems available in MA.
  - b. The hotline will provide information on what means currently exist for friends and family to successfully intervene in a temporary mental health crisis.
  - c. Hotline staff would offer advice on how to conduct a thorough home sweep for materials or items that could be a risk to people in temporary crisis. This would include narcotics, RX medications, alcohol, poisons, etc.
2. Directs the Department of Public Health to develop mental health wellness follow up programs.
3. Directs the Department of Mental Health to develop public relations materials necessary to make the general public aware of available resources.

*2- Preventing the next violent mass-casualty incident;*

1. Provide Judges the ability to mandate secure treatment for people with severe mental health issues that have been determined to pose a risk to others so they may get the help they need.
2. Enables a judge to reduce the likelihood that a person who is severely mentally ill can cause harm using any means by taking action to revoke a wide range of State issued licenses or permits, i.e. a CDL license, license to practice medicine, firearms license, etc.

*3- A Commission to study suicide prevention and the mental health crisis.*

1. This bill will establish a commission to conduct a comprehensive survey on suicide prevention and mental health crisis management. This commission will:
  - a. Examine and report on all current and proposed suicide prevention and mental health crisis management resources available.
  - b. Include a review of emergency outpatient, inpatient, and long-term care needs for those with mental health issues.
  - c. Report on the current statistics regarding suicide and the means of suicide as established by the Injury Surveillance Program under the Massachusetts Department of Public Health.
2. Establish a fund suitable to accept donations from charitable organizations.

As we hope you can see, this alternative legislation is a thoughtful and compassionate approach to providing services and help to those who are suffering from suicidal thoughts or severe mental illness accompanied by violent tendencies. It is an attempt to take strides to do more to address the underlying issues behind the trends of violence in society. It should be noted that this measure will be funded through the redirection of existing sales tax collected from the sale of guns and ammunition; no additional taxes or fees are being proposed.

We would like to thank the Chair and the members of the Committee for their careful consideration of this alternative language. If you or members of the Committee have any questions, please reach out at your earliest convenience.

Sincerely,

Joseph D. McKenna  
State Representative  
18<sup>th</sup> Worcester District

## ***ENCLOSURE***

### **An Act Relative to Suicide Prevention and Mental Illness Dangerousness Proceedings**

#### **SECTION 1**

The Department of Mental Health shall establish a Friends and Family Suicide Prevention Hotline for the purpose of suicide prevention, intervention, and other mental health crisis management. The hotline shall provide assistance to those who may be experiencing a mental health crisis or friends of family members that are concerned for another person. Means of contact for the hotline shall include, but not be limited to, phone, text message, email, and/or live online chat. The hotline monitors shall be trained in suicide prevention and mental health crisis management shall provide information on available professional assistance and intervention. The hotline shall also provide information on intervention means that exist within the Commonwealth including, but not limited to, wellness visits by local law enforcement, Sections 12, Section 12A and Section 35 of Chapter 123 as well as other intervention means. All information gathered through the hotline shall be confidential unless the caller specifically authorizes the agency otherwise.

The Department of Mental Health shall develop materials available to the public for a wellness follow up program. The program shall offer assistance on how to conduct a home inspection for materials that could be a danger to person who may be a risk to themselves as well as information on mental health wellness assistance. The information shall also include legal information on how certain means of suicide or harm such as firearms, excessive medications or alcohol can be legally and safely handled if found.

The Department of Mental Health shall develop public relation materials, public service announcements and other means to make the general public aware of the hotline and other services.

#### **SECTION 2**

Chapter 64H of the Massachusetts general laws shall be amended by inserting a new section:-

Section 34. Sales tax Collected on Firearms and Ammunition.

Sales tax collected from the sale of any products that require a license under Sections 122 or 122B of Chapter 140 shall be appropriated to fund the Friends and Family Suicide Prevention Hotline operated under the Massachusetts Department of Mental Health.

