



EXTREME RISK PROTECTION ORDERS: NEW RECOMMENDATIONS FOR POLICY AND IMPLEMENTATION

Executive Summary

In 2013, the Consortium for Risk-Based Firearm Policy (Consortium) developed and recommended that states enact a novel risk-based firearm removal policy called the gun violence restraining order, now widely known as the *extreme risk protection order* or by its acronym, *ERPO* (or *extreme risk law* or *red flag law*). ERPO laws allow law enforcement officials, and in some states family and household members, among others, to petition a court for a civil order to temporarily remove firearms from, and prevent the purchase of additional firearms by, individuals who are at risk of harming themselves and/or others. This groundbreaking policy was inspired by precursor policies in Connecticut and Indiana, modeled on domestic violence protection orders found nationwide, and grounded in research regarding evidence-based risk factors for both interpersonal and self-directed violence.

Studies of ERPO laws are now providing suggestive evidence of their effectiveness in preventing gun violence. Multiple studies indicate that they can be a valuable suicide prevention mechanism, and new research suggests that they may help prevent mass violence as well, including school violence. Anecdotal evidence suggests that ERPO laws are being used to intervene in cases of threatened homicide in a variety of situations, including domestic violence and workplace violence. Studies of ERPO laws are underway in multiple states.

Based on its explicit focus on evidence-based risk factors and the growing body of research suggesting its effectiveness in preventing gun violence, the ERPO has gained the support of legislators, stakeholders, and citizens across the political spectrum. As of October 2020, 19 states and the District of Columbia have enacted ERPO laws, with more state legislatures considering the policy and Congress considering related federal legislation.

The rapid adoption of ERPO policies across the country has been one of the most significant gun violence prevention policy initiatives in modern history. Advocates, legislators, and implementing agencies have worked hard to bring this policy to their communities and the Consortium thanks them for their efforts. Their early adoption of the law has allowed for timely intervention to reduce violence risk.

As we finalize this report, efforts to address persistent and structural racism in the criminal justice system are gaining momentum in localities nationwide. Questions about the role of the police and their relationships with communities of color are dominating policy discussions. The importance of diverse stakeholder engagement and education, transparency of implementation processes, ongoing data collection, and research in all aspects of the criminal justice system and gun violence prevention policy, including how ERPOs are being used in communities, is critical for progress towards racial equity.¹

As states enact and implement ERPO laws, there has been predictable variation in how the laws are written and implemented, reflecting states' diverse needs, priorities, and barriers to implementation.

¹ For a discussion of how ERPOs may provide a new role for law enforcement in relationships with communities and violence prevention efforts, see: Frattaroli S & Irvin NA. (2020). Extreme risk protection orders in Washington: A tool for reducing the lethality of dangerous behaviors. *Annals of Internal Medicine*. <https://doi.org/10.7326/M20-4323>



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These differences, however, have raised questions about best practices, and stakeholders have turned to the Consortium for specific guidance. In response, the Consortium undertook a review of available research and legal scholarship, solicited expert guidance and stakeholder perspectives, and discussed these findings during an in-person meeting in January 2020 in Baltimore, Maryland. This report provides new consensus recommendations to address contemporary issues in ERPO policy and implementation.

OVERVIEW OF NEW RECOMMENDATIONS

ERPOs are a state-level policy that should be supported at the federal level. An overview of new policy recommendations follows. The complete new recommendations are included within the body of the report while the Consortium's original recommendation to develop ERPO policies is included as Appendix 1.²

AT THE STATE LEVEL, THE CONSORTIUM RECOMMENDS:

1. **Duration of orders:** Temporary (ex parte) ERPOs should be in effect for two to three weeks, while final orders should last one year. The opportunity to renew orders should be available during the last 90 days of final orders, based on recent evidence. Renewed orders should last an additional year with limited, specified exceptions allowing longer orders. Respondents should have the opportunity to petition for early termination of an order once annually. Unless a renewal order is granted, final orders should expire automatically.
2. **Third party clauses / joint occupancy clauses:** In cases where firearms belonging to someone other than the respondent are removed pursuant to an ERPO, "third party clauses" (i.e., "joint occupancy clauses") should permit the legal owner to petition for return of their firearms. It should be unlawful for any legal firearms owner to knowingly, recklessly, or negligently allow an individual known to be under an ERPO to access their firearms. If the lawful owner of the firearms petitions for their return, they should be made legally responsible for ensuring the respondent does not have access.
3. **Cases involving minors at risk of violence:** ERPOs, including ex parte orders, should be applicable to minors, regardless of legal firearm ownership, if the minor has access to a firearm or would otherwise become eligible to purchase a firearm while the order is in effect. However, additional protections should be afforded to minor respondents: court records for such cases should be kept confidential and sealed following expiration of the order, and coordinated efforts should be taken to ensure that such cases are brought to the attention of the appropriate authorities to ensure the safety and protection of the minor. In cases involving a minor respondent and guns owned by a third party (e.g., parent, relative) that are accessible to the minor respondent, a third party clause may be used to provide terms for the owner to retain their firearms and ensure that the respondent does not have access to those guns.

² The Consortium first recommended the development of ERPO policies in: 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>.



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4. **Eligible petitioners:** Persons eligible to petition for ERPOs should include: 1) law enforcement officers; 2) family members, household members, and intimate partners;³ and 3) licensed healthcare providers. Liability protections should be established for licensed healthcare providers who act in good faith, and where necessary, states should examine their privacy laws in light of the ERPO law being proposed and decide whether additional statutory changes are needed to authorize licensed healthcare providers to petition for such orders.
5. **Submission of records to NICS to prevent firearm purchases:** States should require a state-designated entity to enter ERPO records into the National Instant Criminal Background Check System (NICS) and/or, depending on the state, the state background check database, such that ERPO respondents are ineligible to purchase firearms.
6. **Data reporting and availability:** States should assure that ERPO case data are entered into a centralized state database and should facilitate access to these data for research and policy purposes.

AT THE FEDERAL LEVEL, THE CONSORTIUM RECOMMENDS:

1. **Supporting state policy implementation:** Federal grant funding should be available to states to support at least the following six implementation activities: building infrastructure to support implementation; training law enforcement, judges, and court clerks; educating allied professionals and diverse community stakeholders; enhancing social services; supporting research to inform policy and practice regarding ERPO implementation; and improving states' reporting of ERPO records to the national background check system.
2. **Funding for NICS to assure that ERPOs effectively serve as firearm purchase prohibitors:** Congress should appropriate additional funding for NICS to take the necessary action to assure that ERPOs effectively serve as firearm prohibitors at the point of firearm purchases.

ACCESS THE FULL REPORT

The full report "[Extreme Risk Protection Orders: New Recommendations for Policy and Implementation](#)" is available online at the Educational Fund to Stop Gun Violence's website.

ABOUT THE CONSORTIUM:

The Consortium for Risk-Based Firearm Policy (Consortium) includes the nation's leading researchers and academics with expertise at the intersections of gun violence prevention and public health, law, behavioral health, medicine, criminology, and related fields. The Consortium convenes regularly to develop and advance evidence-based gun violence prevention policies.

³ *Intimate partners* is defined as current or former spouses and current or former dating partners.