# Extreme Risk Protection Orders:

## New Recommendations for Policy and Implementation

Consortium for Risk-Based Firearm Policy, October 2020

CONSORTIUM FOR
RISK-BASED FIREARM POLICY

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# About the Consortium for Risk-Based Firearm Policy

## About the Consortium

The Consortium for Risk-Based Firearm Policy (Consortium) comprises experts committed to advancing evidence-based gun violence prevention policies. The group 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.

Following the horrific school shooting in Newtown, Connecticut, in 2012, Josh Horwitz, executive director of the Educational Fund to Stop Gun Violence, convened the Consortium in March 2013 to identify areas of consensus regarding risk factors for future violence, discuss existing research evidence on the issue, and foster collaboration on the development of new research that could lead to new practices and policies. Though they are separate entities, the Consortium is organized and staffed by the Educational Fund to Stop Gun Violence.

The Consortium convenes regularly to develop evidence-based gun violence prevention policies. In turn, policymakers have come to rely upon the Consortium's recommendations to craft legislation and executive action and to inform implementation efforts which continue to shape the policy landscape of the gun violence prevention movement.

Best known for its development of the extreme risk protection order policy, or ERPO, the Consortium has published reports on evidence-based recommendations for state and federal policy, best practices for firearm removal in cases of domestic violence, and guidelines for practice and training in lethal means safety counseling for firearm suicide prevention.

## Mission

The Consortium seeks to synthesize and apply the best available scientific evidence to develop gun violence prevention policies that, within constitutional limits, address access to firearms by persons who are at an elevated risk for committing interpersonal violence or attempting suicide. The Consortium informs relevant stakeholders of these policy recommendations by developing educational materials including reports and issue briefs, conducting public forums, and submitting expert testimony.

## About the Educational Fund to Stop Gun Violence

Founded in 1978, the Educational Fund to Stop Gun Violence (Ed Fund) seeks to make gun violence rare and abnormal. A 501(c)(3) affiliate organization of the Coalition to Stop Gun Violence, the Ed Fund uses public health and equity lenses to identify and implement evidence-based policy solutions and programs to reduce gun violence in all its forms.

The Ed Fund is the gun violence prevention movement's premier research intermediary and founder of the Consortium for Risk-Based Firearm Policy. The Ed Fund makes communities safer by translating research into policy; it achieves this by engaging in policy development, advocacy, community and stakeholder engagement, and technical assistance.

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The Joyce Foundation

### How to Cite this Report

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†Ms. Fletcher is no longer on staff at the Educational Fund to Stop Gun Violence.

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*Denotes member of the Consortium for Risk-Based Firearm Policy.

# 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. 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.

[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

## 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.

**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 purchase:** 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.

[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.

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

**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 extreme risk protection orders effectively serve as firearm purchase prohibitor:** 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.

# Overview of Extreme Risk Protection Orders

## Extreme Risk Protection Orders Prevent Gun Violence

In advance of many shootings, family and household members may be the first to notice changes in the shooters' behavior that indicate they may be a danger to themselves or others. Unfortunately, there are few tools for family members and law enforcement to intervene with during these periods of crisis. In many such situations, no crime has been committed, and law enforcement is unable to intervene. While healthcare providers regularly see patients in times of crisis, they too have limited tools to address patients' elevated risk when they have access to guns, are behaving dangerously, and are at risk of committing violence. To address this gap in the law, 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). For the Consortium's original recommendation, see Appendix 1 or the Consortium's 2013 report entitled "Guns, Public Health and Mental Illness: An Evidence-Based Approach for State Policy."[4]

### Mechanism

ERPOs are a preventive tool for use when someone is displaying signs of endangering themselves or others. Specifically, ERPOs are civil court orders that provide eligible petitioners with a formal legal process to temporarily restrict an individual's access to firearms if a court finds that they pose a danger to themselves or others. These orders temporarily prohibit the respondent from possessing or purchasing firearms and include provisions for relinquishment or removal of firearms already in the respondent's possession; these orders may also apply to ammunition.

### Why are ERPOs *civil* orders?

The Consortium recommends that extreme risk protection orders be civil court orders rather than criminal court orders because they are designed to keep people safe by preventing a tragedy from occurring, not to criminalize elevated risk of violence or self-harm. Because the process is civil, extreme risk protection orders allow petitioners to seek intervention without creating a criminal record. Avoiding a criminal record is important because that record could interfere with the respondent's opportunities (employment, education, etc.) and worries about stigmatizing consequences could be a deterrent to petitioning.[5]

In addition to potentially preventing an act of gun violence by removing firearms from the high-risk situation, ERPOs also create safer circumstances for the at-risk individual to seek treatment or engage other resources to address the underlying causes of the dangerous behaviors. Importantly, these orders accomplish this while ensuring critical due process protections for respondents.

### Evidence Required

There are typically two types of ERPOs: an ex parte order, usually lasting 2-3 weeks, that would only be issued if the respondent poses an immediate risk of harm to self or others in the near future by having access to a firearm; and a final order, usually lasting up to one year, if there is sufficient evidence that the respondent poses a significant danger of injury to themself or others. In most circumstances, these two orders operate as two stages of a single process, where an ex parte order

[4]Consortium for Risk-Based Firearm Policy. (2013). Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy. http://efsgv.wpengine.com/wp-content/uploads/2014/10/Final-State-Report.

[5]As civil orders, ERPOs do not in themselves create a criminal record. However, it is possible for the respondent to be prosecuted for a violation of an order.

[6]While the typical process used is this two stage process, seven states (CA, CO, DE, FL, IL, NV, VT) and the District of Columbia allow petitioners to skip the ex parte stage in favor of a full hearing where the respondent is present as the first and only stage of the process.

precedes a final order.[6] For an ERPO, the petitioner must allege in writing that the respondent poses a threat of personal injury to self 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, among other things: recent threats or acts of violence by the respondent toward self or others, recent violations of domestic violence protection orders, or evidence of a pattern of violent threats or acts.

### Hearings and Due Process

After a petition is filed, a judge may issue an ex parte ERPO (ex parte meaning 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; this is known as post-deprivation due process. 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.

Procedures for ERPOs are modeled significantly after processes for obtaining state domestic violence protection orders, 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 ERPO are nearly identical in substance and form to those afforded by the ex parte domestic violence protection order. Ex parte domestic violence protection orders have been routinely upheld against due process challenges.[7]

In September 2019, the Florida First District Court of Appeals upheld Florida's Risk Protection Order law on due process grounds, stating that '[t]he statute . . . requires a hearing within fourteen days of an RPO petition being filed, thus affording a respondent due process and a prompt opportunity to resist a final order."[8] Upholding the law, the Court also noted that the statute requires petitions to meet the heightened "clear and convincing evidence standard, that the duration of the order may not exceed 12 months, and that the respondent is afforded an opportunity to request early termination of the order.[9]

See Blocher and Charles (2020) for an in-depth review of how ERPOs satisfy due process.[10]

### Differentiation from Domestic Violence Protection Orders

While ERPOs are structured similarly to domestic violence protection orders, they serve different purposes. In some circumstances they may complement one another, while at other times, one order may be more appropriate than the other. It is critical for interested stakeholders, which may include domestic violence survivors, family members, advocates, and law enforcement, to work together to decide the best course of action.

Domestic violence protection orders (also known by the acronym DVPO or as restraining orders and no contact orders, among others) give survivors of domestic violence a mechanism to protect themselves or their dependents from further abuse. They can offer multiple types of protections, including but not limited to: prohibiting the respondent from contacting the abuse survivor, requiring the respondent to move out of a shared residence, requiring the respondent to obtain counseling, or prohibiting the respondent from possessing firearms. However, while many states prohibit a person subject to a domestic violence protection order from purchasing and possessing firearms, some states do not.[11] Among states that do prohibit firearms possession, some do not have a process that requires a prohibited

[7] See e.g. Blazel v. Bradley, 698 F. Supp. 756 (W.D. Wis. 1988); Connecticut v. Doehr, 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).

[8] Davis v. Gilchrist Cty. Sheriff's Office, 280 So. 3d 524, 533 (Fla. Dist. Ct. App. 2019)

[9] Id

[10] Blocher J & Charles J. (2020). Firearms, extreme risk, and legal design: 'Red Flag' laws and due process. Virginia Law Review, Vol. 106. Duke Law School Public Law & Legal Theory Series No. 2020-10. Available at SSRN: https://ssrn.com/abstract=3534630

[11] Whether domestic violence protection orders are firearm prohibitory varies not only by state, but also by type of order (ex parte or final) and type of firearm prohibition (purchase or possession). For more information on domestic violence protective orders and firearm prohibitions, including relinquishment policies, please visit Disarm Domestic Violence www.disarmdv.org

respondent to relinquish their firearms. Further, some states give judges discretion whether or not to include a firearms prohibition in a domestic violence protection order. Additionally, they are only available to petitioners with specific types of relationships with the respondent; persons in dating or sexual relationships who do not cohabit and do not share a child in common may not be eligible for a domestic violence protection order depending on the state in which they reside.

In contrast, ERPOs only offer firearms protections by temporarily removing and prohibiting purchase and possession of firearms from individuals at risk of harming themselves or others. Extreme risk orders may supplement protections provided by domestic violence protection orders or may be used by individuals who are not eligible to petition for a domestic violence protection order.

#### Differentiation from Court-Ordered Mental Health Evaluation and Treatment

Policymakers and law enforcement officials have expressed some confusion about the distinction between ERPOs and court-ordered mental health evaluation and treatment, as well as calls to require court-ordered mental health evaluation and treatment as a condition of an ERPO, which the Consortium strongly advises against.

Court-ordered mental health evaluation and treatment are primarily used to ensure that a person with a suspected or diagnosed mental illness receives appropriate treatment. Every state and the District of Columbia allow for court-ordered mental health treatment. These laws vary among the states, but generally provide legal processes for:

- Detaining a person for a short period to assess their mental health and/or provide emergency treatment; and
- Hospitalizing a person for a longer term of court-ordered mental health treatment (i.e., "civil commitment") if the person is found by clear and convincing evidence to have a mental illness and to be in need of treatment to mitigate a danger to themselves or others, or an inability to care for their basic needs.

In contrast, ERPOs temporarily remove firearms from individuals at risk of harming themselves or others. Criteria for such orders should focus on dangerous behaviors, not mental illness diagnoses.

## Effectiveness

Guns are involved in most violent deaths (57.4% in 2018) in the United States.[12] Firearms are the method used in half of all U.S. suicides and three-quarters of all U.S. homicides taking approximately 37,600 lives each year - an average of 103 people every day.[13] The high lethality of firearms makes risky situations fatal. For example, firearms are the most lethal means for suicide. Nine times out of ten, a person who attempts suicide with a gun will die by suicide. Guns do not allow for a second chance or a change of mind in a suicide attempt.[14] Ultimately, easy access to guns significantly increases risk of both firearm suicide and homicide.[15,16] ERPOs create time and space between an at-risk individual and a firearm. A growing body of research suggests that such policies are valuable gun violence prevention tools.

Extreme risk laws are promising tools for suicide prevention. Studies of Connecticut and Indiana's extreme risk laws estimated that for every 10-20 firearm removal orders issued, at least one suicide was averted. The orders served as important points of intervention, not only for firearm removal but also for connecting respondents at high risk for suicide with resources and services to address underlying causes of dangerous behaviors. While suicidality was the primary concern in the majority of cases, the orders were also used in cases of threatened homicide and domestic disturbances.[17,18]

Much of the political interest around ERPOs is related to the potential for use in averting mass shootings. A California-based case series studied this application of the law, finding 21 cases between 2016 and 2018 wherein law enforcement used an ERPO in scenarios in which individuals were planning or threatening a mass shooting. In each of these cases, the respondent showed clear signs that they intended to commit a mass shooting, but no mass shootings, suicides, or homicides associated with these respondents were recorded to have occurred through August 2019 following the issuing of the orders.[19] Using the same criteria as the California study, a review of King County, Washington ERPO cases from 2017 and 2018 found that five of the total 75 petitions in the study period were filed in response to a mass shooting threat (7% of all temporary orders issued).[20]

Since most extreme risk laws are fairly new and uptake is variable, research on the laws' outcomes is still in a nascent stage and multiple studies are underway. The Consortium will continue to monitor these findings and reevaluate recommendations as necessary.

