

# Extreme Risk Protection Order

## FREQUENTLY ASKED QUESTIONS

**An Extreme Risk Protection Order (ERPO) is a court-issued civil order that empowers families and law enforcement to prevent gun tragedies by reducing access to guns for individuals at an elevated risk of endangering themselves or others. An ERPO temporarily prohibits the purchase and possession of firearms and requires the removal of any firearms currently possessed while the order is in effect.**

### HOW DOES THE ERPO LEGISLATION FILL A GAP IN CURRENT LAW?

Many state laws prohibit individuals who are at high risk of committing violence, such as violent misdemeanants and domestic abusers, from purchasing and possessing firearms.<sup>1</sup> However, there is often no legal process for removing firearms already possessed by such individuals, even if family members or law enforcement believe them to pose an elevated risk of violence to themselves or others. Moreover, there are times when individuals are temporarily at a higher risk of violence towards self or others, but have no accompanying prohibition from purchasing and possessing firearms. This can leave families and law enforcement in a dangerous situation without legal tools for intervention. Waiting for an individual to act in a manner that would prompt a firearm prohibition sometimes means that the opportunity for intervention comes too late to prevent a tragedy. An ERPO fills a gap in state laws by initiating a stronger preventative measure through the judicial system that allows family members and law enforcement to reduce access to firearms by individuals who pose a threat to themselves or others.

### WHY ARE ERPOS NEEDED?

The ERPO is a policy tool that was developed by the Consortium for Risk-Based Firearm Policy in 2013<sup>2,3</sup> and first enacted into law after the deadly shooting on the University of California, Santa Barbara campus in 2014. The shooter had exhibited dangerous behaviors prior to the shooting, and his parents shared their concerns with his therapist who contacted law

121,000 Americans were shot in 2015 alone—over one million in the last decade.<sup>7,8</sup>

Research estimates one life is saved for every 10-20 risk-warrants issued. (Connecticut's ERPO-style law).<sup>9,10</sup>

60% of gun deaths are suicides.<sup>7</sup>

85% of suicide attempts with a firearm are fatal, making firearms the most lethal suicide attempt method that is commonly available. Temporarily reducing access to guns significantly increases the likelihood of surviving a suicidal crisis.<sup>11</sup>

90% of people who survive a suicide attempt do not ultimately die by suicide.<sup>12</sup>

enforcement. The police briefly interviewed him but had no legal authority to intervene. Situations like this leave family members and law enforcement with limited options. An ERPO provides a legal process to prevent tragedies from occurring.

### **WHO CAN PETITION FOR AN ERPO?**

Law enforcement officers and immediate family and household members<sup>4</sup> of the individual exhibiting dangerous behaviors have the ability to petition for an ERPO. Family members may include:

- spouses, current or former
- cohabitating couples
- custodians
- children
- parents
- siblings
- persons in a current or former dating relationship

### **WHAT TYPE OF EVIDENCE HAS TO BE PROVIDED TO OBTAIN AN ERPO?**

There are two types of ERPOs: an ex parte ERPO that may be sought by both family and law enforcement that would only be issued if an individual poses an immediate risk of harm to himself or herself and others in the near future by having access to a firearm; and a non-emergency, year-long ERPO if there is sufficient evidence that the respondent poses a significant danger of injury to himself or herself and others. The petitioner must allege in writing that the respondent poses a threat of personal injury to themselves or others by owning, possessing, or purchasing a firearm. The petitioner must provide credible evidence that the respondent poses the risk alleged in the petition. This evidence may include recent threats or acts of violence by the respondent toward him or herself, recent violations of domestic violence protection orders, or evidence of a pattern of violent threats or acts.

### **HOW LONG DOES IT TAKE FOR A HEARING TO HAPPEN ONCE A PETITION IS FILED?**

After a family member or police officer files a petition, a judge may issue an ex parte ERPO without notice to the respondent. However, a full hearing where the respondent has an opportunity to be present must be scheduled within a short time frame, typically 21 days. At this hearing, the judge will determine if the order should remain in effect for a longer time period, typically up to one year, or if it should be terminated.

### **HOW ARE DUE PROCESS PROTECTIONS ADDRESSED DURING AN EX PARTE ERPO?**

Similar to the domestic violence ex parte order, an emergency ERPO requires a petitioner to file an affidavit with the court alleging that the respondent poses an immediate and present danger to himself or herself and others. The judge must then determine whether the petitioner has met the standard of proof to issue the ex parte ERPO. If it is issued, the person subject to the order is entitled to a full hearing before a judge within a short time frame, typically 21 days, to determine if the order should remain in effect or be dismissed. The ERPO process provides the respondent with adequate due process before restricting his or her access to firearms. The due process protections afforded by the ex parte GVPO are nearly identical in substance and form to those afforded by the domestic violence ex parte (or temporary) protective order.

### **HOW WILL THE RESPONDENT'S INFORMATION BE SHARED?**

No names, addresses, or other identifying data of any individuals or firearms identified in the ERPO will become a public record.

