



**MICHIGAN DOMESTIC & SEXUAL VIOLENCE
PREVENTION & TREATMENT BOARD**
Board Members

- ◆ Hon. Elizabeth Pollard Hines (Ret.) -Chair
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Chairperson Breen
PO Box 30014
Lansing, MI 48909

CC: Bill Sponsors Rep. Churches, Rep. Carter, Rep. Grant, Rep. MacDonell, Rep. Whitsett, Rep. Price, Rep. Brabec, Rep. Puri, Rep. Brixie, Rep. Young

March 17, 2023

Dear Chairperson Breen and Bill Sponsors,

As HBs 4138-4148 are currently before the House Judiciary Committee, I am writing to inform you that the Michigan Domestic and Sexual Violence Prevention and Treatment Board discussed firearm reform bills at its March 10th meeting and its positions are outlined in this letter. For ease of discussion, the Board analyzed and referred to the Senate package, SBs 76-86, and the substitutes the Board had access to at the time of the meeting (substituted are stated below). This letter will refer to the Senate bills when outlining concerns and suggestions.

As you know, the Michigan Domestic and Sexual Violence Prevention and Treatment Board (the Board) is a seven-member, Governor-appointed Board charged with funding sexual assault and domestic violence services for victims and providing policy recommendations on the issues of domestic violence and sexual assault. The Board is administratively housed in the Division of Victims Services within Michigan Department of Health and Human Services. Please note that the Board's position and rationale is solely that of the Board and is not intended to represent the view of any individual member of the Board, the views of the Michigan Department of Health and Human Services, or any other body.

HB 4138, 4142-43 Background checks

Board position: The Board **supports** and provides the following recommendations. (*Position was determined from SB 76 S-1 draft 3, SB 77, SB 78*)

Intimate partner violence and gun violence are often connected, and the results can be especially dangerous. The fatality risk when a gun is present in a domestic abuse assault increases exponentially. Expanding criminal background checks to include purchases for all firearms will protect domestic violence and stalking victims.

The Board was glad to note that several concerns in the bills as introduced were amended in the S-1 substitute, that was voted out of Senate Committee. Those concerns that were addressed are as follows:

- Amended the definition of “seller” and “purchaser” to include all firearms, and not only pistols.
- Removal of Sec 2a (1) (a).

SB 76

1. Currently, only pistol purchase licenses are retained and properly recorded. Consider a mechanism for retention of submitted and completed purchase licenses for all firearms, as a safeguard to ensure background checks are happening for all purchases of all firearms.
2. Ensure that crimes involving domestic violence, especially misdemeanor offenses, are being reviewed prior to authorizing license to purchase or during a background check. Research in this field indicates that the Federal NICS check is the best method to ensure that all relevant history is being reviewed prior to issuing a license to purchase. The Board appreciates the removal of original Sec 2a (1) (a).
 - a. Further, identify that the criteria in Sec 2 (3) (a)-(h), license to purchase, meets everything that is captured and reviewed during a NICS check.

HB 4139-41, 4144 Safe Storage

Board position: The Board **supports** and provides the following recommendations. (*Position was determined from SB 79 S-1 draft 4, SB 80, SB 81, SB 82*)

Many, but not all, households where domestic abuse occurs do include minor children. By requiring safe storage of firearms in a premise where minor children may have access to the firearm, minors and others on the premises, including domestic abuse victims, have greater protection from quick, often fatal decisions to use a firearm in a domestic abuse assault. Without expansion to include all unattended firearms or at least expansion to those situations where individuals are legally restricted from accessing a firearm, adult domestic violence, sexual violence and stalking victims do not receive greater and necessary protection from gun violence.

The Board was happy to see a concern in the bills as introduced was amended in the S-1 substitute, that was voted out of Senate Committee.

- Removed “glove box” and added additional storage measures.

SB 79

1. Currently, the bill only requires safe storage to prevent accessibility by minors. Consider expanding the bill to require that a firearm be safely stored when not in use. This could help prevent other dangerous circumstances (especially for victims in DV situations).
2. Extend the safe storage requirement to cover premises where there are individuals who are legally prohibited from accessing firearms in addition to minors.