[12]Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) [online]. (2018) [cited 2020 June 22]. Available: www.cdc.gov/injury/wisqars

[13]Centers for Disease Control and Prevention, National Center for Health Statistics. Firearm Deaths and Rates per 100,000. WONDER Online Database, 2014-2018. Available: http://wonder.cdc.gov/ucd-icd10.html

[14]Conner A, Azrael D, & Miller M. (2019). Suicide case-fatality rates in the United States, 2007 to 2014: A nationwide population-based study. Ann Intern Med. 171:885–895. https://doi.org/10.7326/M19-1324.

[15]Anglemyer A, Horvath T, & Rutherford G. (2014). The accessibility of firearms and risk for suicide and homicide victimization among household members: A systematic review and meta-analysis. Annals of Internal Medicine.

[16]Dahlberg LL, Ikeda RM, & Kresnow MJ. (2004). Guns in the home and risk of a violent death in the home: Findings from a national study. American Journal of Epidemiology.

[17]Swanson JW, et al. (2017). Implementation and effectiveness of Connecticut's risk-based gun removal law: Does it prevent suicides? Law and Contemporary Problems.

[18]Swanson JW, et al. (2019). Criminal justice and suicide outcomes with Indiana's risk-based gun seizure law. Journal of the American Academy of Psychiatry and the Law.

[19]Wintemute GJ, Pear VA, Schleimer JP, Pallin R, Sohl S, Kravitz-Wirtz N, et al. (2019). Extreme risk protection orders intended to prevent mass shootings: A case series. Annals of Internal Medicine.

[20]Frattaroli S, Omaki E, Molocznik A, Allchin A, Hopkins R, Shanahan S, & Levinson A. (2020). Extreme risk protection orders in King County, Washington: The epidemiology of dangerous behaviors and an intervention response. Inj. Epidemiol. 7, 44 (2020). https://doi.org/10.1186/s40621-020-00270-1.

## History

Though extreme risk laws are a promising tool for preventing multiple kinds of violence, particularly suicide, they often gain public and political support following high-profile shooting tragedies. For example, the nation's first extreme risk law was Connecticut's risk warrant, passed in 1999 following a mass shooting at the state's lottery headquarters, while Indiana passed another early extreme risk law in 2005 following a 2004 shooting rampage. Both states' laws limit eligible petitioners to law enforcement, although anyone can call law enforcement if they are concerned about a person's behavior.

Following the shooting at Sandy Hook Elementary School in Newtown, Connecticut (a case in which a risk warrant was not sought), the national conversation around preventing gun violence focused on mental illness. The Consortium was convened to explore the research and develop policy solutions based on risk of violence, ultimately finding that focusing firearm prohibitions based on mental illness alone was misguided, not supported by research evidence, and harmfully stigmatizing. Instead, the Consortium focused on risk factors for violence to self and others that are supported by research and existing evidence demonstrating statistically significant associations between state domestic violence protection order laws that prohibit respondents from purchasing and possessing firearms and reductions in intimate partner homicide. The existing domestic violence protection order infrastructure served as a model for how to conceptualize a new type of civil order that built on the principles of firearm risk and the focus on firearms already reflected in the Connecticut and Indiana laws. With this recommendation, the Consortium sought to address a critical gap about firearms access in state law. The Consortium's recommendation for the development of ERPO policies is included in Appendix 1 and detailed in the 2013 report entitled "Guns, Public Health and Mental Illness: An Evidence-Based Approach for State Policy."[21]

After a deadly shooting on the University of California, Santa Barbara campus in May of 2014, California became the first state to enact a Consortium-recommended extreme risk law that included both law enforcement and family or household members as petitioners, known as the Gun Violence Restraining Order. In November 2016, Washington voters overwhelmingly passed their ERPO through a ballot initiative and in August 2017, Oregon enacted an ERPO.

Following the February 2018 shooting at Marjory Stoneman Douglas High School in Parkland, Florida, interest in extreme risk laws increased dramatically. Florida took swift action and passed their Risk Protection Order the next month. Vermont, Maryland, Rhode Island, New Jersey, Delaware, Massachusetts, Illinois, and the District of Columbia followed suit later that year. Then in 2019, New York, Colorado, Nevada, and Hawai'i all enacted ERPOs. As of October 1, 2020, nearly half of the U.S. population has access to an extreme risk law.[22]

[21] Consortium for Risk-Based Firearm Policy. (2013) Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy. http://efsgv.wpengine.com/wp-content/uploads/2014/10/Final-State-Report.

[22] As based on state population estimates from the U.S. Census Bureau.

# Extreme Risk Law Timeline

### March 1998

- **March 6: Shooting at Connecticut Lottery headquarters in Newington, CT**

### August 2004

- **August 18: Shooting rampage in Indianapolis, Indiana**

### December 2012

- **December 14: Shooting at Sandy Hook Elementary School in Newtown, CT**

### December 2013

- December 2: Consortium issued report including extreme risk protection order ("Gun Violence Restraining Order") recommendation

### September 2014

- September 28: California "Gun Violence Restraining Order" law signed into law (effective January 1, 2016; amended October 11, 2019; amendment effective September 1, 2020)

### August 2017

- August 16: Oregon "Extreme Risk Protection Order" signed into law (effective January 1, 2018)

### March 2018

- March 9: Florida "Risk Protection Order" signed into law (effective upon signing

### June 2018

- June 1: Rhode Island "Extreme Risk Protection Order" signed into law (effective upon signing)
- June 13: New Jersey "Extreme Risk Protective Order" (effective September 1, 2019)
- June 27: Delaware "Lethal Violence Protective Order" signed into law (effective December 27, 2018; amended July 23, 2019)

### January 2019

- January 31: DC "Extreme Risk Protection Order" signed into law (effective May 10, 2019)

### April 2020

- April 8: Virginia "Substantial Risk Order" signed into law (effective July 1, 2020)

### June 1999

- June 29: Connecticut "Seizure of Firearms and Ammunition from Persons Posing Risk of Imminent Personal Injury to Self or Others" signed into law (effective October 1, 1999; amended June 2013)

### May 2005

- May 5: Indiana "Proceedings for the Seizure and Retention of Firearms" signed into law (effective July 1, 2005; amended May 6, 2019)

### March 2013

- March 21-22: Consortium's inaugural convening during which the contemporary extreme risk protection order was developed

### May 2014

- **May 23: Shooting at University of California, Santa Barbara in Isla Vista, CA**

### November 2016

- November 8: Washington "Extreme Risk Protection Order" passed by voter referendum (took effect December 8, 2016; amended July 28, 2019)

### February 2018

- **February 14: Shooting at Marjory Stoneman Douglas High School in Parkland, FL**

### April 2018

- April 11: Vermont "Extreme Risk Protection Order" signed into law (effective upon signing)
- April 24: Maryland "Extreme Risk Protective Order" signed into law (effective October 1, 2018)

### July 2018

- July 3: Massachusetts "Extreme Risk Protection Order" signed into law (took effect August 17, 2018)
- July 16: Illinois "Firearms Restraining Order" signed into law (effective January 1, 2019; amended July 12, 2019)

### February 2019

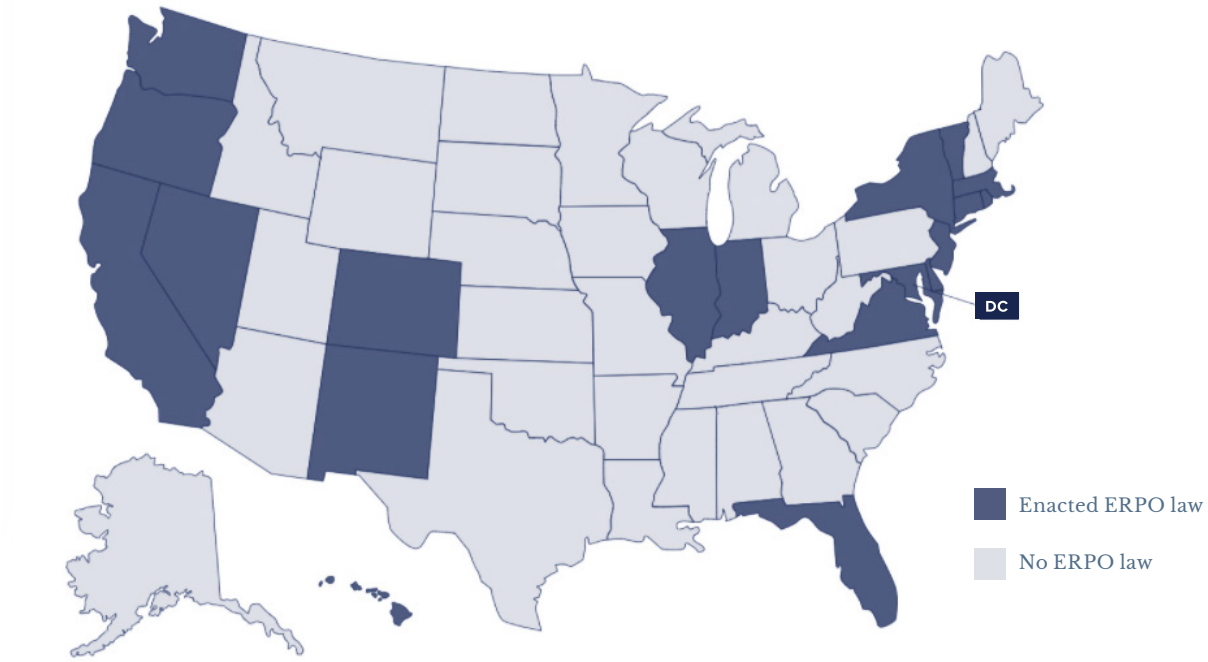
- February 25: New York "Extreme Risk Protection Order" signed into law (effective August 24, 2019)

### October 2020

- October 28: Consortium issued this report on new recommendations for extreme risk protection order policy and implementation

## Current Status in the States

As of October 2020, 19 states (California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington) and the District of Columbia have enacted extreme risk laws; 18 of these laws were enacted following the Consortium-developed ERPO model.[23] For a detailed comparison of these policies, see Appendix 2.




Implementation and use of extreme risk laws varies not only between states but between cities and counties within states.[24] For example, one study of California's extreme risk law (called the gun violence restraining order, or GVRO) found that there was substantial county-level variation in GVRO use, with the number of respondents per county ranging from zero to 354 respondents over the four year period from 2016-2019.[25] One reason for variation in implementation is that ERPOs are legal tools that do not operate in a vacuum. Many systems - at the city, county, and state levels - must coordinate to implement them effectively (e.g., courts that assess petitions, law enforcement agencies that serve orders issued by the courts, agencies that update background check databases). Further, there will be times when other remedies, legal and otherwise, are either more appropriate or used in conjunction with an ERPO to address the underlying causes of risky behavior. Resources and support for implementation efforts are important for their success.

While the body of implementation research is developing, emerging anecdotal evidence and expert experience indicate that certain key factors may contribute to an effective policy. First, successful implementation requires understanding the scope of gun violence in the community in which implementation is occuring. Second, process questions such as which court hears the orders, who is responsible for serving orders, where relinquished or removed firearms are stored, and how to return firearms after the orders end are critical to address for successful implementation. Third, stakeholder outreach, to ensure the key intermediaries are aware of the law, is also important. These diverse

[23] Connecticut and Indiana's extreme risk laws pre-date the Consortium's model.

[24] While there are states, counties, and cities that are both striving and struggling to implement ERPO laws, a small minority of local law enforcement officers have publicly declared that they would not enforce such laws where or if they are enacted; such localities are commonly referred to as "lawless localities" or "Second Amendment sanctuaries." See: Mascia, J. (14 January 2020). Second Amendment Sanctuaries, Explained. The Trace. Available at https://www.thetrace.org/2020/01/second-amendment-sanctuary-movement/.

