



NEVADA FIREARMS COALITION

5575 Simmons Street, Suite 1-176
North Las Vegas, Nevada 89031
702-373-5935

www.nvfac.org
www.facebook.com/nvfac
don@nvfac.org

February 18, 2019

RE: SB 120

Nicole Cannizzaro, Chair
Senate Judiciary Committee
Nevada State Senate

Dear Chair Cannizzaro;

The Nevada Firearms Coalition has reviewed SB 120 (orders of protection) and we have strong concerns regarding the protection of civil rights of the accused. For this reason, we are STRONGLY OPPOSED to SB 120 for the following reasons:

The governing documents of the State of Nevada and the United States of America provide protection to citizens so that their rights are protected.

Most of the language in this bill regarding “threats” is directed to firearms and their possession. There are other devices used in domestic violence that are significant weapons, but they are not the focus of this bill.

Section 4: *Clear and convincing evidence.* This definition lowers the standards of prosecution and degrades the legal level of proof for conviction to that below “probable cause” and “reasonable suspicion.” Under current laws, law enforcement may temporarily detain for “reasonable suspicion” and arrest for “probable cause” with court convictions being “found guilty.” This law lowers the standards of law enforcement and court actions below the level currently established for detention and arrest, and allows tremendous discretion on the part of law enforcement in the determination and enforcement of “high-risk behavior” which is not defined nor codified in Nevada statute, but identified in this bill as the mere possession, custody, control or acquisition of a firearm, which on its face is both legal and a constitutionally protected right. This alone is sufficient to oppose this proposed legislation as an affront to civil liberties as articulated in Nevada and US Constitution.

Section 9: *High-risk behavior* is completely related to firearms and is so vague that it could be applied to any person who simply possesses a firearm. Again, this allows law enforcement to determine what an officer may believe to be in their mind “high risk behavior.” This alone is sufficient to oppose this proposed legislation as an affront to civil liberties as articulated in Nevada and US Constitutions. “High risk behavior” requires ownership/custody of a firearm in addition to other factors. This is incredibly narrow and highly subjective, and someone could exhibit “high risk behavior” without ever owning or possessing a firearm. They could have a knife, explosive device, or other weapon.

Section 9.1: The wording is very vague. What does communication of a threat of violence really mean? An argument? Someone disagrees with someone else on social media? There are serious 1st Amendment issues with this section.

Section 9.3: Vague as to what constitutes threats of violence. Ex-spouses arguing over text messages about exchanging children? Someone loses their temper?

Section 9.4 Exhibited conduct which a law enforcement officer determines would present a threat to the safety of the public. This is extremely vague and gives any law enforcement officer the ability to use personal opinions of behavior to institute law enforcement action. Some officers are of the personal opinion that hunting, open carry of a firearm, concealed carry of firearms, and otherwise lawful behaviors are “threats to the public.” This alone is sufficient to oppose this proposed legislation as an affront to civil liberties as articulated in Nevada and US Constitution.

Other sections which allow standards lower than “probable cause that a crime has been committed” or “reasonable suspicion that a crime has been committed” include the following:

Section 9.5 (a)(b) “Engaged in conduct which presents a danger to himself or herself or another person while (a) in possession, custody or control of a firearm or (b) purchasing or otherwise acquiring a firearm”

Section 9.7. Engaged in the reckless use, display or brandishing of a firearm; Nevada State Law does not define “brandishing.” Again, narrowed only to firearms. What about other weapons? Cars?

Section 9.8: Used, attempted to use or threatened the use of physical force against another. What constitutes a threat of physical force? The wording would include justified use of force for self-defense.

Section 9.9; Abused or is currently abusing a controlled substance or alcohol. What constitutes abuse? This is another section that is subject to subjective interpretation.

Section 9.10: Acquired a firearm or other deadly weapon within the immediately preceding 6 months; or NRS 202...defines “deadly weapon.” But this is not referenced here. This is another example of a poorly written bill, as a mere purchase of a firearm is considered a dangerous act and “high-risk behavior.”

