

Extreme Risk Protection Orders

FREQUENTLY ASKED QUESTIONS

An Extreme Risk Protection Order 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 Extreme Risk Protection Order 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?

In most states there is no legal process for removing firearms from individuals who are temporarily at a higher risk of violence towards themselves 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 Extreme Risk Protection Order fills this 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 EXTREME RISK PROTECTION ORDERS NEEDED?

The Extreme Risk Protection Order is a policy tool that was developed by the Consortium for Risk-Based Firearm Policy in 2013^{2,3} 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 enforcement. The police briefly interviewed him but had no legal authority to intervene. Situations like this

155,000 Americans were shot in 2016 alone—over one million in the last decade.^{8,9}

Research estimates one life is saved for every 10-20 risk-warrants issued. (Connecticut's extreme risk law).^{10,11}

60% of gun deaths are suicides.⁸

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.¹²

90% of people who survive a suicide attempt do not ultimately die by suicide.¹³

leave family members and law enforcement with limited options. An Extreme Risk Protection Order provides a legal process to intervene and prevent tragedies from occurring.

WHO CAN PETITION FOR AN EXTREME RISK PROTECTION ORDER?

In most states, law enforcement officers and immediate family and household members⁴ of the individual exhibiting dangerous behaviors may petition for an Extreme Risk Protection Order. Family members may include:

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

WHAT EVIDENCE HAS TO BE PROVIDED TO OBTAIN AN EXTREME RISK PROTECTION ORDER?

There are typically two types of Extreme Risk Protection Orders: an ex parte order 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 themselves or others in the near future by having access to a firearm; and a final order, lasting up to one year, if there is sufficient evidence that the respondent poses a significant danger of injury to themselves or 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 themselves or others, 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 petition is filed, a judge may issue an ex parte Extreme Risk Protection Order 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 14 to 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 EXTREME RISK PROTECTION ORDER?

Extreme Risk Protection Orders are modeled significantly after state domestic violence protective order processes, which often allow relief (including firearm purchase and possession prohibitions and removal of firearms) to be ordered ex parte. The due process protections afforded by the ex parte order are nearly identical in substance and form to those afforded by the domestic violence ex parte (or temporary) protective order. Ex parte domestic violence protective orders have been routinely upheld against due process challenges.⁵

HOW WILL THE RESPONDENT'S INFORMATION BE SHARED?

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

WHAT HAPPENS TO THE RESPONDENT'S FIREARMS?

Respondents to an Extreme Risk Protection Order shall be required to remove all firearms from their possession. Firearms that have been removed may typically be stored by law enforcement or a federally licensed firearms dealer. Once the order has expired, the respondent may request to have their firearms returned.

CAN THE RESPONDENT REQUEST THAT THE ORDER BE TERMINATED?

Yes, the respondent may file a written request for a hearing to terminate an Extreme Risk Protection Order at least once 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 themselves or others by having access to firearms.

DOES THE EXTREME RISK PROTECTION ORDER VIOLATE THE SECOND AMENDMENT?

No, the Extreme Risk Protection Order is a tool to empower families and law enforcement that is permissible under the Second Amendment. The Supreme Court noted in the 2008 *District of Columbia v. Heller* decision that the Second Amendment is not unlimited and that 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.⁶ Subsequent court rulings in Connecticut and Indiana have upheld laws similar to Extreme Risk Protection Orders, concluding that states may restrict access to firearms by dangerous people if it is in the interest of public safety or an individual’s welfare.⁷

WHICH STATES HAVE SIMILAR LAWS?

In 2014, California became the first state to enact an Extreme Risk Protection Order-type law, known as the Gun Violence Restraining Order. In November 2016, Washington voters overwhelmingly passed an Extreme Risk Protection Order and in August 2017, Oregon enacted an Extreme Risk Protection Order law. In the months following the February 2018 school shooting in Parkland, Florida, eight more states enacted extreme risk laws: Florida, Vermont, Maryland, Rhode Island, New Jersey, Delaware, Massachusetts, and Illinois (through July 2018). 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.

1 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>.
 2 The Extreme Risk Protection Order is known as the Gun Violence Restraining Order (GVRO) in the Consortium for Risk-Based Firearm Policy report.
 3 Refer to individual state law to see state definitions of family and household members.
 4 *D.C. v. Heller*, 554 U.S. 570, 595, 128 S. Ct. 2783, 2799, 171 L. Ed. 2d 637 (2008)
 5 See e.g. *Blazuel v. Bradley*, 698 F. Supp. 756 (W.D. Wis. 1988); *Connecticut v. Doebr*, 501 U.S. 1, 111 S.Ct. 2105, 2112 (1991); *State v. Poole*, 745 S.E.2d 26 (N.C. Ct. App.) writ denied, review denied, appeal dismissed, 749 S.E.2d 885 (N.C. 2013).
 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. 2007-2016, United States Firearm Deaths and Rates per 100,000. *Fatal Injury Reports 1999-2016, for National, Regional, and States (RESTRICTED)*. Retrieved July 5, 2018, from http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html.
 8 National Center for Injury Prevention and Control, CDC. 2007-2016, Overall Firearm Gunshot Nonfatal Injuries and Rates per 100,000. *Nonfatal Injury Reports, 2001-2016*. Retrieved July 5, 2018, from <http://www.cdc.gov/injury/wisqars/nonfatal.html>.
 9 Swanson JW, Norko MA, Lin HJ, Alanis-Hirsch K, Frisman LK, Baranoski MV, Easter MM, Robertson AG, Swartz MS, Bonnie RJ. (2017). Implementation and effectiveness of Connecticut’s risk-based gun removal law: Does it prevent suicides? *Law & Contemp. Probs.* 80, 179.
 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.