[25] Pallin R, Schleimer JP, Pear VA, & Wintemute GJ. (2020). Assessment of extreme risk protection order use in California from 2016 to 2019. JAMA Network Open, 3(6), e207735-e207735.

intermediaries may include social service practitioners, medical providers, clergy members, and community leaders who are likely to counsel community members in times of crisis and are thus in a position to increase awareness of the law among community members.

All aspects and stages of implementation must be intentionally considered through an equity lens, which means anticipating unintended consequences and/or the disproportionate impacts on people of color and other historically underrepresented and marginalized communities. To accomplish this, we encourage that the perspectives of diverse stakeholders, including Black, Indigenous, people of color, LGBTQ+, immigrant, consumer mental health advocates, and other communities be considered in implementation efforts - and any related revisions to ERPO laws. In all jurisdictions, to mitigate potentially harmful outcomes, we encourage implementers to invest in crisis intervention and de-escalation training for law enforcement (e.g., Crisis Intervention Team (CIT) training).

To facilitate monitoring, evaluation, and transparency with the public, courts and/or law enforcement agencies should regularly report how ERPOs are being used. These data are needed both to understand outcomes and to ensure that ERPOs are being used equitably. Unfortunately, funding for extreme risk law implementation has been limited and is one reason for uneven implementation and limited data about their use. More research is needed to support successful and equitable implementation practices.

## Current Status of Federal Policy

While the ERPO was developed as a state policy, it has gained national attention and support. For example, President Trump called on states to pass ERPOs in March 2018 and directed the Department of Justice "to provide technical assistance to States, at their request, on establishing and implementing ERPOs."[26] His administration's December 2018 Final Report of the Federal Commission on School Safety restated that support, recommending that states adopt ERPO laws.[27] Nearly all of the 2020 Democratic presidential candidates endorsed extreme risk laws and incorporated them into their gun violence prevention policy platforms, and Congress is also considering multiple federal policy proposals related to ERPOs.

## Need for this Report

Key stakeholders have helped to identify issues relating to ERPO laws and their implementation that would benefit from additional guidance. Four key areas are addressed in this report: 1) duration of orders including requirements for renewals; 2) "third party" or "joint occupancy" clauses; 3) cases involving minors at risk of violence; and 4) eligible petitioners. In addition, this report provides guidance related to entry of orders into the National Instant Criminal Background Check System (NICS), data reporting and access, and federal policy as related to state ERPO laws. As new data become available in the months and years to come, we will continue to add to and/or update our recommendations as necessary.

[26] White House fact sheet issued March 12, 2018: "President Donald J. Trump is Taking Immediate Actions to Secure Our Schools." Accessed 13 January 2020. Available: https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-immediate-actions-secure-schools/

[27] U.S. Department of Education, U.S. Department of Justice, U.S. Department of Homeland Security, U.S. Department of Health and Human Services. (2018). Final Report of the Federal Commission on School Safety. https://www2.ed.gov/documents/school-safety/school-safety-report.pdf

# State Recommendations

## Duration of Orders

ERPOs are designed to prevent gun violence by temporarily prohibiting someone who is behaving dangerously and at risk of violence from purchasing and possessing firearms. There are typically two types of orders, temporary (ex parte) and final; both of these orders are time-limited. In issuing specific recommendations regarding the duration of each order, the Consortium seeks to provide enough time for respondents to address the underlying causes of risk and thus, for the elevated risk of harm to self or others to subside, while also balancing rights of respondents and available resources and capacity of law enforcement and judicial personnel.

The Consortium recommends that temporary (ex parte) orders be in effect for two to three weeks. First, this generally allows the courts enough time to hold a noticed hearing. Shorter timeframes run the risk of affording too little time for order service and for respondents to plan to appear at the hearing. Second, ERPO petitions may be based on situational or otherwise acute risk factors that must be addressed in the acute context but are unlikely to persist. A two to three week temporary (ex parte) order may allow respondents enough time to create their own safety plans and stabilize or address acute risk factors, thus reducing the need for a final order. In other words, with enough time, a temporary order may be sufficient to address the risk that prompted the order, making a longer order unnecessary.[28]

### ERPOs in the era of COVID-19

This report is being published amid the global COVID-19 pandemic, which has caused courts to adapt procedures to mitigate health risks. In many states, these mitigation procedures affect ERPO processes. When not explicitly addressed in state law, executive orders, or orders issued by the highest appellate court of the state, local court rules may dictate how to handle unusual circumstances such as these, including online filing of petitions, holding remote hearings, and scheduling of hearings or granting of continuances. Flexibility is necessary and there is state and local variation in response.

The Consortium urges courts to take measures that protect the public's health while also ensuring that ERPOs are accessible to those who need them. Furthermore, the Consortium also encourages leaders to consider how these unusual circumstances may encourage the creation of new norms and opportunities to make ERPOs more accessible in the future (e.g. through remote testimony and online filing of petitions).

Following a temporary order, the Consortium recommends that final orders be in effect for one year. This is consistent with most states' ERPO laws as currently written and in keeping with common time frames for domestic violence restraining orders. In cases where the underlying risk factors cannot be addressed in the course of a temporary (ex parte) order, this allows a respondent more time to address underlying risk factors, particularly those that may require more intensive intervention. Respondents should have the opportunity to demonstrate to the court that they are no longer at elevated risk of violence through a one-time petition for early termination of a final order. Otherwise, final orders should expire automatically at the end of one year so long as no renewal petition is sought and granted.

In some cases, a respondent may remain at an elevated risk of violence at the end of a year-long order, either due to new risk factors or enduring risk factors that have not been resolved. Thus, order renewal processes should be available in the last 90 days of final orders. To effectively determine whether a renewal petition should be sought prior to order expiration, there should be a process whereby petitioners (or if law enforcement were the petitioners, appropriate family members/partners) are notified of the impending expiration of the petition and given information regarding how to file for an extension. This

[28] While ERPOs are not a mental health intervention, the Consortium's recommendation for the length of orders benefits from research on the court processes related to mental health commitments. See: Wanchek TN & Bonnie RJ. (2012). Use of longer periods of temporary detention to reduce mental health civil commitments. Psychiatric Services, 63(7), 643-648. 10.1176/appi.ps.201100359.

does not place an unreasonable burden on a public agency, but does alert those people who are likely to be most affected by the upcoming end point for the order. It is critical for renewal orders to be based on recent evidence to ensure that renewals reflect contemporaneous risk levels. Whether or not the circumstances that precipitated the original order have abated, a renewal order must be based on recent evidence. However, evidence from the original petition may also be used if it remains relevant in demonstrating that the risk continues.

In most cases, renewals should, like final orders, be in effect for one year and again, respondents should have the option to petition for early termination of the order once in that year, with the respondent bearing the burden of proof to demonstrate that they are no longer at elevated risk of violence. However, there should be limited exceptions that grant courts the authority to issue a renewal order in effect for longer than one year. Specifically, renewals longer than one year should be available under one of two conditions: 1) when the evidence documents a level of impairment associated with a condition that is either stable or deteriorating (i.e., demonstrates a continuing or increasing level of risk, such as in certain types of dementia); or 2) when the respondent requests a longer order as an avenue for self-prohibition. In both of these cases, annual renewal of the order has the potential to put an undue burden on law enforcement and the judicial system as well as on the respondent. Still, in such cases, the respondent again should have the option to petition for early termination of the order once yearly. In the first year of a longer-term renewal order the burden of proof should remain on the respondent, but in subsequent years the burden of proof should shift to the petitioner.

Resources are required to ensure effective implementation of each step of the ERPO process, including: petitioning, processing, and serving orders; removing and processing firearms; preparing for and appearing in court; and coordinating with other agencies and services as appropriate. Most of these steps are repeated for subsequent hearings and renewal petition processes. To ensure that these orders are appropriately and fully implemented, targeted resources to support ERPO implementation should be allocated to law enforcement agencies (including city and district attorneys, victims advocates, and paralegals, among others), judicial system offices, and related personnel, including for dedicated staff time to manage and process ERPOs.

## Duration of Orders – the Consortium Recommends:

- Temporary (ex parte) orders should be in effect for two to three weeks.
- Final orders should be in effect for one year.
    a. Respondents should have the option to petition once for early termination of the order after it goes into effect, with the burden of proof being on the respondent to demonstrate that they are no longer at elevated risk of violence.
    b. If no renewal petition is sought and granted, the order should expire automatically at the end of one year.
- Final orders should be eligible for renewal based on a petition filed within the final 90 days of the order.
    a. Renewal of an order should be based on recent evidence that the individual continues to pose an elevated risk of violence but may also take into consideration the original facts of the case to the extent that they support a finding of continuing risk.
    b. Renewals should be in effect for one year with limited exceptions. Courts should have the authority to enter an order in effect for longer than one year under the following conditions:
        1. When the evidence documents a level of impairment associated with a condition that is either stable or deteriorating (i.e., demonstrates a continuing or increasing level of risk); or
        2. When the respondent requests a longer prohibition (i.e., as avenue for self-prohibition).
    c. When a renewal order is granted, respondents should again have the option to petition for early termination of the order, with the burden of proof being on the respondent to demonstrate that they are no longer at elevated risk of violence. If the renewal period is longer than one year, the burden of proof shifts from respondent to petitioner after one year has elapsed. For orders lasting for multiple years, the respondent may petition up to once per year for early termination of the order.
- Implementation recommendations related to duration of orders:
    a. In the final 90 days of the order, there should be a process whereby petitioners (or if law enforcement were the petitioners, appropriate family members/partners) are notified of the impending expiration of the petition and given information regarding how to file for an extension.
    b. Resources should be allocated for law enforcement agencies (including city and district attorneys), judicial system offices, and related personnel issuing and processing ERPOs, including dedicated staff time to manage key aspects of implementation.

## Third Party Clauses / Joint Occupancy Clauses

ERPOs may be issued when the respondent has possession (actual or constructive) of, or other access to, a firearm but is not the legal owner of the firearm. In such cases where firearms that are lawfully possessed by someone other than the respondent are removed, "third party clauses" (or "joint occupancy clauses") should allow the legal owner to petition for return of their firearms. This allows for the firearms to be removed in the midst of a high-risk situation to protect the respondent or others who may be harmed while also allowing for the expedient return of the firearms to their lawful owner. Cases where such clauses may apply include when the respondent is a minor and the firearms belong to their parent, guardian, or other adult or when the respondent is an adult family member, intimate partner, or other person who shares a home with the lawful owner of the firearms. The petition should be accompanied by a plan that indicates how the legal owner intends to prevent access by the respondent. Components of such a plan might include, but not be limited to, secure on-site storage, off-site storage, and/or restriction of the respondent from the premises where the firearm is stored. Granting of the petition should depend on a finding by the court that the plan is adequate to preclude access by the respondent. Failure by the legal owner to abide by the plan should result in clearly defined civil penalties.

To ensure the ongoing protection afforded by the ERPO, it should be unlawful for any legal firearms owner to knowingly, recklessly, or negligently allow an individual they know is the respondent to an ERPO to access their firearms. At a minimum, in the absence of a court-approved plan, in cases where third party clauses result in the return of firearms to their lawful owner who cohabits with the respondent, the lawful owner should be informed of the requirement to safely store the firearms in a manner that prevents the respondent from accessing the firearms and the legal penalties for failure to do so and required to acknowledge their responsibility. The manner in which the lawful owner is informed of the storage requirement (and formally acknowledges it) should be decided by the local jurisdiction, and may include being informed by the court orally (if present) or in writing, by the law enforcement agency returning the firearms orally or in writing, or another manner as appropriate. Specific safer storage requirements and associated penalties will vary by state. Similarly, in cases where third party clauses result in the return of firearms to their lawful owner who does not cohabit with the respondent, they should also be informed of their obligation to prevent the respondent from accessing the firearms and the legal penalties for failure to do so. As above, the manner in which the lawful owner is informed of this requirement should be decided by the local jurisdiction. Ultimately, if the lawful owner of the firearms petitions for their return, they will be responsible for ensuring the respondent does not have access.