## WHAT HAPPENS TO THE RESPONDENT'S FIREARMS?

Respondents to an ERPO shall be required to remove all firearms from their possession. Firearms that have been removed may be stored by law enforcement, a federally licensed firearms dealer, a neutral third party, or some combination thereof. Once the order has expired, the respondent may petition the court to have their firearms returned.

## CAN THE RESPONDENT REQUEST THAT THE GVPO BE TERMINATED?

Yes, the respondent may file a written request for a hearing to terminate an ERPO at any time during the period that the order is in effect. The specifics of this request may vary state to state. During the hearing, the respondent would be required to provide proof that he or she does not pose a serious threat of causing personal injury to him or herself or others by having access to firearms.

## DOES THE GVPO VIOLATE AN INDIVIDUAL'S SECOND AMENDMENT RIGHTS?

No, the ERPO is a tool to empower families and law enforcement that is permissible under the Second Amendment. The Supreme Court noted in the 2008 *Heller* decision that the Second Amendment is not unlimited and there are categories of people, such as people with felony convictions and people who have been adjudicated as a "mental defective" or have been "committed to any mental institution," that should be prohibited from possessing firearms.<sup>5</sup> Subsequent court rulings in Connecticut and Indiana have upheld ERPO laws stating that states may restrict access to firearms by dangerous people if it is in the interest of public safety or an individual's welfare.<sup>6</sup>

## WHICH STATES HAVE SIMILAR LAWS?

In 2014, California became the first state to enact an ERPO-type law, known as both the Gun Violence Restraining Order (GVRO) and Firearms Restraining Order (FRO). In November 2016, Washington voters overwhelmingly passed an ERPO and in August 2017, Oregon enacted an ERPO law. Connecticut and Indiana also have had longstanding similar laws that enable only law enforcement to petition the court system to temporarily remove firearms from an individual who is at risk of harming themselves or others.

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1 E.g. Cal. Penal Code §§ 29800(a), 29805, 29825, 29900-29905.

2 Consortium for Risk-Based Firearm Policy. Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy. December 2013. <http://efsgv.wpengine.com/wp-content/uploads/2014/10/Final-State-Report>.

3 The ERPO is known as the Gun Violence Restraining Order (GVRO) in the Consortium for Risk-Based Firearm Policy report.

4 Refer to individual state law to see state definitions of family and household members.

5 *D.C. v. Heller*, 554 U.S. 570, 595, 128 S. Ct. 2783, 2799, 171 L. Ed. 2d 637 (2008)

6 *Hope v. State*, 163 Conn. App. 36, 133 A.3d 519 (2016); *Redington v. State*, 992 N.E.2d 823 (Ind. Ct. App. 2013).

7 National Center for Injury Prevention and Control, CDC. 2005-2015, United States Firearm Deaths and Rates per 100,000. *Fatal Injury Reports 1999-2015, for National, Regional, and States (RESTRICTED)*. Retrieved December 6, 2017, from [http://www.cdc.gov/injury/wisqars/fatal\\_injury\\_reports.html](http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html).

8 National Center for Injury Prevention and Control, CDC. 2005-2015, Overall Firearm Gunshot Nonfatal Injuries and Rates per 100,000. *Nonfatal Injury Reports, 2001-2015*. Retrieved December 6, 2017, from <http://www.cdc.gov/injury/wisqars/nonfatal.html>.

9 Swanson, Jeffrey W. and Norko, Michael and Lin, Hsiu-Ju and Alanis-Hirsch, Kelly and Frisman, Linda and Baranoski, Madelon and Easter, Michele and Gilbert, Allison and Swartz, Marvin and Bonnie, Richard J., Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides? (August 24, 2016). *Law and Contemporary Problems*, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2828847>

10 <http://efsgv.org/wp-content/uploads/2016/09/FINAL-ERPO-complete-091916-1.pdf>

11 Miller, M., Azrael, D., & Barber, C. (2012). Suicide mortality in the United States: the importance of attending to method in understanding population-level disparities in the burden of suicide. *Annual review of public health*, 33, 393-408.

12 Owens, D., Horrocks, J., & House, A. (2002). Fatal and non-fatal repetition of self-harm. *Systematic review. British Journal of Psychiatry*, 181(3), 193-199.

## ABOUT THE EDUCATIONAL FUND TO STOP GUN VIOLENCE

The Educational Fund to Stop Gun Violence (Ed Fund) was founded in 1978 as a 501(c)(3) organization that makes communities safer by translating research into policy to reduce gun violence. The Ed Fund achieves this by engaging in policy development, advocacy, community and stakeholder engagement, and technical assistance.

## ABOUT GIFFORDS

Giffords is a nonprofit organization dedicated to saving lives from gun violence. Led by former Congresswoman Gabrielle Giffords and her husband, Navy combat veteran and retired NASA astronaut Captain Mark Kelly, Giffords inspires the courage of people from all walks of life to make America safer.