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**Testimony to the Senate Federal and State Affairs Committee  
Opposing SB192 (Speaking In-Person)**  
March 2, 2021

Chairman Olson and Members of the Senate Federal and State Affairs:

We want to be very clear law enforcement has a high interest in protecting and ensuring the safety of domestic violence survivors and members of their families. We also share the families' desires to end the cycle of domestic violence. We understand the difficulties many survivors face when attempting to create separation and protection from violent partners.

**Practical Concerns**

We are concerned that SB192 will not assure the intended goals and very likely could raise unrealistic expectations regarding the safety of family members and a false sense of security the offender will not be in possession of a firearm while under this new type of court order. The process in SB192 does not assure the defendant in a protection order or a person convicted of domestic violence will not illegally possess a firearm any more than the protection order by itself can assure compliance by the defendant.

One concern is requiring a person to relinquish firearms that have not been used in a crime and prohibiting the owner from transferring the firearms to another person who may lawfully possess it. SB192 even goes a step further in ordering a relinquishment even if there is no threat to use a firearm or even without further actions by the defendant toward the victim. While the government can order a person convicted of a DUI not to drive a car, we do not order relinquishment of every vehicle they own to be held by the government in an attempt to assure they won't drive anyway. Yet we know some of those convicted of DUI will drive while their license is suspended and some of those will even do so while intoxicated.

In reality, a person who has their firearms confiscated under this bill who intends to cause harm to the victim or their family will find ways to obtain yet another firearm or simply to use another weapon.

**Legal Concerns**

The part of the bill requiring a court to deliver an order that a person who is prohibited from possessing a firearm due to issuing certain protection orders or convictions, and perhaps even as a bond condition, may be a good idea. But, to order relinquishment to a law enforcement agency (the government) raises concerns.

SB192 requires law enforcement to act based on information from the court clerk. In our opinion, failure of the defendant to comply with the court's order or the related statute is a matter for the court to determine the course of action for the noncompliance, not the court clerk.

Current law already prohibits a person with a protection order or conviction under the conditions listed in SB192 cannot lawfully possess a firearm. This was a change to state law our associations proposed and successfully convinced the legislature to pass several years ago. If law enforcement learns a person is in violation of that law, we have the tools to investigate and if we find they are in possession of a firearm they can already be charged with a crime. We take those violations seriously and can use a search warrant to seek evidence of a violation with the appropriate probable cause.

On page 2, lines 2-3 and 5, the bill refers to required actions by law enforcement to “conduct any search of the defendant permitted by law” and refers to “a lawful search” at the time of service. Those limitations on the required search are appropriate, but we are concerned that the expectations may be beyond those limitations. We are concerned the expectation is that we can assure the defendant does not have access to a firearm at the conclusion of our contact. We know in reality that will never be the case. To conduct a search, KSA 22-2502 requires “probable cause that a crime has been, is being or is about to be committed” and that the items being searched for are in the location being searched. This means such search must be based not only on probable cause a firearm is present (not just information that the defendant owns a firearm or has possessed one in the past), but also that possession is a crime. Under SB192, the defendant has 48-hours after issuance of the order or after 24-hours after service to relinquish the firearms. So at the time of service there is no crime occurring.

The US Supreme Court in *Henderson v US* has ruled that while a person can be denied the right of possession of a firearm due to certain conduct, their ownership right cannot be denied.

SB192 fails to address this case law as it provides, “A sheriff may dispose of any firearms relinquished by a defendant pursuant to a relinquishment order issued under subsection (a)(2) only after the defendant is notified of the pending disposal of any such firearm. . .” (Page 3, lines 29-34.) We believe this likely violates the case law and the defendant’s ownership rights.

The provisions of section 1, subsection (k) on page 3, line 35 through page 4, line 3 is also questionable under *Henderson*. While we agree we should return the firearms to the owner if we determine the rightful owner is not the defendant, we question whether we could lawfully impose the conditions on that return as required in subsection (k)(1). We also do not know how the owner can assure compliance a third party is prohibited from possessing the firearm, without access to records.

Section 1, subsection (a) on page 1, line 9 requires the court to order relinquishment of “any concealed carry license.” The definition of “concealed carry license” on page 4, lines 5-7, includes concealed carry permits issued by Kansas and “any other jurisdiction.” Kansas could clearly order relinquishment of a Kansas concealed carry permit if that is the policy decision of the legislature. But we question if Kansas can order relinquishment of a license issued by another state. This provision also seems to conflict with KSA 75-7c07.

Also on page 3, line 5, there is a requirement law enforcement must “take possession” of any firearm in plain sight at the time of service of the order. A firearm in plain site may not be the defendant’s firearm. Sometimes service is not at the defendant’s property but at many other places. In a worst-case scenario example, if we were to serve an order when the person is

located at firearms business, the wording in the bill would require us to take possession of every firearm in the business. But in a more common scenario, if the order is served at property where the defendant is staying with relatives or friends, we would be required to take a firearm in plain sight even if the firearm belongs to someone other than the defendant.

### **Law Enforcement Logistical and Operational Concerns**

Our members are very concerned about the cost of the requirements of SB192. Most of our agencies report their firearms storage rooms are filled to capacity with evidence in crimes. To have us store firearms that are not evidence, and potentially to do so for years, is an impractical requirement that will cost taxpayers an unknown amount of money. Additional secure storage space could be required.

There is also the issue of liability incurred by agencies being forced to store a large influx of firearms. Many gun enthusiasts are very particular about the condition of their property and if it is returned, scratched or marred in some way, departments charged with storing them would be liable and face an unavoidable increase in claims. This bill does not provide relief from those claims. As those of us having experience with firearms know, the storage of firearms requires periodic inspection and care to prevent rust and other deterioration. We cannot think of any other circumstances where we are required to retain property that is not evidence for safe keeping over long periods of time. There is significant cost to an agency to provide that care of firearms.

The bill requires law enforcement to make “a good faith effort” to determine if a defendant has relinquished all their firearms. This is extremely vague language. If we fail to find a hidden firearm or if the defendant lies to us about having any firearms in their possession, will we be found to have not made “a good faith effort?” This appears to add to our already high exposure to liability for agencies.

### **Other Potential Solutions**

We believe there is potential for other solutions less intrusive on the 2<sup>nd</sup> and 4<sup>th</sup> amendments that may produce more effective results. For example:

1. If the person violates a protection order while illegally possessing a firearm, increase the penalty for the firearm violations. Something like that being proposed in SB534 by the attorney general.
2. If the person violates a protection order by using threats against the victim or victim’s family, increase the penalty for the violation.
3. Strengthen bond conditions that keep repeat offenders of protection order laws or illegal possession of firearms laws in custody, especially when those violations include new threats directed at the protected party or firearms violations.

We urge you to not pass this bill out of committee.

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