## Third Party Clauses / Joint Occupancy Clauses - the Consortium Recommends:

- ERPO laws should include "third party clauses" (or "joint occupancy clauses") that allow the legal owner of any firearms removed pursuant to an ERPO (when the firearms do not belong to the respondent) to petition for return of their firearms; such clauses should apply whether or not the respondent is a minor.
- It should be unlawful for any legal firearms owner to knowingly, recklessly, or negligently allow an individual they know is the respondent to an ERPO to access their firearms.
- The petition for return of firearms should be accompanied by a plan that indicates how the legal owner intends to prevent access by the respondent. Plan components might include, but not be limited to, secure on-site storage, off-site storage, and/or restriction of the respondent from the premises where the firearm is stored.
    a. In the absence of a court-approved plan, at a minimum:
        1. When firearms are returned to the lawful owner who cohabits with the respondent of the ERPO, the lawful owner should be informed of the requirement to safely store the firearms in a manner that prevents the respondent from accessing the firearms and the legal penalties for failure to do so.
        2. When firearms are returned to the lawful owner who does not cohabit with the respondent of the ERPO, the lawful owner should be informed of the requirement to prevent the respondent from accessing the firearms and the legal penalties for failure to do so. penalties for failure to do so.

## Cases Involving Minors at Risk of Violence

While many states prohibit firearm ownership by minors and firearms may not be in their immediate control, minors often still have access to firearms owned by another person in the home. Limiting access to firearms by a minor who is at elevated risk of harm to self or others can be a life-saving intervention, yet as of October 2020, Washington is the only state where an ERPO law explicitly includes minors as respondents (though without explicit inclusion of minors in their ERPO statue, some states have still issued ERPOs to minors).[29] The Consortium recommends that ERPOs, including ex parte orders, should be available in cases where the respondent is a minor, 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 (such as in cases where the minor is approaching their 18th birthday).[30] Professionals likely to interact with and identify minors at elevated risk of harm should be provided training and resources about ERPOs and the officers who serve them should have special training in working with minors as well as in crisis intervention. If firearms are removed pursuant to an ERPO that are the property of a person other than the respondent (e.g., parent, relative), a "third party clause" (or "joint occupancy clause") should apply, allowing the legal owner to petition for return of their firearms while providing terms to ensure that the respondent does not have access to those firearms.

Minors who are at elevated risk of harm to self or others are a particularly vulnerable population and deserve special court protections under ERPOs. Some jurisdictions may have designated courts handling all ERPO cases, while others may be best equipped to handle such cases through juvenile or family courts, among other arrangements as is necessary at the local level. Regardless of this variation, the Consortium recommends that court records for cases involving minor respondents be kept confidential and be sealed following expiration of the order.

Furthermore, ERPOs should not be utilized in a vacuum, particularly in cases involving minor respondents. While ERPOs should be made legally available to be used in cases of minors, they may not be the appropriate intervention in all situations and other interventions should be considered to reduce the risk of firearm suicide or interpersonal violence. Additionally, when an ERPO is pursued for a minor respondent, other remedies, legal and otherwise (such as those related to child firearms access prevention laws, social services, etc.), may be appropriate or necessary in conjunction with an ERPO to ensure the safety of the minor respondent. Law enforcement authorities should initiate these remedies and bring such cases to the attention of the responsible public officials, including family/social service agency officials and prosecutors, as needed. To ensure that cases do not slip through the cracks of the relevant systems, adequate resources and staff time should be designated to coordinate these interagency activities. More broadly, appropriate services and interventions should be made available to respondents, both minors and adults, to address the underlying causes of risky behaviors.

[29]Engrossed Substitute Senate Bill 5027, 2019. (accessed 28 July 2020). Available: http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5027-S.SL.pdf?q=20200419124156.

[30]Swanson, J. W. (2020). Preventing suicide through better firearm safety policy in the United States. Psychiatric services, appi-ps.

## Cases Involving Minors at Risk of Violence - the Consortium Recommends:

- ERPOs, including ex parte orders, should be available in cases where the respondent is a minor, 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.
- Third party clauses should apply in cases where the respondent is a minor.
- In cases where the respondent is a minor, court records should be confidential and, after the order has expired, should be sealed.
- In cases involving minor respondents, law enforcement authorities should take other action as they deem appropriate or necessary to ensure the safety and protection of the minor respondent and bring the case to the attention of the responsible public officials.
- Implementation recommendations related to minor respondents:
    a. Educational materials about ERPOs, their utility, and procedures should be offered to social service professionals who specialize in working with children and adolescents, including school counselors.
    b. Law enforcement officers serving ERPOs to minor respondents should have experience working with minors as well as in crisis intervention.[31]
    c. Law enforcement authorities and courts handling ERPO cases involving minors at risk of violence should designate key staff to develop and implement relevant policies and procedures that ensure the above protections of minor respondents, including interagency coordination. Relevant agencies should be allocated adequate resources to perform these activities.

## Eligible Petitioners

To date, available evidence shows that the great majority of ERPO petitions are filed by law enforcement, though it is not uncommon for those cases to be initiated by calls for assistance by family members of the respondent.[32,33,34] A key principle behind ERPOs is that they allow for law enforcement and the people closest to the respondent to intervene to help prevent tragedies before they occur. The Consortium recommends that persons eligible to petition include: law enforcement officers; family members, household members, and intimate partners;[35] and licensed healthcare providers. While prior Consortium recommendations included law enforcement, family members, household members, and intimate partners as eligible petitioners, the Consortium now recommends extending the eligibility to petition for an ERPO to licensed healthcare providers. The rationale behind this expansion is that healthcare providers are trained to identify and mitigate crises, and many providers already engage with people in crisis or who are otherwise at elevated risk of violence to self or others as a regular part of their professional work. Further, healthcare providers may provide an important alternate pathway to an ERPO for people who do not want to immediately involve law enforcement, although it should be noted that law enforcement will inevitably be involved later in the protective order process (e.g., to serve the order).[36] As of October 2020, Hawaii, Maryland, and the District of Columbia all include healthcare providers among those eligible to petition for ERPOs.

Healthcare providers have raised two areas of concern related to petitioning that may be addressed, if necessary, through policy change: legal liability and privacy laws.[37] First, liability protections should be established for licensed healthcare providers, both for petitioning for an ERPO, and for deciding not to do so, as long as they act in good faith. Second, healthcare providers will have to weigh whether to disclose their patients' protected health information to petition for an ERPO. Such disclosures are permitted under the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule when the provider believes disclosure is necessary to prevent a serious and imminent threat to the patient or others and disclosure is made to persons whom the provider believes are reasonably able to prevent or lessen the threat.[38] While state laws cannot override HIPAA privacy requirements, they may be more restrictive. 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.

Implementation practices can improve how the law is applied, particularly through training for people who petition as part of their professional role. For law enforcement petitioners, agencies should designate specially-trained officers who focus professionally on ERPOs (in smaller jurisdictions, this focus may be among other responsibilities), and all officers serving such orders should be trained in crisis intervention, whether as members of Crisis Intervention Teams or some equivalent. Likewise, licensed healthcare providers should be offered training on ERPOs and the petitioning process.

Because the petitioning and court processes can be especially burdensome and take healthcare providers

[31]Where, without any specific reference to minors, the ERPO may be issued against a minor, the order will be served on the respondent in accordance with the statute (some states also allow for alternate service; i.e. by publication). In Washington's case the order is served on the minor but a copy of the order is also served "on the parent or guardian of the minor at any address where the minor resides, or the department of children, youth, and families in the case where the minor is the subject of a dependency or court approved out-of-home placement." See Wash. Rev. Code Ann. § 7.94.060(7)(a).

[32]Pallin R, Schleimer JP, Pear VA, & Wintemute GJ. (2020). Assessment of extreme risk protection order use in California from 2016 to 2019. JAMA Network Open, 3(6), e207735-e207735.

[33]Rowhani-Rahbar A, Bellenger MA, Gibb L, Chesnut H, Lowry-Schiller M, Gause E, ... & Rivara FP. (2020). Extreme risk protection orders in Washington: a statewide descriptive study. Annals of Internal Medicine. https://doi.org/10.7326/M20-0594.

[34]Frattaroli S, Omaki E, Molocznik A, Allchin A, Hopkins R, Shanahan S, & Levinson A. (2020). Extreme risk protection orders in King County, Washington: The epidemiology of dangerous behaviors and an intervention response. Inj. Epidemiol. 7, 44 (2020). https://doi.org/10.1186/s40621-020-00270-1.

[35]Intimate partners is defined as current or former spouses and current or former dating partners.

[36]Swanson, J. W. (2020). Preventing suicide through better firearm safety policy in the United States. Psychiatric services, appi-ps.

[37]For further discussion of healthcare providers' concerns related to eligibility to petition for ERPOs, see: Swanson JW, Nestadt PS, Barnhorst AV, & Frattaroli S. (in press). Risk-based temporary firearm removal orders: A new legal tool for clinicians. Harvard Review of Psychiatry.

[38]The scope of this permission is detailed in a letter to the nation's healthcare providers from the Director of the Office for Civil Rights at the Department of Health and Human Services, dated 15 January 2013, following mass shootings in Aurora, Colorado and Newtown, Connecticut. The letter is accessible here: https://www.hhs.gov/sites/default/files/ocr/office/lettertonationhcp.pdf.

away from their clients and patients for extended time periods, additional support may be beneficial for implementation in clinical settings.[39] Healthcare facilities where eligible licensed healthcare provider petitioners work, and public health departments at the local and/or state levels, should designate trained clinical coordinators who are themselves eligible petitioners to serve as ERPO content experts for healthcare providers. Such clinical coordinators could be charged with managing petitions and testimony. These designated clinical coordinators would address a major barrier to healthcare provider-initiated petitions: the lack of time to complete the petition and testify in court.36 In addition, these clinical coordinators could maintain relationships with local law enforcement, thereby helping to smooth transitions between healthcare provider petitioners and law enforcement officers who serve the orders.

## Eligible Petitioners - the Consortium Recommends:

- Persons eligible to petition for ERPOs should include: 1) law enforcement officers; 2) family members, household members, and intimate partners; and 3) licensed healthcare providers.
- Licensed healthcare providers should be granted liability protections both for petitioning for an ERPO, as well as deciding not to do so, as long as they act in good faith.
- 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 and to protect them from liability for good-faith decisions.
- Implementation recommendations:
    a. Law enforcement agencies should designate specially-trained officers whose professional focus, at least in part, is on managing reports about dangerous behaviors, petitioning for, and serving ERPOs. It would be helpful if officers serving ERPOs are members of Crisis Intervention Teams, where they exist, or have equivalent experience.
    b. Licensed healthcare providers should be offered tailored training on ERPOs, including their use and function, petitioning requirements, court processes, etc.
    c. Healthcare facilities and public health departments at the local and/or state levels where eligible licensed healthcare provider petitioners work should establish clinical coordinators who serve as ERPO content experts for healthcare providers and who are charged with managing ERPO petitions and testimony.

### Submission of Records to NICS to Prevent Firearm Purchases

ERPOs reduce access to firearms by persons deemed at elevated risk of violence via three mechanisms. First, ERPOs require removal of any firearms currently possessed by the respondent; second, they prohibit possession of firearms by the respondent for the duration of the order; and third, they prohibit purchase of new firearms by the respondent. This three-pronged approach ensures not only that current access to firearms is reduced, but also that the likelihood of subsequent acquisition of firearms is reduced. For the third mechanism to be effective, ERPOs be entered into the National Instant Criminal Background Check System (NICS) or into the state background checks database such that at the point of purchase, the sale would be denied.[41] States should require a state-designated entity to enter ERPO order information, including expiration dates and renewals, into NICS and/or, depending on the state, the appropriate state background checks database.

## Records Submissions to NICS to Prevent Purchase of Firearms - the Consortium Recommends:

- States should ensure that when a court enters an ERPO order finding that the respondent is ineligible to purchase firearms, the information is entered by a state-designated entity into the National Instant Criminal Background Check System and/or, depending on the state, into the state background checks database. Such notification should include order expiration dates and any renewals that are granted.

