

**2023 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1401**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1401  
1/26/2023

Relating to state prohibition on extreme risk protection provisions and to declare an emergency
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2:17 PM

Vice Chairman D Anderson opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby. Absent: Representative Kasper.

### **Discussion Topics:**

- Anti red-flag law
- Definition
- Emergency
- Local control

Rep. Matt Heilman, Dist 7, presented HB 1401, Testimony 20909  
Jonathan Alm, attorney, DHHS, Testimony 17153

### **Additional written testimony:**

Andrew Bornemann, Testimony 16951  
Iain Graeme, Testimony 17163

2:35 PM Vice Chairman D Anderson closed the hearing.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1401  
2/16/2023

Relating to state prohibition on extreme risk protection provisions and to declare an emergency
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10:14 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

### Discussion Topics:

- Committee action

Rep Heinert moved a Do Not Pass, seconded by Rep Roers Jones.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	N
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

**12-1-1 Motion carried.** Rep Conmy is carrier.

10:15 AM Chairman Porter closed the meeting.

*Kathleen Davis, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1401: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO NOT PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB  
1401 was placed on the Eleventh order on the calendar.

**TESTIMONY**

**HB 1401**

## HB 1401 Testimony

Hello, my name is Andrew Bornemann. I am a farmer and small business owner from Kintyre, ND.

I am writing to you today to respectfully request a "Do Pass" recommendation from your committee in House Bill 1401.

This bill would create a new section of Century Code which would prohibit state agencies and political subdivisions from restricting law abiding citizens rights to keep, possess or receive firearms, without due process due to an "extreme risk protection provision".

As a 10-year CCW holder, and a husband and father, I will always support the rights of law abiding citizens to protect themselves and their families, no matter where they happen to be, or what may be happening around them. I ask that you join me in defending the right to keep and bear arms, guaranteed to us in the Second Ammendment, by voting for a "Do Pass" recommendation on House Bill 1401.

Thank you!

Andrew Bornemann



**Testimony**  
**House Bill No. 1401**  
**House Energy and Natural Resources Committee**  
**Representative Todd Porter, Chairman**  
January 26, 2023

Chairman Porter, and members of the House Energy and Natural Resources Committee, I am Jonathan Alm, an attorney with the Department of Health and Human Services (Department). I appear before you in opposition of House Bill 1401 as written.

The Department, along with the Department of Corrections and Rehabilitation (DOCR), is concerned that the passage of House Bill 1401 will limit both agencies ability to safely manage its premises and prohibit the possession of firearms. For example, if this Bill passes as introduced, the Department and DOCR would not be able to prohibit visitors to the State Hospital or the State Penitentiary from possessing firearms, thus creating a security risk to the individual, staff, patients, and inmates.

The Department and DOCR are requesting the attached amendment be adopted by this Committee to House Bill 1401 that would exempt both agencies.

This concludes my testimony. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1401

Page 1, after line 13, insert:

3. This section does not apply to the department of corrections and rehabilitation or the department of health and human services.

Renumber accordingly





January 26, 2023

Chairman Todd Porter  
House Energy and Natural Resources  
North Dakota Legislative Assembly  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505

Re: Testimony in support of House Bill 1401 relating to a state prohibition on extreme risk protection provisions

Dear Chairman Porter,

On behalf of our members, I am submitting to you today my written testimony in support of House Bill 1401 and to ask that the members of this committee vote favorably on this bill.

Simply put, the purpose of House Bill 1401 is to prohibit a state agency or political subdivision from adopting extreme risk protection provisions, or what are commonly known as “red-flag” laws.

Red-flag laws have been described, and promoted, as a “gap filler” option, the purpose of which is to disarm individuals who are deemed “dangers to themselves or to the public,” but who are otherwise not prohibited from possessing a firearm. The specific provisions of red-flag laws are different in each state, but generally these laws authorize courts and executive agencies to issue orders prohibiting individuals from owning, purchasing, and possessing firearms, upon the premise that the individual is at risk of committing a crime, or hurting themselves at some unknown point in the future.

It is plainly evident that such laws are meant to strip an individual of their God-given right to keep and bear arms without first being adjudicated prohibited from possessing firearms. Indeed, such governmental action are clearly unconstitutional and fundamentally shatters the long held American principle that is articulated in the commonly known colloquialism “innocent until proven guilty.” Unfortunately, there are many with the aforementioned erroneous view that so long as there are sufficient “due process” protections, red-flag laws do not unconstitutionally infringe on an individual’s right to keep and bear arms. This can be seen with the recent passage of the federal *Bipartisan Safer Communities Act* (2022), which provides grant money to states that pass red-flag laws, so long as those laws include sufficient “due process” protections.

While it is true that red-flag laws raise important “due process” concerns, what must not be overlooked is that red-flag laws are also blatant violation of the Second Amendment to the United States Constitution, and no amount of “due process” can make the infringement less of

one. The Second Amendment protects “the right of the people to keep and bear arms” -- regardless of whether the government thinks it is a good idea that a particular individual possesses a firearm.