Section 9.11: Engaged in any other conduct or acts the court considers relevant to determine whether to issue an order for protection against high-risk behavior. Since “high-risk” behavior is not codified in Nevada Law and by this bill is focused solely on possession of firearms, what standard would a court use for consideration?

Section 11.1; The court may issue the order based only on the “clear and convincing” evidence standard. This is more than the “preponderance of evidence” standard used for civil cases, but not as rigorous as the “beyond a reasonable doubt” standard used in criminal cases.

This lower standard is troubling because the section is taking away constitutional rights, without due process, and with a lower standard of evidence (clear and convincing). If anything, the standard must be “beyond a reasonable doubt.”

Section 11.2; The court is not required to have both parties appear, but this bill gives wide discretion. This violates the 6th Amendment right to confront witnesses and cross-examine them.

Section 11.3; Extended orders at least require notice and a hearing, a reasonable due process requirement. Emergency orders can be issued with or without notice and there is no hearing requirement. *Ex Parte* orders require notice in this bill, but it is silent regarding the requirement for a hearing.

Section 11.5: If it appears to the satisfaction to the court from specific facts communicated by telephone to the court by a law enforcement officer that an act of high-risk behavior has occurred, the court may issue an emergency order against the adverse party. Not only does this law allow for individual personal law enforcement determination of “high-risk behavior,” it provides sanctions against a person based on subjective personal opinions. This proposed legislation is an affront to civil liberties as articulated in Nevada and US Constitution.

Section 12.1; This section requires the adverse party to surrender firearms. This is a clear violation of the 4th and 5th Amendment right to unreasonable seizure and due process. It is also a violation of the 2nd Amendment. Without

notice and a hearing, this is unconstitutional. In addition the passage of the “universal background check” bill prohibits the surrender of a firearm(s) without a mandatory background check.

This bill contains provisions that are clear violations of the 2nd, 4th, 5th, and 6th Amendments to the US Constitution. It also appears to be in direct contravention of similar Nevada state constitutional sections (Sections 8, 9, 11, 14, and 18).

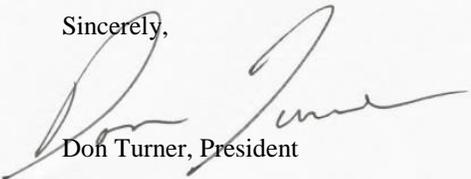
In addition to the problems already mentioned, this bill will subject law-abiding residents of Nevada to adverse legal consequences before they have committed a violation of the law – indeed, punishing them for what someone thinks they might do. In a free constitutional republic that prides itself on the rule of law, for a sovereign state of that republic to contemplate such a flagrant abuse of legal process is nothing short of outrageous.

Before someone is deprived of a constitutional right, they must be given the full provision of due process. This includes specificity about the definitions and elements of that process, full rights of notice, and the full and free opportunity to legally contest that process with legal counsel, and proof of contested facts beyond a reasonable doubt. All presented in a court of law before any actions are taken that are adverse to the accused’s constitutional rights.

This bill provides no method of appeal for the adverse party. The lack of notice and hearing for any type of court order, the complete subjective interpretation of behavior, the focus on firearms only, in addition to the violations of Constitutional rights are highly problematic.

For these reasons the Nevada Firearms Coalition **STRONGLY OPPOSES** passage of this bill.

Sincerely,



Don Turner, President

cc: Senate Judiciary Committee

Dallas Harris
James Ohrenschall
Marilyn Dondero Loop
Melanie Scheible
Scott Hammond
Ira Hansen
Keith Pickard

The Nevada Firearms Coalition is dedicated to the safe use of firearms for self-defense, competition, recreation and hunting. We are the statewide Nevada grassroots organization representing the firearms owners of Nevada. Our membership includes individuals, gun clubs, community organizations, and retail firearm corporations and ranges. We are the State Association for the National Rifle Association, and a member of the National Shooting Sports Foundation, USA Shooting and the Civilian Marksman Program.