

Dear Criminal Justice and Public Safety committee,

I am writing to you in opposition to HB 1642, an act relative to extreme risk protection orders. I have a number of misgivings about the wording of this bill, as it describes a process that strips the accused of due process, and it provides an avenue for someone to evade prosecution should they falsely accuse someone of being a subject of extreme risk.

Now, despite being opposed to this bill, I support the intervention of law enforcement when someone presents a danger to themselves or those around them. Quite recently here in Amherst, just such a situation arose, where an elderly individual had lost their sense of reality and had to be both disarmed and detained. They were then institutionalized for their own well being. This situation showed me that the existing NH laws are very strong, and very effective when dealing with people who pose an extreme risk. I have complete confidence in our legal system as it pertains to this subject. As I was personally involved with the family, I was able to see that all parties were protected, and that the civil rights of all parties were fully respected and the police were able to quickly deal with the situation at hand, using the law as it stands today.

Now, I would like to review the particular parts of the bill that I have misgivings about.

First, *159-G:3, II, (b) Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current ownership, possession, custody, or control.*

This section indicates that a person who is a danger to themselves, others, or both, can only harm these parties if they are armed with a firearm or ammunition. This is a ridiculous assumption and it is clearly a falsehood. If a person is a dangerous person, then what prevents that person from going into a cutlery drawer and using a butcher knife to cause harm? And what prevents them from using another object such as a frying pan, chair, lamp or something else to cause harm? I say that nothing prevents them from doing so, as a dangerous person does not need a firearm to cause death or serious bodily injury to themselves or those around them. If a person is indeed a dangerous enough person to have the police called on them, then they would need to be denied access to every object that could cause harm. This means that they would need to be removed from the premises, not to have a narrow court order taken against them.

Secondly, *159-G:3, IV Notice of the pendency of the action and of the facts alleged against the respondent shall be given to the respondent, either personally or as provided in paragraph V. **The petitioner shall be permitted to supplement or amend the petition only if the respondent is provided an opportunity prior to the hearing to respond to the supplemental or amended petition.** All petitions filed under this chapter shall include the home and work telephone numbers of the respondent, if known. Notice of the whereabouts of the petitioner may be kept confidential by order of the court for good cause shown. Any answer by the respondent shall be filed with the court and a copy shall be provided to the petitioner by the court.*

This section indicates that a respondent may not be allowed to respond to the petition against them, whereas it should contain a provision that requires that the respondent be given the opportunity to respond. This section effectively locks the respondent out of the pre-hearing process.

Thirdly, *159-G:3 IX In any proceeding under this chapter, the court **shall not be bound by the technical rules of evidence** and may admit evidence which it considers relevant, reliable, and material.*

This section is abhorrent to the very judicial process that the bill attempts to put in place. Without the technical rules of evidence in place, the respondent will be subject to rulings based

on hearsay, and in any proceeding whether major or minor, we must protect the rights of the accused and insist that actual evidence be introduced.

Fourthly, *159-G:4 IA petitioner may request, and the court may enter, a temporary extreme risk protection order with or without actual notice to respondent.*

This section allows the process to take place without the knowledge of the respondent, effectively locking the respondent out of the process. If the respondent is to have any defense at all to the accusations, then they must be informed of the actions against them through an official service of the court, as would be done in any other proceedings.

Fifthly, *159G:4 IIIIf a temporary extreme risk protection order is requested, the court shall hold a temporary **ex parte** risk protection order hearing in person or by telephone on the day the petition is filed or on the business day immediately following the day the petition is filed.*

This section also locks the respondent out of the hearing process. In effect, the accused individual has no opportunity to respond to the accusations laid against them.

While there are additional issues with this bill, I think that these 5 examples are enough for everyone on the committee to vote against this bill in its current form. I have shown where this bill violates the following Constitutional Rights:

The 6<sup>th</sup> Amendment which contains the Confrontation Clause and the Compulsory Process Clause for witness & defense evidence.

The 14<sup>th</sup> Amendment which contains the Due Process clause and the Brady Rights to exculpatory evidence.

It is the right to present witnesses, confront accusers, obtain favorable evidence, testify personally and the right to have effective counsel that insures a fair and meaningful process to insure that justice is done and to prevent an unfair conviction, and the writing of this bill does exactly the opposite.

If we, as a State, are to introduce a new process to insure public safety, then let us introduce a process which insures that the rights of both the accuser and the accused are respected.

Sincerely,  
Anthony J. Nino Jr.