We have life as a gift from our Creator. Our rights are not only self-evidently true, but also, they are endowments to all humanity, equally. The right to life means that individuals have the right to take the necessary actions for the support, development, and well-being of their own life. Moreover, it means that one has the right to self-ownership, self-sustenance, self-government, self-preservation, and self-defence. These inherently interwoven principles also intrinsically imply that the right serves as legal fence protecting individuals from the initiation of coercion by others. That timeless truth is such regardless of whether the infringing misconduct is instigated by a lawless individual or by the actions of an unjust government. The correlative rule forbids individuals from initiating force against the life of another person, unless acting in defence of life, liberty, and property.

As obvious gifts from the Creator, these individual rights are therefore inalienable — a term that means “not capable of being taken away or denied” as well as “not transferable to any other.” Given that our liberties are inherent to our humanity, a government cannot strip away the right to keep and bear arms simply because, in doing so, it has complied with due process rights.

Current state and federal law makes firearms possession illegal by an individual convicted of a felony, under certain domestic violence orders, or when adjudicated mentally ill, but there is absolutely no historical or legal precedent for taking Second Amendment protected rights away from individuals whom the government declares may commit a crime, or injure themselves in the future. This is an important fact because under the recent holding of the Supreme Court of the United States in *New York State Rifle and Pistol Assoc., Inc. v. Bruen*, any law the government cannot demonstrate as being consistent with this country’s “historical tradition of firearm regulation” is not “justified” and is unconstitutional. **Thus, red-flag laws are not justified and are unconstitutional!**

We must fail to remember that the Bill of Rights, including the Second Amendment, protects the liberties of *all* Americans; and in a truly free society, individuals will, at times, conduct themselves in an unfortunate manner. Hence, Thomas Jefferson’s preference for the “tempestuous seas of liberty” over the “calm of despotism.” The proper role of government, therefore, is to secure our rights, as well as to punish criminality, regardless of the source, and provide justice to victims—*after* the commission of an illegal act, not before.

That is why, on behalf of our members, Gun Owners of America supports House Bill 1401, prohibiting red-flag laws in North Dakota, and I urge the committee to vote favorably on this bill.

Sincerely,

Iain Graeme  
Rocky Mountain & Great Plains Region Director  
Gun Owners of America



# North Dakota House of Representatives

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## **Representative Matt Heilman**

District 7  
5501 Flatrock Drive  
Bismarck, ND 58503-8929  
[mheilman@ndlegis.gov](mailto:mheilman@ndlegis.gov)

**COMMITTEES:**  
Education  
Political Subdivisions

January 26, 2023

Chairman Porter and Members of the Energy and Natural Resources Committee,

I am state representative Matt Heilman from district seven representing Bismarck. I come before you today in support of my bill, House Bill 1401. This bill defines extreme risk protections in section one. Section two goes on to say a state agency or political subdivision may not adopt or implement an extreme risk protection. This bill was modeled after Oklahoma's senate bill 1081 from 2020. Over a dozen states have red flag laws, but Oklahoma is the first to have an anti red flag law. This bill did pass and became state law. It is the first of it's kind and I would be more than happy to see North Dakota pass similar legislation.

This is a straight forward bill with the primary goal of preventing red flag laws being adopted or implemented by a state agency or political subdivision. I am more than happy to stand for any questions and respectfully ask for a do pass recommendation.

Proposed Amendment: Page 1 line 10 and 11

Remove “,without due process” to have section one read as:

As used in this section, "extreme risk protection provision" means a rule, ordinance, regulation, or guideline prohibiting an individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license from having a firearm in that individual's custody or control, or from possessing, or receiving a firearm; ~~without due process.~~

The problem with the original language is that any red flag law passed and includes sufficient due processes protections would not meet the definition of an extreme risk protection provision under the proposed law and would be legal. Thus, it should be deleted. Also, North Dakota Century Code (NDCC) also has no definition of “due process.” NDCC already covers the issue of people mentally incapable of a firearm and forfeiture of a dangerous weapon or firearm by a person convicted of a crime. This is under 62.1-02.

Proposed Amendment: Page 1 Line 12

“A state agency or political subdivision may not accept any grant or funding to adopt or implement any rule, ordinance, regulation, or guideline having the effect of imposing an extreme risk protection order against a resident of this state.”

The purpose of this amendment is to prohibit North Dakota from receiving grant money to implement red flag laws under the federal Bipartisan Safer Communities Act. Under this federal law, in order to qualify for the grant money, any red flag law passed would have to include all of the due process provision outlined in the law. If 1401 was passed as written, it is likely that any law that met the grant requirements of the Bipartisan Safer Communities Act would not meet the definition of an extreme risk protection provision, and North Dakota would still be able to collect the federal grant money.