



Extreme Risk Protective Order in Massachusetts

EMPOWERING FAMILIES & LAW ENFORCEMENT TO PREVENT GUN TRAGEDIES

Extreme Risk Protective Orders empower Massachusetts families and law enforcement to prevent gun tragedies by temporarily reducing access to guns by individuals at a high risk of endangering themselves or others.

A common thread in many high profile shootings are the family members of the shooters who saw their loved ones engage in dangerous behaviors and grew concerned about their risk of harming themselves or others—even before any violence occurred. In fact, family members are often the first to know when loved ones are in crisis in the many incidents of interpersonal violence and suicide that take place across this country every day. However, a gap in Massachusetts's laws makes it hard for families to intervene. An Extreme Risk Protective Order fills this gap by creating a legal mechanism for family and household members to have guns temporarily removed and prevent the purchase of new guns by individuals who pose an elevated risk of endangering themselves or others. This law will save lives while ensuring critical legal protections for respondents, just as it has in states that have already taken this responsible step.

WHAT IS AN EXTREME RISK PROTECTIVE ORDER?

The Extreme Risk Protective Order (ERPO) is based on the long-standing infrastructure and procedure of domestic violence protective orders (in place in all 50 states) and involves both a court hearing and clearly defined due process protections. An ERPO is a civil court order issued by a judge upon consideration of the evidence, prompted by petition by a family member, law enforcement officer, or district attorney that temporarily prohibits a person in crisis from possessing or purchasing firearms or ammunition. ERPOs provide families and law enforcement officers with a formal legal process to temporarily reduce an individual's access to firearms if they pose a danger to themselves or others.

58%

of Massachusetts gun deaths in 2016 were suicides.³

1,226

People from Massachusetts died by firearm suicide in the last decade.¹

90%

of people who survive their first suicide attempt do not go on to die by suicide.⁴

RESEARCH ESTIMATES ONE LIFE IS SAVED FOR EVERY 10-20 RISK-WARRANTS ISSUED.²

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In many shootings, family and household members of the shooters noticed the person exhibiting dangerous behaviors and became concerned that they may harm him or herself or others. Unfortunately, there are few tools for family members to intervene during these periods of crisis. The ERPO offers family and household members – as well as law enforcement – a legal tool for helping a loved one who is displaying signs of endangering themselves or others by temporarily removing guns that are already in possession and prohibiting them from purchasing new ones for the duration of the order. In addition to potentially preventing an act of gun violence, the ERPO creates safer circumstances for the individual to seek treatment or engage other resources to address the underlying causes of the dangerous behaviors.

HOW DOES THE ERPO WORK?

A qualifying petitioner (family member, household member, law enforcement officer, or district attorney) would petition the civil court in their jurisdiction for an ERPO based on the evidence they present through a written application and at a hearing before a judge. This *does not* involve a criminal complaint. Specifically, the court process would include:

STAGE 1 At an initial hearing, a judge considers the information presented in the written petition and assesses whether the person is at risk of harming him/herself or someone else. The individual (respondent) may or may not receive notice about the hearing beforehand. If the respondent does not receive notice of the hearing beforehand, the hearing is “ex parte.”

If issued, an ex parte or temporary ERPO will be in effect for a short period of time. If the respondent does not own or possess firearms, he or she is temporarily prohibited from purchasing or otherwise acquiring a firearm. If the respondent does own firearms, he or she must surrender his or her guns for the duration of the order.

STAGE 2 Before the ex parte or temporary ERPO expires, a subsequent hearing will take place to address the claim of dangerousness. **For an order to be issued, ERPO petitioners will be required to testify and present evidence in a court of law. Respondents will also have an opportunity to present evidence to show that he or she is not a danger to him or herself or others and a ERPO is not necessary.**

If the court determines that the respondent poses the risk alleged in the petition, the order prohibiting the purchase and possession of firearms will be extended for a longer time period, typically up to one year.

To terminate the ERPO before its expiration, the respondent may file a written request. The respondent must provide evidence to a judge that he or she does not pose a significant danger. When the order is terminated or expired, and the respondent is not otherwise prohibited from purchasing or possessing a gun, law enforcement or the FFL may return the firearms to the owner.

To renew the ERPO, the petitioner may file a written request. For a judge to renew the ERPO, an additional hearing will be held according to the same procedure and burden of proof as stage 2.

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- 1 National Center for Injury Prevention and Control, CDC. United States Firearm Deaths and Rates per 100,000. *Fatal Injury Reports 1999-2016, for National, Regional, and States (RESTRICTED)*. Retrieved February 12, 2018, from http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html.
 - 2 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. Available at SSRN: <http://ssrn.com/abstract=2828847>. Note: A risk-warrant is similar to an ERPO.
 - 3 National Center for Injury Prevention and Control, CDC. 2015, Massachusetts Firearm Deaths and Rates per 100,000. *Fatal Injury Reports 1999-2016, for National, Regional, and States (RESTRICTED)*. Retrieved February 12, 2018, from http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html
 - 4 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.