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Bill Enabling Court Petitions by Relatives and Health Personnel for Firearm Seizure of High-Risk Individuals Held in Committee

Proposed legislation aims to prevent gun violence by empowering family and healthcare workers to act

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Senator Diane Capehart's initiative to introduce the "Red Flag" legislation in the USVI encountered an obstacle during its first reading.

The bill, referred to as a "tool for the Police Department," was intended to help prevent gun violence by allowing certain individuals to petition for the temporary confiscation of firearms if a person is considered a threat. However, concerns raised by legislators, the Attorney General, and department commissioners about potential misuse and stigmatization led to Capehart's decision to

hold the bill in the Committee of Health, Hospitals, and Human Services for further refinement.

At its core, Bill 35-0187 is a gun violence prevention measure. In the legislation meant to introduce extreme risk protection orders to the territory, senators on Wednesday learnt that a “family or household member, law enforcement officer, healthcare worker, educator or co-worker” could file a court petition to temporarily confiscate a person's licensed firearm and ban their access to guns for one year, if that person is deemed by the court to be a risk to themselves or others.

That description was scrutinized by legislators and testifiers alike, including the Office of the Attorney General, who submitted testimony via letter. In her correspondence, Attorney General Ariel Smith underscored the temporary nature of Extreme Risk Protection Orders. “They cannot be extended without another hearing,” she noted. “During a subsequent hearing, an ERPO can only be extended if there is additional evidence the person continues to be a threat to themselves and others.”

She warned of the potential for false reports and urged legislators to consider including language to vet the person who would take custody of the licensed weapon during the prescribed period. In its current form, the legislation would allow the restricted individual to hand their weapon over to another family member if they are in possession of a firearm license. That provision was criticized by Senator Novelle Francis, as well as Police Commissioner Ray Martinez, who was present at the hearing after several missed sessions. “I do believe that the weapon should be kept in safekeeping for that year,” the police commissioner opined.

Outside of that cautionary note, however, Mr. Martinez was generally supportive of the proposed legislation, referring to Bill 35-0187 as “a beacon to further safeguard our community,” and later as “offering us a tool to intervene before a crisis turns into a tragedy.” He dismissed concerns that the bill infringed on the right to bear arms, arguing that “this is not about infringing on rights, but about safeguarding the community while respecting individual freedoms.” Mr. Martinez also called for public education on the issue across all involved departments and agencies.

The Departments of Human Services and Health, though, were less enthusiastic. DHS Commissioner Nominee Averil George wrote to Committee Chair Ray Fonseca to share concerns over the “wide latitude given to a large group of persons to initiate legal actions that could have far-reaching effects on the rights and protected information of others.” Ms. George was also disconcerted by the apparent lack of “safeguard protections for petitioners as well as potential victims.”

Meanwhile, Health Commissioner Justa Encarnacion feared that the legislation could create “unintended stigmatization of mental health matters.” She worried that individuals who want to seek help might avoid doing so due to “apprehension of criminal repercussions linked to these laws.” She expressed concerns over the law possibly “undermining endeavors to cultivate an environment of openness and support for individuals grappling with mental health difficulties,” and erasing the therapeutic rapport existing between mental health practitioners and their clients.

Legislators listened intently as Ms. Encarnacion warned that instead of avoiding a crisis, “the forcible confiscation of firearms might inadvertently result in heightened tensions and adverse consequences thereby undermining the legislative objective.”

Despite the laundry list of concerns from invited testifiers, lawmakers including Fonseca and Gittens expressed their support for the measure. Senator Donna Frett-Gregory however, called for the parameters of the bill to be “narrowed a bit,” as she harbored concerns over the number of

people who could file a petition to ultimately deprive an individual of their licensed firearm. She raised concerns over doctor-patient confidentiality (as healthcare workers are among those able to file a petition), and predicted “issues within the community.”

Her concerns were seconded by Assistant Commissioner of Health Nicole Craigwell-Syms, who pulled apart the legislation's language. “Expanding to coworkers and persons outside of the realm of constant visual and physical interactions with an individual can be a little dangerous, especially because the legislation speaks to ‘deem’, and ‘deem’ is cousin to ‘assume’,” she warned.

Following a recess, the live proceedings resumed with a motion from Capeheart to hold her bill in committee so that further work could be done on the measure.

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