#### **SECTION 3**

Chapter 123 of the general laws shall be amended by inserting the following new section:-

Section 12A. Mental Illness Dangerousness Hearing Proceedings

(a) Any person may make application to a district court justice or a justice of the juvenile court department for a seven day commitment to a state mental health facility of a mentally ill person whom they believe does pose an extreme public safety risk if not confined. After hearing such evidence as he may consider sufficient, a district court justice or a justice of the juvenile court department may issue a warrant for the apprehension and appearance before him of the alleged mentally ill person presenting a presumed extreme public safety risk. If the defendant cannot provide his or her own legal counsel the court shall appoint counsel to represent said person.

Following an appearance before the court and after a finding of the facts the court may order the person to be temporarily ordered to a facility for up to seven days at which time said person will be examined by a physician or psychologist specializing in dangerousness due to mental illness in accordance with the regulations of the department.

If said physician or qualified psychologist reports that the failure to hospitalize the person would represent an extreme public safety risk by reason of mental illness, the court shall order the person committed to a facility suitable for treating patients that represent an extreme public safety risk due to mental illness.

(b) The first order of commitment of a person under this section shall be valid for a period of not less than six months and not greater than two years and all subsequent recommitments shall be valid for a period of up to five years. The court shall conduct a hearing before the expiration of any commitment to determine if a recommitment is needed. The court may not recommit any person without a hearing. The periods of time prescribed or allowed under the provisions of this section shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure.

(c) The Court shall notify the agency, board, or supervisory authority governing any and all professional or civil licenses, permits, or certifications an individual may hold of the determination that the individual has been deemed an extreme public safety risk due to mental illness and has been committed under this section. Such notice shall result in the mandatory review of all licenses and permits for suitability, with the recommendation from the Court that all be suspended until further notice is received from the Courts indicating that such person is no longer deemed to be an extreme public safety risk due to mental illness.

(d) Should the court determine that a person is to be released from commitment, after a hearing, it shall be authorized to set conditions of release. The court shall also notify of the release the agency, board, or supervisory authority governing any and all professional or civil licenses, permits, or certifications an individual previously held and they shall conduct an evaluation of the suitable for re-establishment of such licenses, permits, or certifications. If the conditions of release are violated, the court shall immediately order the person be held until a hearing is held to determine if recommitted is necessary. Said hearing shall take place within seventy-two hours.

(e) Any person who makes an application under this section under false pretenses or knowingly provides materially false evidence or with the intent to harass the respondent shall be punished by a fine of not more than \$100,000 or by imprisonment for no more than 10 years in a house of correction or both.

#### **SECTION 4**

There shall be established the Massachusetts Commission on Suicide Prevention and Mental Health Crisis Management to be comprised of seven members; The Governor or his/her designee, the Attorney General or his/her designee, the Secretary of Health and Human Services or his/her designee, the Commissioner of The Department of Mental Health or his/her designee, the Commissioner of Executive Office of Public Safety and Security or his/her designee, the Speaker of the House or his/her designee, and the Senate President or his/her designee.

Said commission shall examine the state of suicide prevention and mental health crisis management in the Commonwealth. The commission will include in its study emergency and outpatient care needs, inpatient and long term care needs, facility and infrastructure needs, public information and outreach; professional training needs and potential shortages, Establishing a dedicated fund suitable to accept donations from charitable organizations for said needs and other means of funding sources.

Said commission shall examine current and proposed suicide prevention and mental health crisis management measures including but not limited to counseling services, diversionary programs, doctors' interventions, police wellness visits, court programs, youth education, Sections 12 and Section 35 of Chapter 123 and shall issue a report no later than January 1 2019 with recommendations for improvements to those efforts including expanded access, additional channels of communication, improvements to follow up programs, assistance on securing a home from materials that could be a danger to individuals who may be a risk to themselves, and increased marketing.

Said commission shall also report on the current relative statistics regarding suicide and the means of suicide as established by the Injury Surveillance Program under the Massachusetts Department of Public Health; and shall also include legal information on how certain means of suicide or harm such as firearms, excessive medications or alcohol can be handled if believed to be a potential hazard.