

## EXTREME RISK PROTECTION ORDER (ERPO)

### Senate Bill 1458, House Bill 1763

#### Why is there a need for an extreme risk protection order (ERPO) in Virginia?

In Virginia, there is the need for law enforcement to have clear legal authority to remove firearms from individuals who pose a risk of harm to self or others but do not meet existing prohibitory criteria: involuntary admission to a facility, mandatory outpatient treatment, or voluntary admission following a temporary detention order (§ 18.2-308.1:3). These existing gun prohibitions are predicated on incompetence or an individual being at an increased risk of causing serious physical harm to self or others based on a mental illness; however, there are individuals at high risk due to other factors including, among others, substance or alcohol misuse or a recent history of interpersonal violence.

#### What does an extreme risk protection order (ERPO) do?

ERPO would give law enforcement the authority and clear legal path to temporarily remove firearms from such individuals and to prohibit new gun purchases for the duration of the order. A recent study of a similar law in Connecticut estimated that for every 10 to 20 *risk warrants* issued, one life was saved.<sup>1</sup> If enacted, SB1458/HB1763 will fill a gap in Virginia law by giving law enforcement the tools they need to save lives and protect public safety.

#### Who can request an extreme risk protection order in Virginia?

- Commonwealth's attorneys
- Law enforcement officers

#### What is the legal standard required for an extreme risk protection order?

Probable cause to believe that: (1) a person poses a substantial risk of personal injury to self or to others in the near future, and (2) such person possesses one or more firearms.

#### How long does the extreme risk protection order last?

An *emergency order* may be issued if a court finds that an individual poses an immediate risk of harm to themselves or others; this order can last up to 14 days.

A *final order* may be issued only after a full hearing where the respondent can be present, which must occur within 14 days of the emergency risk order. The judge will determine if the order should remain in effect for a longer time period. The final order may last for up to 180 days.

#### What happens at the hearing?

The attorney for the Commonwealth for the jurisdiction that issued the ERPO must prove by clear and convincing evidence that the subject of the order poses a substantial risk of personal injury to self or to other individuals in the near future. If, at the hearing, the court finds that this burden has been met, the court may order that any firearm removed pursuant to the emergency risk order continue to be held by the agency that took the firearm pursuant to the emergency risk order.

#### Can the subject of the order get their guns back before the order expires?

30 days after the court issues an ERPO, such person may petition the court to dissolve the order.

#### Conclusion

SB1458/HB1763 will fill a gap in Virginia law by giving law enforcement the tools they need to temporarily remove firearms from individuals who may not meet the requirements of § 18.2-308.1:3 but who pose a substantial risk of harm to self or others.

<sup>1</sup> Swanson, J. W., Norko, M. A., Lin, H. J., Alanis-Hirsch, K., Frisman, L. K., Baranoski, M. V., et al. (2017). Implementation and effectiveness of Connecticut's risk-based gun removal law: Does it prevent suicides? *Law and Contemporary Problems*, 80(2), 101-128.