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Testimony in support of HB1267 - Public Safety - Extreme Risk Protective Orders - Review of Court Records

Hearing Date: March 6, 2024

Thank you Chair Clippinger, Vice Chair Bartlett, and members of the Judiciary Committee. I am Delegate Robbyn Lewis testifying on behalf of HB1267, which will allow researchers at institutions of higher education to access Extreme Risk Protective Orders (ERPO) data.

As some of you will recall, the General Assembly passed ERPO legislation in 2018; it is sometimes referred to as the “Red Flag” law. Designed to prevent tragedies, ERPO gives law enforcement, family members, and health care providers the ability to petition the court to temporarily remove firearms from individuals who are at risk of using guns to hurt themselves or others.

Data generated under an ERPO order includes court records, which are already confidential.

Under our current “Red Flag” law already allows court personnel, the respondent or counsel for the respondent, the Maryland Department of Health, local mental health authorities, and law enforcement to access relevant court records. The bill before you will simply add academic researchers to that list. Without this important data, researchers will be unable to effectively evaluate the implementation and equitable enforcement of ERPOs.

The bill does not change the ERPO in any other way. This bill does not change who can petition for an ERPO. It does not change the process or court procedures. It merely provides the opportunity for researchers to study how the law is being used.

Researchers play an important role in the legislative process, conducting studies evaluating our laws' effectiveness. As policymakers, we need data to inform legislation and ensure it will have the intended effect. Moreover, gun violence is a public health crisis and requires a comprehensive public health approach. Data will allow researchers to understand the size and scope of the problem, what puts our communities at risk, and how to reduce those risks with policies and programs to keep our communities safe.

Almost all states with extreme risk laws allow researchers access to petitions and court records. In fact, it is public information in many states through court records or FOIA requests. Some state statutes require annual or semi-annual reports on the use and impact of the law. This bill will update the state's confidentiality clause to exempt researchers working to study the law. We need researchers to continue having access to ERPO data to support the state's efforts in eradicating gun violence.

Granting access to researchers is a move in the right direction. While we are extending the confidentiality exceptions to allow researchers at higher education institutions access, we are not expanding access to the public. University research is subject to strict oversight by Institutional Review Boards (IRBs) which operate under federal regulations that govern research. This oversight ensures the privacy, safety, and security of all information in Maryland ERPO case files. Among the list of exceptions in the ERPO confidentiality clause, researchers at institutions of higher education would have the most oversight on their use of this information because of the IRB oversight. This means that only university-affiliated researchers who have first sought approval from the IRB can request access to the court records and only other authorized project team members can review the confidential materials.

HB1267 brings the state closer to crucial research that can inform policy that will save lives.

Thank you for your consideration. I respectfully request a favorable report for HB1267.

Sincerely,

Delegate Robbyn Lewis