HB 4145-4148 Extreme Risk Protection Order

Board position: The Board **supports only with immediate surrender of firearms upon service with law enforcement present** and provides the following recommendations. (*Position was determined from SB 83 S-1, SB 84, SB 85, SB 86*)

The Board stresses the importance of the need to have immediate firearm surrender at the time of the service of the extreme risk protection order with law enforcement present. The Board does not consider the S-1 reported out of committee on March 9th to provide immediate surrender when there is an option for the respondent to first be served with the ERPO and then surrender firearms to a licensed firearm dealer on his own. **The Board does not support this substitute.** (See more in recommendations).

In time of crisis, leaving a respondent with time and access to firearms and, in turn, to harm himself or herself and others is too dangerous.

Further, ERPOs could be used in tandem with domestic violence, stalking, or sexual assault Personal Protection Orders. An extreme risk order could result in a much more immediate path to safety for a victim by eliminating access to a firearm. ERPOs cannot and should not replace other types of protection orders, as those offer more protections than only an ERPO with the latter's sole focus on removing firearms. Adding an ERPO as another option available to victims could be helpful to them when safety planning.

The Board was glad to note that several concerns in the bills as introduced were amended in the S-1 substitute, that was voted out of Senate Committee. Those concerns that were addressed are as follows:

- Ammunition was added along with firearms to be removed, prohibit purchasing/possessing while an ERPO is effective.
- Sec 7 (1)(f): amended "convictions" to "previous or existing criminal charges..." and inserted the intent of offenses rather than specific charges. This will allow the court to view behaviors through a larger scope.
- Sec 7 (1) (c): added pretrial release order, probation order, parole order, and another injunctive order.
- Add provision that law enforcement must notify the petitioner immediately after serving the ERPO on the respondent. (Sec 13 (3) (b))
- Removed in Sec 17 that a petitioner to give written notice to respondent of extension to ERPO. This is too dangerous for a petitioner, other than law enforcement.

SB 83

Sec 3

- The Board appreciates the amendment of plaintiff/defendant to petitioner/respondent; however, the Board suggests the removal of "restrained individual" as unnecessary and unduly confusing and incorporate this definition into "respondent" (these are terms currently used in protection orders). "Respondent" applies whether or not service is made or an order issued.

- If restrained individual is kept in the definitions, please evaluate Sec 15 (4), as it may need to be changed to “respondent.”

Sec 5

- As it has been identified that courts can issue an order against a minor, consider adding to the list of eligible petitioners Sec 5 (2) school counselor/administration/personnel. (school counselor does not seem to be qualified under the mental health professional definition)

Sec 7

- Section 7 (1)(a), the court should not be limited to only “use, attempted use or threatened use” of “physical force.” Would recommend adding “**or stalking behavior.**” Stalking is too often a precursor to murder. Stalking may not involve “physical force,” but to someone threatened and stalked by a person with a gun, it can turn deadly.
 - The Board believes that this needs to be addressed in (a), even though stalking could align with (f) (ii), (f) only factors incidents that lead to “criminal charges.” This behavior is very important for a court to consider, whether or not there is charge.
- Sec 7 (1) (c) amend to include “violations of.” 7 (d) and (e) address violations of ERPOs or PPO, but violations of (c) (iii)-(vi) are also important and should be considered.
- Sec 7 (f) (ii) add “animals.” The offense has an element involving a threat to a person, property, or *animals*. Abusers may intimidate victims by threatening to harm or kill their pet.
- The Board appreciates the work that has been done with this section. Many original concerns have been addressed in the substitute.

Sec 9

- **Strongly suggest removal of Sec 9 (1) (c) (ii).**
The Board stresses the immense importance of true immediate surrender/seizure of firearms upon the issuance and service of an extreme risk protection order.

If this provision is amended so that law enforcement would accompany respondent immediately upon service of the ERPO to the licensed firearm dealer, the Board could support, so long as the language makes clear this process is to be done immediately and with law enforcement present. At no time should the respondent have access to the firearm(s) after service of the ERPO.