[39] Frattaroli S, Hoops K, Irvin NA, McCourt A, Nestadt PS, Omaki E, Shields WC, & Wilcox HC. (2019). Assessment of physician self-reported knowledge and use of Maryland's extreme risk protection order law. JAMA Network Open, 2(12), e1918037-e1918037.

[40] Swanson, J. W. (2020). Preventing suicide through better firearm safety policy in the United States. Psychiatric services, appi-ps.

## Data Reporting and Availability

As states enact and implement extreme risk laws, strategic evaluation is critical. Research will enhance understanding of the laws' impacts on firearm violence, provide necessary feedback to implementers of the policy to help improve outcomes, help to spot and correct inequitable use of the orders, and ultimately empower legislatures to make more informed policy decisions. States should require reporting of ERPO case data to a centralized state database and should facilitate access to these data for research and policy purposes. Specific data required to be reported to these researcher-accessible databases may include but are not limited to:

### Petitioner Information

1. Relationship of petitioner to respondent;
2. Petitioner type (category of eligible petitioner according to state law);
3. Demographic information of petitioner, including age, gender identity, and racial or ethnic identity; and
4. For law enforcement petitioners, the specific department or agency for which the petitioner works or which the petitioner is representing.

### Respondent Information

1. Demographic information of respondent, including age, gender identity, and racial or ethnic identity;
2. Whether the respondent is or has been the respondent to another ERPO and/or other protective order; and
3. Whether the respondent has a concurrent criminal case.

### Order Information and Circumstances

1. City, county, and date of petition and issuance;
2. Expiration date for petition;
3. Risk profile of respondent:
    a. Risk to self only,
    b. Risk to others only, or
    c. Risk to self and others;
4. Brief synopsis of event that precipitated the order;
5. Petition Outcome:
    a. Temporary ERPO granted or denied and reasons for petition being granted, denied, or renewed,
    b. Full ERPO granted, denied, or renewed and reasons for petition being granted, denied, or renewed,
    c. Case dismissed and reasons for dismissal, or
    d. If the respondent contested the order;
6. Whether the order was served, and if yes, the date of service;
7. Whether the respondent was arrested, hospitalized, or referred for services; and
8. Whether a search warrant was issued.

### Firearms Information

1. Number and type of known firearms in respondent's possession or accessible to respondent;
2. Number and type of firearms recovered, seized, and/or transferred;
3. Number of firearms unaccounted for; and
4. Whether the respondent was compliant with the order to relinquish firearms.

### Data Reporting and Availability - the Consortium Recommends:

- 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.

# Federal Recommendations

## Supporting State Policy Implementation

ERPO laws cannot be effective if they are not implemented fully and with fidelity. While ERPOs are a state-level policy, the federal government can play an important role in helping states and localities implement ERPO laws. Federal funding would advance implementation efforts, while also creating an incentive for additional states to enact these laws.

Making federal funding available to states is critical to ensure that the law can help address the different nuances and cultural values of different communities, therefore allowing states to do what is best for them. By conditioning grant funding for state-level implementation on compliance with minimum standards for ERPO laws, the federal government can help maintain the integrity of the policy while providing enough flexibility for states that do not precisely mirror those standards (or exceed them) to remain eligible -- thereby allowing the largest number of states to be eligible for funding.

At least the following six implementation activities should be supported by federal grant funding:[41]

**1. Building infrastructure to support implementation:** Anecdotal evidence suggests that ERPO implementation has been most effective when collaborative, multi-agency teams are in place. These teams should include local police and prosecutors, and might also include other problem-solvers or conciliators (to assist both petitioners and respondents). For example, in King County, Washington, the Regional Domestic Violence Firearms Enforcement Unit, which was originally envisioned to handle firearm removal in cases of domestic violence, also handles ERPOs. The unit comprises dedicated law enforcement, prosecutors, advocates - including a new ERPO advocate, a court orders problem-solver, a court coordinator, a paralegal, a data technician, and a program manager. These multidisciplinary personnel work together to ensure the entire ERPO process is effective, timely, and just.

**2. Training law enforcement, judges, and court clerks:** Law enforcement and judicial training is essential to ensure that ERPO laws are implemented in a safe, equitable, and effective manner. Law enforcement officials, such as police officers and prosecutors, should be trained on filing petitions, issuing and serving orders, and recovering firearms. Law enforcement and judges should work together to create an effective court process for their jurisdiction and disseminate this to their colleagues. Judges should be trained regarding how ERPOs differ from other orders such as domestic violence restraining orders, as well as the burdens of proof associated with different types of ERPOs. Court clerks should be trained regarding how to distribute and make ERPO petitions accessible and available. Moreover, court clerks can play a role in ensuring data and information related to petition forms are collected, amalgamated, and shared with researchers; training on how to do so may be necessary. Overall, such training ensures that each party is prepared for their role and ultimately enhances implementation and enforcement. For example, in Maryland, state-wide law enforcement training took place prior to the law taking effect; as a result, petitions have been filed in nearly every county.

[41] Frattaroli S & Horwitz, J. (23 August 2019). Congress can prevent gun violence with protection laws and federal funding. The Hill. Available: https://thehill.com/opinion/civil-rights/458522-congress-can-prevent-gun-violence-with-protection-laws-and-federal

[42] To learn more about King County's Regional Domestic Violence Firearms Enforcement Unit, visit https://www.kingcounty.gov/depts/prosecutor/ellies-place/rdvfeu.aspx. Accessed 28 July 2020.

**3. Educating allied professionals and diverse community stakeholders:** The ERPO policy is relatively new and may be unfamiliar to community stakeholders and petitioners alike, including a lack of awareness of its existence, why it is important, how it may be applied, and processes for seeking and enforcing orders. Tailored training, guidance, and resources are crucial for a wide variety of stakeholders, including for healthcare providers, community leaders, domestic violence and suicide prevention advocates, as well as for social services providers who may be working with potential petitioners. Likewise, public education is important, especially when family members are authorized to file petitions; the allied professionals and the broad array of community stakeholders listed above often serve as a trusted conduit for public education. These implementation activities are critical for addressing unfamiliarity and allowing the law to be enforced at its highest potential.

**4. Enhancing social services:** By temporarily removing firearms, ERPOs provide safer circumstances during which the respondent may seek treatment or engage other resources to address the underlying causes of the risky behavior. These social services may include but are not limited to: housing, employment, and financial support services; individual and/or family counseling, social work, and other behavioral health interventions; alcohol and substance use treatment; anger management classes; etc. Developing protocols for optional referral to such services, when an individual demonstrates need, and enhancing the delivery of such services to respondents are important implementation activities.

**5. Supporting research to inform extreme risk protection order implementation:** Implementation efforts vary among states and localities. Research on and evaluation of different implementation models will help improve policy and practice of laws across the country. Supporting state and local data collection and analysis, including the development of data infrastructure around ERPOs (such as the centralized state databases described in the state-level recommendation Data Reporting and Availability, p. 24), is crucial for these efforts. Additionally, continuous research on the entire process will help evaluate if the law is being implemented effectively and equitably.

**6. Improving states' reporting of extreme risk protection order records to the national background check system:** For the National Instant Criminal Background Check System (NICS) to be effective, all disqualifying information must be entered into the system quickly and accurately. Ensuring that all ERPOs are included in NICS for the duration of the order and removed when the order expires is a critical component of successful implementation. If respondents' firearm purchase prohibition orders are not included in NICS, these high-risk individuals would still be able to purchase firearms from licensed firearm dealers.

## Supporting State Policy Implementation - the Consortium Recommends:

- The federal government should make grants available to states to help provide critical funding for ERPO implementation, given that their policies meet or exceed minimum standards. At least these six implementation activities should be supported by federal grant funding: 1) building infrastructure to support implementation; 2) training law enforcement, judges, and court clerks; 3) educating allied professionals and diverse community stakeholders; 4) enhancing social services; 5) supporting research to inform policy and practice regarding ERPO implementation; and 6) improving states' reporting of ERPO records to the national background check system.

## Funding for NICS Utilization of ERPOs as Firearm Purchase Prohibitors

As outlined under the state recommendation, Submission of Records to NICS to Prevent Firearm Purchases, ERPOs should be entered into the NICS (including expiration dates and updates with any renewals) and utilized such that at the point of purchase, the sale of a firearm would be denied to a respondent who is legally prohibited from purchase. Unless state-supplied ERPO data is included in the database, respondents who are prohibited from firearms purchases would still be able to purchase firearms from licensed firearm dealers. However, the FBI's NICS section is consistently underfunded and overburdened, placing an undue strain on the agency's ability to achieve its mission.[43] To support the NICS section in fully utilizing ERPO data, 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.

### Funding for NICS to Assure that Extreme Risk Protection Orders Effectively Serve as Firearm Purchase Prohibitors - the Consortium Recommends:

- 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.

[43] Givens A. (21 March 2018). The Gun Background Check System Is Overburdened and Understaffed, DOJ Budget Request Shows. The Trace. Available: https://www.thetrace.org/2018/03/gun-background-check-staff-shortage-justice-department-budget/

# Call for Research

As ERPO laws continue to be passed and implemented in states nationwide, ongoing study is crucial to fully evaluate the laws' impacts, identify gaps or unintended consequences, and amend the laws so that they evolve with the data and jurisprudence. The Consortium encourages researchers to work directly with implementers of extreme risk laws to bolster the evaluation process, to advocate for data reporting and sharing requirements in state law, and for funding for research.

Questions for researchers to explore include the following:

**1. Extreme risk protection order cases:** What are the demographic profiles of respondents and petitioners, and how might that compare to the gun-owning community in general? What circumstances commonly precipitate an ERPO? What are the short- and long-term outcomes of cases in which ERPOs are obtained? What commonalities are there among respondents who go on to attempt or die by suicide or threaten or commit interpersonal violence? Do outcomes vary depending on the relationship between respondent and petitioner or other factors?

**2. Racial equity:** How might race and ethnicity play roles in ERPO petitions, police involvement, court processes, and outcomes? Are certain populations over- or underrepresented among respondents? If so, why? Are there unintended consequences that impact racial and ethnic groups differentially, and if yes, what are they? How might they be mitigated? Are services to address underlying behaviors available across racial and ethnic groups? Are there racial disparities in either seeking charges and/or obtaining convictions for criminal penalties of non-compliant respondents?

**3. Implementation processes:** What implementation processes are being practiced in various cities, counties, and states? How are they funded? What type of resources are needed for each implementation role? Where has innovation emerged? How are implementation processes and outcomes related?

**4. Evaluations of stakeholder trainings:** What are the key points that stakeholders need or would like to be trained on? What is missing? How can trainings be improved?

**5. Public awareness and perception of the policy:** Is the general public aware of the policy? Which awareness-raising efforts are successful? What does public opinion polling find about the policy's favorability?

To support the study of ERPO laws, the Consortium recommends that states make detailed ERPO data available to researchers and aggregate data available to the public, including specific recommendations on which data to require reporting into researcher-accessible databases (see Data Reporting and Availability, p. 24, for complete recommendation and listing of variables, including petitioner information, respondent information, order information and circumstances, and firearms information).

# Conclusion

ERPO laws allow law enforcement, 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. Using precursor policies in Connecticut and Indiana and domestic violence protection orders as a foundation, the Consortium developed a model for ERPOs in 2013. Advocates and lawmakers quickly recognized the value of ERPOs, especially in the wake of high-profile mass shootings that may have been prevented by ERPOs. The enactment of these laws in 19 states[44] and the District of Columbia (as of October 2020) has been one of the most significant gun violence prevention policy initiatives in modern history, and now nearly half of the U.S. population has access to an extreme risk law. [45]

The Consortium's ERPO model is flexible to account for states' diverse needs and priorities. In response to questions about best practices, this report provides new consensus recommendations on the following topics: 1) duration of orders; 2) third party or joint occupancy clauses; 3) cases involving minors at risk of violence; 4) eligible petitioners; 5) records submission to NICS and state background check systems; and 6) data reporting and availability. At the federal level, the Consortium recommends federal grant funding to support state policy implementation as well as funding for NICS to assure that ERPOs serve effectively as firearm purchase prohibitors.

