

**Testimony of Wemi Peters
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**Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia**

**Public Hearing Regarding:
Bill 22-0193
“Temporary Protection Order Firearm Relinquishment Act of 2017”**

**Bill 22-0400
“Extreme Risk Civil Protection Order Amendment Act of 2017”**

March 22, 2018

The Legal Aid Society of the District of Columbia¹ submits this testimony to provide feedback regarding Bill 22-0400 “the Extreme Risk Civil Protection Order Amendment Act of 2017” and Bill 22-0193 “the Temporary Protection Order Firearm Relinquishment Act of 2017.” We represent survivors of domestic violence when they petition the Court for Civil Protection Orders (CPOs) and recognize that there is a connection between domestic violence and gun violence. Furthermore, we recognize that our clients in all our practice areas deserve to have the means to ensure that their communities are safe. For that reason, we support the goals of both of these bills and believe that they provide new tools to address public safety concerns about firearm violence. Our testimony today will focus on a couple of changes that we believe will better allow both bills to fulfill their public safety purpose.

Specifically, Bill 22-0400 should be amended to ease burdens on petitioners who might make use of it, mainly by eliminating filing fees and tasking the Office of the Attorney General with all litigation related to initial petitions, modifications, and extensions. Bill 22-0193 should be amended to provide an additional narrow protection against potential misuse of the process. Further, we would like to highlight for the Committee the need to improve enforcement of existing law around relinquishment of firearms when a CPO is issued, as we have long been concerned that respondents in CPO cases do not actually relinquish weapons, even though they are required to do so. Particularly in these times, the Committee and relevant parts of the District Government should focus their attention on ensuring that abusers who have CPOs against them do in fact give up their weapons and that these weapons are properly secured during the time that CPOs are in effect.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 85 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

BILL 22-0400 SHOULD BE AMENDED TO EASE BURDENS ON PETITIONERS

Bill 22-0400 would allow members of the public to harness the Court's power to disarm parties who intend to use guns to inflict harm on themselves or others in the community. As a threshold matter, we are concerned that the name for the orders issued under this bill – Extreme Risk Civil Protection Orders – is very similar to the name for orders issued under the current Civil Protection Order process. A CPO is an entirely different order that applies to parties with a special intrafamily or interpersonal relationship and does much more than disarm the party that is subject to that Order. This similarity in nomenclature may cause confusion when parties attempt to file for the Extreme Risk order, and in fact, may lead fewer potential petitioners to file for ERCPOs if they mistakenly believe that the same intrafamily or interpersonal relationship requirement applies in both types of process. Therefore, we recommend that the name be changed from ERCPO to Extreme Risk Relinquishment Order (ERRO) or some other name that does not incorporate the term “Civil Protection Order.”

Beyond the issue of what orders issued under Bill 22-0400 should be called, there are a couple of structural changes the Committee should make to make it more likely that petitioners will make use of the bill's process and that the bill's protections will reliably remain in force.

First, as the goal of Bill 22-0400 is to ensure public safety, the bill should include clear language indicating that, like CPOs, petitioners may file for Orders without cost.

Second, we are very concerned that this bill places a burden on individuals to not merely initiate a case to ensure that the public is safe, but also to litigate the matter to conclusion and be responsible for subsequent motions, such as motions to vacate or extend the order. By placing such an extensive responsibility on private individuals, the bill, in essence, turns private citizens into public safety officials. That burden makes even less sense when the petitioner does not know the respondent well and/or has limited access to information or facts that would support an order to have the respondent relinquish her firearms.