The Board is understanding of a respondent wishing to receive economic gain by selling a firearm, and believes that option should be available, but removing the firearms from respondent’s access needs to be the top priority. In time of crisis, leaving a respondent with access to firearms and time to commit harm is too dangerous.

- **Strongly suggest in Sec 9 (1) (c) change “after” to “upon.”** This will further signify the intent and purpose of immediate surrender of firearms is at time of service.
- Make clear that the law enforcement officer serving the Order can also seize the firearms (Sec 13 states all law enforcement officers can serve an order, but Sec 9 (1) (c) states

surrender of firearms is to LEA in subsection 9 (1) (g)) Does this cause a scenario that a law enforcement officer can serve the order but not accept surrendered firearms (i.e. traffic stop and gun is in the vehicle)?

- The bill should clarify and give direction to law enforcement as to when they can enter the premises and seize firearms and ammunition. Sec 9 (1) (h) may have attempted to do this; however, this provision delays the immediacy of surrender/seizure if respondent has up to 24 hours to surrender, and this also could create a more dangerous situation for all parties involved. The Board suggests that law enforcement be allowed to seize firearms immediately upon serving the order.
 - o Sec 9 (1) (h): concerns around term and vagueness of “discretion as appropriate to the situation”
 - o What happens if respondent is evading law enforcement, or they have possession of firearms and refuse surrender? Does law enforcement have to go to court to seek a warrant to seize? Again, this could create a dangerous situation if law enforcement can’t seize upon service.
- What is the timeframe in which the order must be served by law enforcement? (The Florida statute may provide guidance: law enforcement shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night.)

Sec 10

- Sec 10 (1) (a): Ensure the law enforcement agency/law enforcement officer is granted the power to seize/remove firearms as is specified in this section (Sec 9 (1) (h) does not imply immediate surrender)
- Sec 10 (3): suggest removing the new language “a good-faith effort under this subsection may include asking the restrained individual for a receipt showing that the restrained individual has surrendered the individual’s firearms and ammunition to a licensed firearm dealer.”
- Sec 10 (1) (a) (b) add license to purchase 28.422
- Receive actual notice: this process doesn’t seem to work in ERPO situations. Modeled from PPOs, but ERPO has an immediate nature not the same as the current PPO process. This may need to be re-evaluated.

Sec 11

- Sec 11 (e): Doesn’t believe the petitioner needs to take the order to law enforcement. Law enforcement is already involved since they are the only entity that can serve, they should be automatically entering into this system.

Sec 19

- Sec 19 (4): The Board wants to ensure that if someone petitions in good faith for an Extreme Risk Protection Order but the court denies the order, the petitioner should not fear criminal penalties if there was simply not enough information to issue the order. Could tighten up by adding such language as “... makes a false statement, under oath, which he or she does not believe to be true, regarding a material matter.”

Additional considerations

- Mental health evaluation: During the Risk Protection Order hearing in Florida, the court must consider ordering a mental health evaluation, if appropriate. The court has the authority to order the evaluation and can get people in crisis into treatment. Need to add language that lack of mental health evaluation due to a respondent not being able to pay is not a reason to be held in contempt of court.
- Florida appears to have developed instructional and informational materials that may be helpful in Michigan. It is a requirement of their statute. 790.401(14). Materials may include local community resources, including crisis intervention, metal health, substance abuse and other counseling. Instructions for petitioners are required to include pictures of types of firearms and ammunition that a petitioner may choose from to identify relevant firearms and ammunition without requiring specific or technical knowledge of firearms or ammunition.
- The Board asks for consideration of involving Personal Protection Orders in the conversation of free service.

Thank you for your time and your interest in protecting the residents of Michigan. The Board appreciates the intent of this bill package, as the Board and its allies working with crime victims acknowledge the long-standing need for such reforms. Please contact me or staff to the Board, Angie Povilaitis, Staff Attorney, povilaitisa1@michigan.gov, or Jess Averill, Policy Analyst, Averillj@michigan.gov, if you have any questions or would like to further discuss these Board positions.

Sincerely,



Hon. Elizabeth Pollard Hines (Ret.)
Chair, Michigan Domestic and Sexual Violence Prevention and Treatment Board
libbyhines@comcast.net