The Consortium's ability to monitor policy and practice is dependent upon the availability of evidence about how such laws are being implemented, and the impacts they are having on all forms of gun violence in communities throughout this country. Together with diverse stakeholder engagement and transparency of implementation processes, robust data collection and research are especially critical in ensuring racial equity, which can assist in community-centered policing and improve police-community relations while providing a beneficial impact through ERPOs.

The Consortium's objective is to reduce gun violence through policies that focus on evidence-based risk factors for violence. By weighing in now with new recommendations, the Consortium seeks to provide necessary and practicable guidance for states now implementing these laws as well as states considering enacting them. Members of the Consortium remain convinced that the ERPO policy has great potential as a life-saving intervention that merits nationwide implementation.

[44] Includes Connecticut and Indiana's precursor laws.

[45] As based on state population estimates from the U.S. Census Bureau.

# Appendix 1: Consortium's 2013 Extreme Risk Protection Order Recommendation

In 2013, the Consortium issued Guns, Public Health and Mental Illness: An Evidence-Based Approach for State Policy, which included the introduction of a new mechanism to remove firearms from individuals who pose a serious risk of harm to self or others (recommendation #3). This included three components: authorizing risk-based firearm removal by law enforcement (3.1); a civil court order process to petition for the removal of firearms from individuals at immediate risk of harm (3.2); and due process protections for affected individuals (3.3). The orders outlined in 3.2 were then called gun violence restraining orders and are now known as extreme risk protection orders or by its acronym, ERPO. The following text is excerpted directly from the 2013 report.[46]

**Recommendation #3: Develop a mechanism to authorize law enforcement officers to remove firearms when they identify someone who poses an immediate threat of harm to self or others. States should also provide law enforcement with a mechanism to request a warrant authorizing gun removal when the risk of harm to self or others is credible, but not immediate. In addition, states should create a new civil restraining order process to allow family members and intimate partners to petition the court to authorize removal of firearms and temporarily prohibit firearm purchase and possession based on a credible risk of physical harm to self or others, even when domestic violence is not an issue.**

3.1: Authorize law enforcement to remove guns from any individual who poses an immediate threat of harm to self or others. Law enforcement officers are well versed in the "use of force" continuum, and may also use risk/lethality assessments to judge the risk of particular situations. In emergency situations, this authority can be exercised without a warrant.

3.2: Create a new civil restraining order process to allow private citizens to petition the court to request that guns be temporarily removed from a family member or intimate partner who poses a credible risk of harm to self or others. This process should mirror the restraining order process in most states and include a temporary ex parte order as well as a long-term order issued after a hearing in which the respondent had an opportunity to participate. Respondents to an order issued through this process (Gun Violence Restraining Order or GVRO) will be prohibited from purchasing and possessing guns for the duration of the order and required to relinquish all firearms in their possession for the duration of the order. Law enforcement officers should be able to request a warrant through this process to remove guns when there is a credible risk of harm that is not immediate.

3.3: Include due process protections for affected individuals. Specifically, provide respondents with an opportunity to participate in a hearing after having their guns removed by law enforcement (3.1) or through the GVRO process (3.2) and assure processes are in place for returning all removed guns at the conclusion of the temporary prohibition.

[46]Consortium for Risk-Based Firearm Policy. (2013). Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy. http://efsgv.wpengine.com/wp-content/uploads/2014/10/Final-State-Report.

Broad policies restricting gun access by people who have been diagnosed with a mental illness are neither justified nor likely to be effective in reducing gun violence in the United States. Restricting gun access based on a credible threat of violence is promising, but has long been recognized as a challenge because such behavior by itself does not constitute a criminal act in most cases. As a result, threatening behavior by a co-worker, neighbor, or family member may cause concern but is unlikely to trigger a law enforcement response. When law enforcement is involved, they have few options to address the threat under current law because no crime has been committed. In order to address this shortcoming, the Consortium makes the following recommendations.

## Recommendations

**Recommendation 3.1: Authorize law enforcement to remove guns from any individual who poses an immediate threat of harm to self or others. Law enforcement officers are well versed in the "use of force" continuum, and may also use risk/lethality assessments to judge the risk of particular situations. In emergency situations, this authority can be exercised without a warrant.**

We propose two mechanisms, based on existing state laws in several states that will establish clear authority for law enforcement to remove guns with and without a warrant when they identify an individual who poses a serious risk of harm to self or others. Such authority provides an important tool to reduce the immediate and short-term threat posed by such individuals.

### Existing State Law

Connecticut, Indiana, and Texas each provide a process for law enforcement (police, sheriffs, and/or prosecutors) to assess whether an individual poses an imminent danger and whether the interests of public safety warrant a prohibition on the purchase and possession of firearms.

### Connecticut

A 1998 shooting prompted the legislature to pass and the governor to sign a bill establishing a process by which two police officers or a state's attorney can file a complaint with the court based on probable cause that an individual "(1) poses a risk of imminent injury to self or others; (2) possesses one or more firearms. In such cases a judge may issue a warrant for law enforcement to search for and remove any and all firearms."[47] Law enforcement may only request a warrant after "conducting an investigation to establish that probable cause exists and determining that no reasonable alternative to avert the risk of harm exists."[48] Criteria for assessing both probable cause (e.g., recent threats or acts of violence toward self, others, or animals) and imminent risk (e.g., reckless firearm behaviors, threatened or actual violence, prior involuntary confinement in a psychiatric hospital, and illegal use of controlled substances or alcohol) are included in the law.[49] If the state establishes probable cause, a judge must issue a warrant. After police serve the warrant[50] and remove all guns, the court must schedule a hearing within 14 days to determine whether the guns will be returned or the warrant will stand.[51] At this hearing the state has the burden of proof to meet a clear and convincing evidence standard. If that standard[52] is met, the court may order the guns held for up to one year.[53] Any person whose guns are removed through this process may transfer those guns to an individual who is eligible to purchase and possess guns, otherwise the state will retain custody.[54] In cases where the state does not prove its case, all removed guns must be returned to the owner.[55]

[47]Conn. Gen. Stat. § 29-38c

[48]Conn. Gen. Stat. § 29-38c

[49]Conn. Gen. Stat. § 29-38c

[50]Conn. Gen. Stat. § 29-38c

[51]Conn. Gen. Stat. § 29-38c

[52]Conn. Gen. Stat. § 29-38c

[53]Conn. Gen. Stat. § 29-38c

[54]Conn. Gen. Stat. § 29-38c

[55]Conn. Gen. Stat. § 29-38c

During the first 10 years that the law was in effect, police and the state's attorney made at least 277 warrant requests resulting in 274 warrants issued and more than 2000 guns removed from individuals deemed to pose an imminent risk of violence.[56] Police removed guns from almost all (96%) of the people named in the warrants.[57]

**Indiana**

In 2004 one Indiana police officer was killed and four others were injured when responding to a complaint about a man with a gun. The shooter was also killed in the incident. Less than a year before, police removed several firearms and ammunition from the shooter after an encounter with the man resulted in an inpatient stay and a diagnosis of paranoid schizophrenia. These guns were later returned at the man's request, despite objections from law enforcement. After the shooting the Indiana legislature passed a bill that was signed by the Governor authorizing law enforcement to remove guns from an individual they deem to be dangerous.[58] The law defines dangerous in two ways: (1) someone who "presents an imminent present risk or possible future risk and who has not consistently taken medication to control a mental illness that may be controlled by medications;" or (2) "has a history to support a reasonable belief that the person has a propensity for violent or emotionally unstable conduct."[59]

Police do not need a warrant to remove guns from a person they identify as an immediate and substantial threat.[60] However, the law requires the officer involved to complete a written report justifying the gun removal within 48 hours.[61] After the confiscation, a hearing must occur for the purpose of determining whether the guns should continue to be held based on a "clear and convincing" standard.[62] The respondent in the hearing must be notified of the time, date, and location of the hearing.[63] It is the state's responsibility to establish clear and convincing evidence that the individual poses an immediate threat to self or others.[64] If the state meets the standard, any guns removed may be held for up to one year by the state, an approved third party, or a licensed firearm dealer.[65] The respondent also has the option of selling the firearms.[66] During this time the respondent is prohibited from purchasing additional firearms.[67]

Once the court approves a gun removal, individuals whose guns are held must wait at least 180 days before filing a petition to request a review of that decision.[68] The court must honor that request, and at the hearing the petitioner must prove by a "preponderance of the evidence" that he/she is not dangerous.[69] If the court determines that standard has been met, the petitioner may retake possession of his/her firearms. If the standard is not met, the petitioner may file another request to review the decision after 180 days have passed.[70]

At the conclusion of the court-ordered hold, or if the court determines that a continued hold is not warranted, the individual may retake possession of their guns.[71] When such an individual seeks to retain possession of his/her guns, law enforcement first conducts a NICS background check.[72] Unless that check reveals additional prohibitions on the respondent's ability to legally purchase and possess firearms, the respondent may retain possession of his/her firearms.[73]

During the first two years the law was in effect (2006 and 2007) one county court in Indianapolis heard 133 cases involving firearms removed under the new law.[74] In a minority of cases (9%) the judge ordered the guns

[56]Rose V, Cummings L. (2009). Gun Seizure Law. OLR Research Report 2009-R-0306.

[57]Rose V, Cummings L. (2009). Gun Seizure Law. OLR Research Report 2009-R-0306.

[58]Ind. Code Ann. § 35-47-14

[59]Parker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.

[60]Ind. Code Ann. § 35-47-14

[61]Ind. Code Ann. § 35-47-14

[62]Parker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.

[63]Ind. Code Ann. § 35-47-14

[64]Ind. Code Ann. § 35-47-14

[65]Ind. Code Ann. § 35-47-14

[66]Ind. Code Ann. § 35-47-14

[67]Ind. Code Ann. § 35-47-14

[68]Ind. Code Ann. § 35-47-14

[69]Ind. Code Ann. § 35-47-14

[70]Ind. Code Ann. § 35-47-14

[71]Ind. Code Ann. § 35-47-14

[72]Ind. Code Ann. § 35-47-14

[73]Parker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.

returned to the owner.[75] Most of those cases (65%) were a response to suicide threat; a small portion (10%) was prompted by active psychosis.[76] Police arrested few individuals when removing guns (5%), however most were either involuntarily (74%) or voluntarily (8%) transported for psychiatric evaluation.[77] During these first two years, implementation varied dramatically. Specifically, in 2007 68% of respondents either failed to appear at the court hearing (n=20) or were never served the notice of hearing (n=33), presumably because they could not be located. In contrast all respondents who had guns removed in 2006 participated in the subsequent hearing.[78]

More recent data suggest that implementation of the law continues to evolve. From 2010 to 2012 the Indianapolis county court that initially ordered guns be retained in more than 80% of cases returned weapons to the owners in nearly 80% of the cases.[79] Firearm license suspensions, a mechanism for prohibiting new gun purchases, also declined precipitously after the first year the law was in effect and challenges meeting the timeframes for hearings specified by the law have been noted.[80,81]

### Texas

A Texas law, which went into effect in September 2013, authorizes law enforcement to remove guns from the possession of persons with mental illness who pose an imminent risk to themselves or others.[82] As reported by local media, the law was part of a larger call to overhaul the state's mental health system and received support from law enforcement who view the new law as a way to better respond to mental health crises.[83] Passed almost unanimously by the Texas legislature, the new law allows an arresting officer to remove guns from the person taken into custody if the officer believes the person has a mental illness and as result poses "substantial risk of serious harm to the person or others unless the person is immediately restrained."[84] The law includes requirements for legal hearings and processes for returning or disposing of any guns that cannot be returned if the person transported is prohibited from possessing firearms.[85] California has long had a similar law.[86]

Texas law specifies that the arresting officer must provide the individual taken into custody with a receipt for all firearms removed and information about the process for reclaiming those firearms.[87] Within 15 days following the arrest, the law enforcement agency holding the guns must send to the person's closest family member information about the procedure for returning firearms removed by law enforcement at the time of arrest.[88] Within 30 days of the arrest, the law enforcement agency must request information from the court about the disposition of the individual taken into custody.[89] Within 30 days of receiving information from the court that the individual is no longer in custody, the agency must notify the individual that he/she can retain possession of their firearms once the agency verifies he/she is not prohibited from possessing firearms.[90] The agency is responsible for completing this background check within the 30-day period.[91] For those individuals whose arrest was followed by inpatient mental health

[74]Parker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.