If the bill passes as-written, consider a hypothetical scenario where a college student learns that one of her friends is in possession of a firearm and has been talking about using the firearm against a list of people. The college student could file for an order under Bill 22-0400, but would then be required to follow through with the case, take the time to come to court on subsequent dates, and to find and present additional evidence against the friend, including one or more of the following: a history of use of force (including attempted or threatened) against another person, prior arrests, history of violation of a protective order, documentary evidence of past criminal history and evidence of the acquisition of firearms, ammunition or other deadly weapons within six months of the filing of the petition. Some of this information is not available to the public and even when available, searching for the information puts an undue burden on an individual who has adequate information to raise an alarm but who lacks adequate resources or time to conduct an investigation into another party's past criminal history or firearms purchases or the ability to utilize litigation tools such as subpoenas to gain such information. It also puts the burden on the hypothetical college student to defend against future vacatur or modification requests from the friend and to request extensions if the respondent poses a continuing risk beyond one year – something the hypothetical college student might not even be aware of. If, at any time, the college student moves out of the District or becomes overwhelmed by the process,

the litigation ends, even if the threat posed by the respondent was genuine and persists. As written, the bill rests fulfillment of its valid and important public safety purpose almost entirely on the ability of each individual petitioner to navigate the litigation process successfully.

To eliminate the risk that someone who poses a genuine threat to themselves or others keeps their firearms even after an individual has raised the alarm by filing a case, and to ensure that requests for these orders will receive consistent and adequate follow-through, we suggest that the Committee amend the bill to make the Office of Attorney General responsible for the litigation of these cases once a private individual has filed a petition under Bill 22-0400. The OAG, which includes a public safety office, is equipped to handle this litigation in a way that an ordinary private citizen is not. The OAG has investigative tools at their disposal, skilled lawyers who can prepare and present the required evidence during a hearing, and the benefit of institutional continuity. As the intent of this legislation is to ensure public safety, once the litigation commences, there is a greater chance of the necessary follow-through happening when the burden is not on an individual party but on a government agency with the resources to see an entire case through.

BILL 22-0193 SHOULD BE AMENDED TO INCLUDE FURTHER SAFEGUARDS AGAINST MISUSE

Bill 22-0193, the Temporary Protection Order Firearm Relinquishment Act of 2017, would amend Section 16-1004 of the D.C. Code to include a requirement that a party subject to the Temporary Protection Order (TPO) relinquish their firearms until the protection order litigation is resolved. We are very aware of the relationship between domestic violence and firearms. In particular, survivors of domestic violence are most at risk when they take steps to leave violent relationships. We commend the Council for closing this gap, as this firearm relinquishment provision already exists in the one-year CPO but has so far been missing from the TPOs. However, we have seen abusers routinely use the judicial system to attempt to perpetuate their abuse and control of their victims. As the TPO hearing is usually an *ex parte* hearing, it offers an unchecked opportunity for an abuser to make claims without opposition. We are concerned that an abuser could abuse this provision within the TPO portion of the CPO process in order to hurt a survivor whose employment – and independence from the abuser – is contingent on carrying a firearm. For example, Legal Aid had a client who was a Special Police Officer who was required to carry a firearm as part of her job. When she filed a petition for a CPO against her abuser, she requested and received a TPO as part of her relief. After being served, her abuser retaliated by filing a counter-petition against her. She ultimately prevailed against her abuser. However, had this provision been in place, she would have been at risk of losing her job if she had to relinquish her firearm for two or more weeks during the pendency of the Civil Protection Order litigation. Therefore, we recommend that the new section include a narrow exception for parties who are required to carry a firearm as part of their job *when the firearm has no substantial relationship* to the alleged intrafamily offense.

EXISTING CPO FIREARM RELINQUISHMENT PROVISIONS SHOULD BE ENFORCED

Furthermore, we would like to draw attention to the lack of enforcement of the firearm relinquishment provision that already exists in one-year Civil Protection Orders. Each CPO issued in D.C. contains a Firearms Warning for Respondents, ordering them to relinquish firearms to local law enforcement within 24 hours after being served with the CPO. However, after a Civil Protection Order is entered, there is no process to ensure that firearms are surrendered to appropriate third parties (i.e. the police, not family or friends). The police are not required to conduct a search for a firearm even after the Court finds that a Respondent, in possession of a firearm, has committed an intrafamily offense. Given the very real connection between domestic violence and gun violence, increased enforcement of the requirement that abusers relinquish firearms when subject to a Civil Protection Order would ensure that survivors of domestic violence do not have to live in fear.

CONCLUSION

Legal Aid supports this Committee's action towards ensuring that D.C. residents are better protected from firearm violence and hope that you will consider and incorporate our proposed changes to both bills. Thank you for your time.