[75]Parker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.[53]Ind. Code Ann. § 35-47-14

[76]Parker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.

[77]Parker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.

[78]Parker GF. Personal communication.

[79]Parker GF. Personal communication.

[80]Parker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.

[81]Texas Health and Safety Code Title 7, subtitle C, Section 573.001

[82]Freedman D. Texas clarified mental health crisis gun policy. Houston Chronicle. October 19, 2013. Available at: http://www.houstonchronicle.com/news/houston-texas/texas/article/Texas-clarifies-mental-crisis-guns-policy-4908331.php. Accessed: November 10, 2013.

[83]Texas Health and Safety Code Title 7, subtitle C, Section 573.001.

[84]Texas Health and Safety Code Title 7, subtitle C, Section 573.001[64]Ind. Code Ann. § 35-47-14

[85]Cal. Welf. & Inst. Code § 8102.[66]Ind. Code Ann. § 35-47-14

[86]Tex. Health & Safety Code Ann. § 573.001, see also Tex. Crim. Proc. Code Ann. § art. 18.191.

[87]Texas Health and Safety Code Title 7, subtitle C, Section 573.001.

[88]Texas Health and Safety Code Title 7, subtitle C, Section 573.001.

[89]Texas Health and Safety Code Title 7, subtitle C, Section 573.001.

[90]Texas Health and Safety Code Title 7, subtitle C, Section 573.001.

[91]Texas Health and Safety Code Title 7, subtitle C, Section 573.001.

[92]Frattaroli, S., & Vernick, J. S. (2006). Separating Batterers and Guns A Review and Analysis of Gun Removal Laws in 50 States. Evaluation Review, 30(3), 296-312.

[93]Law Center to Prevent Gun Violence, Domestic Violence and Firearms Policy Summary, at http://smartgunlaws.org/domestic-violence-firearms-policy-summary/

[94]Texas Health and Safety Code Title 7, subtitle C, Section 573.001.

treatment, the agency must notify them that they are no longer eligible to purchase and possess firearms; the process for appealing this disqualification; and the options available to them for legally disposing of their firearms.[92] No information about the implementation or impact of this law was available at the time of this writing.

In addition, many states authorize law enforcement to remove firearms when they arrive at the scene of a domestic violence incident for the safety of the officer, the victims and the public.[93,94]

Based on these existing state laws, we suggest states adopt procedures that law enforcement may use to remove firearms from manifestly dangerous individuals either with or without a warrant.

Removing guns without a warrant. Police and sheriff's officers regularly respond to crises and in these contexts routinely assess whether people pose a threat, and employ strategies to minimize identified threats in accordance with their training and standardized approaches. After removing firearms when such a threat is identified, law enforcement will file a report with the court justifying the removal within 48 hours. The court will schedule a hearing within two weeks of the guns being removed and provide notice of the hearing to the gun owner. As the experience in Indiana demonstrates assuring implementation of this provision is crucial.[95] At the hearing the state will bear the burden of proof to demonstrate by clear and convincing evidence that the individual remains a risk to self or others. The court may consider the individual's history of threatening or dangerous behavior, history of or current use of controlled substances, history of or current abuse of alcohol, and history of adherence to prescribed psychiatric medications. Prior involuntary commitment to a psychiatric facility or to outpatient psychiatric or psychological therapy may also be considered. The hearing will determine if law enforcement will retain the guns for safe-keeping. If the court determines the individual remains a risk, the court may order the firearms held for up to one year by a licensed firearm dealer or local law enforcement agency. For the duration of this hold the individual will be prohibited from purchasing firearms, and the NICS system (or state equivalent) should be updated to include this information.

Removing guns with a warrant. When law enforcement agencies (police, sheriffs, and prosecutors) receive information from members of the public that a friend, neighbor, or coworker poses a risk of harm to self or others, they often have little recourse to avert harm. We recommend states adopt a Connecticut-style law that provides a warrant-based process for law enforcement to assess complaints about risk of harm and remove guns when such assessments warrant action with due process protections for those involved.

**Recommendation 3.2: Create a new civil restraining order process to allow private citizens to petition the court to request that guns be temporarily removed from a family member or intimate partner who poses an immediate risk of harm to self or others.**

Based on the experience of the 50 states with DVROs, we recommend states create a new civil restraining order process. This new process would provide family members and intimate partners with a mechanism to initiate a court proceeding to evaluate the credibility of repors about individuals who pose a serious risk of harm and assess that threat against an established standard, as described below. Where the standard is met, the court would have the option of issuing an order to remove any guns in the respondents' possession. This Gun Violence Restraining Order (GVRO) offers a mechanism for intervening when a family member or intimate partner poses a risk of violence to self or others, even when domestic violence is not an issue.

[93]Frattaroli, S., & Vernick, J. S. (2006). Separating Batterers and Guns A Review and Analysis of Gun Removal Laws in 50 States. Evaluation Review, 30(3), 296-312.

[94]Law Center to Prevent Gun Violence, Domestic Violence and Firearms Policy Summary, at http://smartgunlaws.org/domestic-violence-firearms-policy-summary/

[95]TParker, G. (2010). Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. Psychiatric Services, 61(5), 478-482.

Under U.S. criminal law the government initiates proceedings in response to a crime. Civil law offers a mechanism for private citizens to request the court's involvement in circumstances specified by law. Civil domestic violence restraining orders (DVROs) are one example of how civil law is used to address violence. DVROs are available in all fifty states and provide domestic violence victims with a process for engaging the court to structure protections to prevent future violence that does not involve a criminal complaint. DVRO processes are familiar to the public and generally regarded as an important part of a larger response system for domestic violence victims. Federal law prohibits respondents to certain DVROs from purchasing and possessing guns for the duration of the order, a provision repeated in at least 20 state laws. Many of these state laws not only prohibit the abuser from purchasing or possessing firearms, but also mandate that the abuser surrender firearms already in his or her possession.

Three studies suggest that state policies limiting DVRO respondents' access to firearms are associated with a reduction in domestic violence homicides in general, and domestic violence gun homicides in particular. - However, an evaluation of the law in North Carolina revealed that the firearm-related intimate partner violence was unaffected by the law. This study was unique in that the authors included a measure of firearm possession by DVRO respondents, and this result may be because efforts to remove guns already in the abuser's possession were not occurring on a systematic basis.

DVROs provide a mechanism for private citizens to bring to the court's attention individuals who are causing or threatening to cause violence in the context of an intimate relationship and are a tool for preventing future violence. States have the infrastructure in place to support restraining order applications, hearings, and service. Creating a new process to allow family members to petition the court when they have good cause to believe a relative poses an immediate risk of harm to self or others is a promising strategy to prevent gun violence.

**Petitioning the court to prohibit purchase and possession.** DVROs allow victims of domestic violence to seek an order to prevent further domestic violence and sometimes include a firearm prohibition as well. In contrast, the GVRO would focus solely on firearms, and would be based on a finding that the person presents a serious threat of harm to self or others. Nevertheless, the procedure that is used may be similar. The GVRO should follow the well-established infrastructure of the ex parte, temporary restraining order process. While processes differ among the states, generally the petitioner completes an application that includes information about the parties involved and the behaviors that led to the petition, and submits the completed application to the court. A judge then reviews the request and decides whether to issue a restraining order or deny the request. If a temporary restraining order is authorized under the expanded criteria and firearms are subsequently removed, the court will schedule a hearing at which the respondent has the right to be present with counsel. The hearing provides an opportunity for the respondent to be part of the process when the court assesses whether to extend the temporary order. The process and procedure for the hearings should follow the procedures under the state's DVRO law.

**Assessing immediate threat of harm.** In assessing the threat of harm to self or to others the court may consider such factors as the petitioner's account of the threat; and the respondent's history of threatening or dangerous behavior, history of or current use of controlled substances, history of or current abuse of alcohol, and history of adherence to prescribed psychiatric medications. These factors may include threats of suicide. Prior involuntary commitment to a psychiatric facility or to outpatient psychiatric or psychological therapy may also be considered, if such information is available.

**Implementing the prohibition.** To assure that a court ordered prohibition on gun purchase and possession for the duration of the order is realized, states must include GVROs in the data reported to the NICS background check system. Similarly, processes for removing

and storing guns, as authorized by the court, must also be established or clarified under state law. Firearms will be surrendered by or removed from the respondent immediately upon service of the ex parte order and held by a licensed firearm dealer or local law enforcement for the duration of the civil restraining order.

**Returning removed firearms at the conclusion of the order.** At the conclusion of the court order, state or local law enforcement will conduct a background check, including a check of the NICS system in accordance with existing practices under the state's DVRO system. If the respondent is not otherwise prohibited from purchasing or possessing a firearm, the respondent will have the opportunity to request that all firearms removed be returned, and the NICS system (or state equivalent) will be updated to allow the respondent to purchase guns. Law enforcement will notify the petitioner when the respondent to their order requests that guns be returned and provide the petitioner with information about petitioning the court to issue a new order.

**Recommendation 3.3: Include due process protections for affected individuals. Specifically, provide respondents with an opportunity to participate in a hearing after having their guns removed by law enforcement (3.1) or through the GVRO process (3.2) and assure processes are in place for returning all removed guns at the conclusion of the temporary prohibition.**

### Rationale

The authority for law enforcement to remove guns under Recommendation 3.1 without court oversight is needed to be responsive to emergency situations in which the risk of harm to self or others is credible and immediate. This interest in public safety must be balanced against due process protections for individuals affected by this authority.

### Due Process Protections

As described in the preceding sections, Recommendation 3.1 provides due process protections by requiring law enforcement officers who exercise this authority to file a report explaining their decision to remove guns and specifying that a hearing on the matter must follow soon after the firearms are removed. Similarly Recommendation 3.2 calls for a civil ex parte hearing followed by a full hearing that includes the respondent.

### Returning Removed Guns

All three recommendations support time-limited prohibitions. Provided the respondent is not otherwise prohibited from purchasing and possessing guns when the court order expires, processes are needed to assure guns are returned in a timely manner. Accordingly, both Recommendations 3.1 and 3.2 include gun return provisions.

# Appendix 2: Comparison of Extreme Risk Laws

| State | Name of Order | Petitioners<br>*Type of Order* | Orders Available<br>*Length of orders*<br>Burden of proof | Standard for Renewal |
|---|---|---|---|---|
| California | • Gun Violence Restraining Order<br>• Cal. Penal Code §§ 18100-18205 | • Law Enforcement<br>*Emergency, Temporary, Final*<br>• Family or Household Member<br>*Temporary, Final*<br>• Employer*<br>*Temporary, Final*<br>• Coworker*<br>*Temporary, Final*<br>• Secondary or Postsecondary Employee or Teacher*<br>*Temporary, Final*<br>*Effective September 1, 2020, eligible petitioners for a temporary or final order include: an employer; a coworker who has substantial and regular interactions with the person and approval of their employer; or an employee or teacher of a secondary or postsecondary school, with the approval of a school administrator or a school administration staff member | • Emergency<br>*Up to 21 days after issuance*<br>Reasonable cause<br>• Temporary<br>*Up to 21 days after issuance*<br>Substantial likelihood<br>• Final<br>*1 to 5* years*<br>Clear and convincing<br>*Effective September 1, 2020. | Petitioner bears burden of proving by clear and convincing evidence that the respondent continues to pose a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm, ammunition, or magazine and the order is necessary to prevent personal injury to the respondent, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the respondent.<br><br>Court shall consider the same factors as required and allowed when issuing original GVRO. |
| Colorado | • Extreme Risk Protection Order<br>• Colo. Rev. Stat. §§ 13-14.5-101 - 13-14.5-114 | • Law Enforcement<br>*Temporary, Final*<br>• Family or Household Member<br>*Temporary, Final* | • Temporary<br>*Up to 14 days after issuance*<br>Preponderance of the evidence<br>• Final<br>*364 days*<br>Clear and convincing | If the court finds by clear and convincing evidence that, based on the same type of evidence presented when the petitioner sought the original ERPO, the respondent continues to pose a significant risk of causing personal injury to self or others by having in his or her custody or control a firearm or by purchasing, possessing, or receiving a firearm, the court shall renew the order for a period of time the court deems appropriate, not to exceed one year. |
| Connecticut | • Seizure of Firearms (Risk-Warrant)<br>• Conn. Gen. Stat. § 29-38c | • Law Enforcement<br>*Warrant, Final*<br>• [Assistant] State's Attorney<br>*Warrant, Final* | • Warrant<br>*Up to 14 days after execution*<br>Probable cause<br>• Final<br>*Up to 1 year*<br>Clear and convincing | CT's law does not include a renewal provision. |
| Delaware | • Lethal Violence Protective Order<br>• Del. Code Ann. tit. 10, §§ 7701-7709 | • Law Enforcement<br>*Emergency, Final*<br>• Family Member<br>*Final* | • Emergency<br>*Up to 10 days after issuance*<br>Preponderance of the evidence<br>• Final<br>*Up to 1 year*<br>Clear and convincing | The petitioner must prove by clear and convincing evidence that the respondent continues to pose a danger of causing physical injury to self or others in the near future by controlling, owning, purchasing, possessing, having access to, or receiving a firearm. |
| District of Columbia | • Extreme Risk Protection Order<br>• D.C. Code §§ 7-2510.01 - 7-2510.12 | • Law Enforcement<br>*Ex Parte, Final*<br>• Family or Household Member<br>*Ex Parte, Final*<br>• Mental Health Professionals<br>*Ex Parte, Final* | • Ex Parte<br>*Up to 10 days after issuance*<br>Probable cause<br>• Final<br>*1 year*<br>Preponderance of the evidence | The court shall renew an ERPO if the court finds by a preponderance of the evidence that the respondent continues to pose a significant danger of causing bodily injury to self or others by having possession or control of, or purchasing, or receiving any firearm or ammunition. |

| State | Name of Order | Petitioners<br>*Type of Order* | Orders Available<br>*Length of orders*<br>Burden of proof | Standard for Renewal |
|---|---|---|---|---|
| Florida | • Risk Protection Order<br>• Fla. Stat. Ann. § 790.401 | • Law Enforcement<br>*Temporary Ex Parte, Final* | • Temporary Ex Parte<br>*Up to 14 days after issuance*<br>Reasonable cause<br>• Final<br>*Up to 1 year*<br>Clear and convincing | If the court finds by clear and convincing evidence that the requirements for issuance of an RPO continue to be met, the court must extend the RPO. |
| Hawaii | • Gun Violence Protective Order<br>• Haw. Rev. Stat. §§ 134-61 - 134-72 | • Law Enforcement<br>*Ex Parte, Final*<br>• Family or Household Member<br>*Ex Parte, Final*<br>• Medical Professional<br>*Ex Parte, Final*<br>• Educator<br>*Ex Parte, Final*<br>• Work Colleague<br>*Ex Parte,, Final* | • Ex Parte<br>*Up to 14 days after petition for a 1-year order submitted*<br>Probable cause<br>• Final<br>*1 year*<br>Preponderance of the evidence | The court may renew a GVPO if it finds by a preponderance of the evidence that the respondent continues to pose a significant danger of causing bodily injury to self or other by purchasing or possessing any firearm or ammunition. |
| Illinois | • Firearms Restraining Order<br>• 430 Ill. Comp. Stat. Ann. 67/1-67/80 | • Law Enforcement<br>*Ex Parte, Final*<br>• Family or Household Member<br>*Ex Parte, Final* | • Ex Parte<br>*Up to 14 days after issuance*<br>Probable cause<br>• Final<br>*6 months*<br>Clear and convincing | A court shall, after notice and a hearing, renew a firearms restraining order if the petitioner proves, by clear and convincing evidence, that the respondent continues to pose a danger of causing personal injury to himself, herself, or another in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. |
| Indiana | • Seizure and Retention of a Firearm (Risk-Warrant)<br>• Ind. Code Ann. §§ 35-47-14-1 - 35-47-14-10 | • Law Enforcement<br>*Warrant, Warrantless* | • Warrant<br>*At least 180 days after issuance*<br>Probable cause (initial warrant)<br>Clear and convincing (at hearing)<br>• Warrantless<br>*At least 180 days after the court orders law enforcement to retain firearm*<br>Probable cause (after firearm seizure) Clear and convincing (at hearing) | If no more than one year has passed from the date of the order to retain firearms: the court must return firearms if it finds by a preponderance of the evidence that the respondent is no longer dangerous.<br>If more than one year has passed from the date of the order to retain firearms: the court must retain firearms if it finds clear and convincing evidence the respondent is still dangerous. |
| Maryland | • Extreme Risk Protective Order<br>• Md. Code Ann., Pub. Safety §§ 5-601 - 5-610 | • Law Enforcement<br>*Interim, Temporary, Final*<br>• Family or Household Member<br>*Interim, Temporary, Final*<br>• Health Care Professionals<br>*Interim, Temporary, Final* | • Interim<br>*Up to 2 business days*<br>Reasonable grounds<br>• Temporary<br>*Up to 7 days after service*<br>Reasonable grounds<br>• Final<br>*Up to 1 year*<br>Clear and convincing | For good cause shown, a judge may extend the term of a final ERPO for six months after giving notice to all affected persons and the respondent, and a hearing. |
| Massachusetts | • Extreme Risk Protection Order<br>• Mass. Gen. Laws Ann. ch. 140, §§131R-131Y | • Law Enforcement<br>*Emergency, Final*<br>• Family or Household Member<br>*Emergency, Final* | • Emergency<br>*Up to 10 days after issuance*<br>Reasonable cause<br>• Final<br>*Up to 1 year*<br>Preponderance of the evidence | MA's law does not include a renewal provision, however a MA government ERPO brochure instructs petitioners interested in renewing petitions to fill out a new petition. |

| State | Name of Order | Petitioners<br>*Type of Order* | Orders Available<br>*Length of orders*<br>Burden of proof | Standard for Renewal |
|---|---|---|---|---|
| Nevada | • Order for Protection Against High-Risk Behavior<br>• Nev. Rev. Stat. §§ 33.500 - 33.670 | • Law Enforcement<br>*Ex Parte, Final*<br>• Family or Household Member<br>*Ex Parte, Final* | • Ex Parte<br>*Up to 7 days after issuance or until final hearing held*<br>Preponderance of the evidence<br>• Final (Extended) *1 year*<br>Clear and convincing | The court may renew or extend an order if a judge finds by clear and convincing evidence that the respondent continues to pose a risk of causing personal injury to self or others by purchasing or possessing a firearm. |
| New Jersey | • Extreme Risk Protective Order<br>• NJ Stat. Ann. §§ 2C:58-20 - 2c:58-32 | • Law Enforcement<br>*Temporary, Final*<br>• Family or Household Member<br>*Temporary, Final* | • Temporary<br>*Up to 10 days after petition is filed*<br>Good cause<br>• Final *1 year*<br>Preponderance of the evidence | NJ's law does not include a renewal provision. They do include a termination provision: If the court finds by a preponderance of the evidence that the respondent no longer poses a significant danger of causing bodily injury to self or other by purchasing or possessing a firearm, will terminate order. |
| New Mexico | • Extreme Risk Firearm Protective Order<br>• S.B. 5, 54th Leg., 2d Sess. (N.M. 2020) | • Law Enforcement<br>*Temporary, Warrantless* | • Temporary<br>*Up to 10 days after issuance*<br>Probable cause<br>• Final *Up to 1 year*<br>Preponderance of the evidence | The court may renew an order if the respondent poses a significant danger of causing imminent personal injury to self or others by having in their custody or control, or purchasing, possessing or receiving a firearm. . |
| New York | • Extreme Risk Protection Order<br>• N.Y. C.P.L.R. §§ 6340 - 6347 | • Law Enforcement<br>*Temporary, Final*<br>• District Attorney<br>*Temporary, Final*<br>• Family or Household Member<br>*Temporary, Final*<br>• School Administrator or Designee<br>*Temporary, Final* | • Temporary<br>*Up to 6 days after service*<br>Probable cause<br>• Final *Up to 1 year*<br>Clear and convincing | The court may renew an ERPO if the judge finds by clear and convincing evidence that the respondent continues to be likely to engage in conduct that would result in serious harm to self or others. |
| Oregon | • Extreme Risk Protection Order<br>• Or. Rev. Stat. §§ 166.525-166.543 | • Law Enforcement<br>*Final*<br>• Family or Household Member<br>*Final* | • Final*<br>*1 year*<br>Clear and convincing<br>*Court may issue a final order at an ex parte hearing. Respondent may request a hearing to terminate the order within 30 days of service. | If the court finds by clear and convincing evidence that the respondent continues to present a risk in the near future of suicide or causing physical injury to another, the court may renew the ERPO for up to one year. |
| Rhode Island | • Extreme Risk Protection Order<br>• R.I. Gen. Laws Ann. §§ 8-8.3-1 - 8-8.3-14 | • Law Enforcement<br>*Temporary, Final* | • Temporary<br>*Up to 14 days after issuance*<br>Probable cause<br>• Final<br>*1 year*<br>Clear and convincing | The court shall renew an order if they find by clear and convincing evidence that the respondent continues to pose a significant danger of causing personal injury to self or others by purchasing or possessing a firearm. |
| Vermont | • Extreme Risk Protection Order<br>• Vt. Stat. Ann. tit. 13, §§ 4051-4061 | • State's Attorney<br>*Temporary, Final*<br>• Office of the Attorney General<br>*Temporary, Final* | • Temporary<br>*14 days after issuance*<br>Preponderance of the evidence<br>• Final (Extended)<br>*Up to 6 months* Clear and convincing | The court shall renew the EPRO for an additional period of up to six months if it finds by clear and convincing evidence that the respondent continues to pose an extreme risk of causing harm to self or others by purchasing or possessing firearms. |

| State | Name of Order | Petitioners<br>*Type of Order* | Orders Available<br>*Length of orders*<br>Burden of proof | Standard for Renewal |
|---|---|---|---|---|
| Virginia | • Substantial Risk Order H.B. 674, 2020 Gen. Assemb., Reg. Sess. (Va. 2020)<br>• S.B. 240, 2020 Gen. Assemb., Reg. Sess. (Va. 2020) | • Law Enforcement<br>*Emergency, Final*<br>• Commonwealth Attorneys<br>*Emergency, Final* | • Emergency<br>*Up to 14 days after issuance*<br>Probable cause<br>• Final<br>*Up to 180 days*<br>Clear and convincing | The court may extend the SRO if the court finds by clear and convincing evidence that the respondent continues to pose a substantial risk of personal injury to self or others in the near future by purchasing or possessing firearms. |
| Washington | • Extreme Risk Protection Order<br>• Wash. Rev. Code Ann. §§ 7.94.010-7.94.900 | • Law Enforcement<br>*Ex Parte, Final*<br>• Family or Household Member<br>*Ex Parte, Final* | • Ex Parte<br>*Up to 14 days after issuance*<br>Reasonable cause<br>• Final<br>*1 year*<br>Preponderance of the evidence | If the court finds by a preponderance of the evidence that the respondent continues to pose a significant danger of causing personal injury to self or other by purchasing or possessing firearms, the court shall renew the order. |

We use the term "family or household member" to include petitioners such as parents or guardians, spouses, dating partners, and roommates. Please see state laws for the complete list of petitioners in each state.

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