

SUBSTANTIAL RISK ORDERS (SRO) IN VIRGINIA

The substantial risk order law empowers law enforcement to prevent gun tragedies. The substantial risk order law allows law enforcement and commonwealth's attorneys to file a petition with the courts for a civil order to temporarily prohibit the possession, purchase, or transportation of firearms from individuals at high risk of harm to self or others. Though family members may not petition directly for a substantial risk order, they may bring their concerns to law enforcement or a commonwealth's attorney. Similar laws are available in 18 states and the District of Columbia.

Research of similar laws in Indiana and Connecticut suggests that one life is saved for every 10-20 cases where firearms are temporarily removed.¹

How does Virginia's substantial risk order work?

Once a law enforcement officer conducts an independent investigation, a law enforcement officer or a commonwealth's attorney may petition a magistrate or a judge in circuit court, general district court, or juvenile and domestic relations court for an emergency substantial risk order (ESRO). A magistrate or judge shall issue an emergency substantial risk order upon a finding of probable cause that the subject of the emergency substantial risk order petition poses a substantial risk of personal injury to self or others in the near future by such person's possession or acquisition of a firearm.² The law enforcement officer serving the emergency substantial risk order shall give the subject of the emergency substantial risk order the opportunity to voluntarily relinquish any firearms in their possession.³

No later than 14 days after the issuance of the emergency substantial risk order, the circuit court shall hold a hearing to determine if a substantial risk order should be issued. The attorney for the Commonwealth must prove by clear and convincing evidence that that the person poses a substantial risk of personal injury to himself or to other individuals in the near future by such person's possession or acquisition of a firearm.⁴ If the attorney for the Commonwealth meets this burden, the court shall issue a substantial risk order and shall order any firearms relinquished under the emergency substantial risk order continue to be held by the law enforcement agency that has custody of them.⁵ The substantial risk order may last up to 180 days.⁶

Prior to the expiration of a substantial risk order, a law enforcement officer or commonwealth's attorney may file a motion for an extension of the substantial risk order. The court may extend the order for an additional 180 days if the court finds by clear and convincing evidence that the person continues to pose a substantial risk of personal injury to self or to others in the near future by possessing or acquiring a firearm at the time the request for an extension is made.⁷ After the substantial risk order has been in effect for 30 days, the subject of the order may make one motion to dissolve the order.⁸

If a substantial risk order is not issued, expires and is not extended, or is dissolved, any firearms relinquished shall be returned unless the individual is prohibited from possessing a firearm under federal or state law.⁹

Equity considerations: When implementing any law, it is imperative to consider contextual factors. The current landscape for training on gun violence prevention policies, like the substantial risk order, may be burdensome or particularly challenging in the midst of the COVID-19 pandemic. However, it's important to note that COVID-19 is exacerbating risk factors for suicidality and domestic violence, which reinforces how critical these policies can be in creating safer communities. Moreover, the relationships between communities of color and law enforcement are dominating policy discussions. Research on and transparency of implementation processes in all aspects of the justice system, including how substantial risk orders are being used in communities to mitigate risk, is critical.

SUICIDE

In 2018, 1,243 Virginians died by suicide; a firearm was used in 55% of these deaths. The Commonwealth's firearm suicide rate has increased 17% over the last decade (2009 to 2018) and is consistently higher than the national rate.¹⁰ Easy access to firearms increases the risk of suicide a by nearly 3-fold. Individuals who are temporarily in crisis and have easy access to a firearm are particularly vulnerable.¹¹

How Virginia's substantial risk order will prevent suicides: Substantial risk orders are most frequently used for cases of suicidal ideation. Substantial risk order laws provide family members and friends an avenue for safely removing firearms from loved ones exhibiting signs of distress. It allows concerned individuals to provide clear evidence to law enforcement who can petition the court for a substantial risk order. An analysis of a similar law in Connecticut found that 61% of individuals who had firearms removed were at risk for suicide and for every 10-20 of risk warrants issued one suicide was averted.¹²

In Clark County, Washington law enforcement used a similar law, called an extreme risk protection order (ERPO), to prevent a suicide. Police responded to a 57-year old man who was being evicted from his home and had made suicidal statements involving his firearm. Police used ERPO to temporarily remove the gun and protect this man during his time of crisis.¹³

MASS SHOOTINGS

Seventy-six mass shootings¹⁴ have occurred in the United States in the thirteen years since the Virginia Tech massacre.¹⁵ Over this time span, 615 individuals have been killed and an additional 1,107 have been injured in mass shootings.¹⁶ The Virginia Beach mass shooting on May 31, 2019, where 12 people were killed and 4 people were injured, is a reminder of how mass shootings continue to devastate the Commonwealth and our nation as a whole.

How Virginia's substantial risk order will prevent mass shootings: Mass shooters often exhibit warning signs that they are at risk of harming others (and often, themselves). Virginia's substantial risk order provides law enforcement with the tools to temporarily remove firearms from these individuals before they commit acts of mass violence.

In Rockville, Maryland, law enforcement used a similar law, called an extreme risk protection order (ERPO), to prevent a school shooting. The state's ERPO law allowed police to temporarily confiscate an AR-15 rifle from an 18-year old who made multiple mass shooting threats at his former high school.¹⁷

BOTTOM LINE:

The substantial risk order fills a gap in Virginia law by giving law enforcement the tools they need to temporarily remove firearms from individuals at high risk for violence and will help prevent suicides and mass shootings.

¹ Swanson JW, Easter MM, Alanis-Hirsch K, Belden CM, Norko MA, Robertson AG, ... & Parker GF. (2019). [Criminal justice and suicide outcomes with Indiana's risk-based gun seizure law](#). *The Journal of the American Academy of Psychiatry and the Law*.

² Va. Code Ann. § 19.2-152.13(A)(2020).

³ Va. Code Ann. § 19.2-152.13(C)(2020).

⁴ Va. Code Ann. § 19.2-152.14(A)(2020).

⁵ Va. Code Ann. § 19.2-152.14(B)(2020).

⁶ Va. Code Ann. § 19.2-152.14(C)(2020).

⁷ *Id.*

⁸ *Id.*

⁹ Va. Code Ann. §§ 19.2-152.14(B); 19.2-152.15(A)(2020).

¹⁰ Centers for Disease Control and Prevention, National Center for Health Statistics. [About Underlying Cause of Death, 1999-2018](#).

¹¹ Anglemeyer 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*.

¹² Swanson JW, Norko MA, Lin, HJ, Alanis-Hirsch K, Frisman LK, Baranoski MV, ... & Bonnie RJ. (2017). [Implementation and effectiveness of Connecticut's risk-based gun removal law: Does it prevent suicides?](#) *Law & Contemporary Problems*.

¹³ Shedlock J. (2019) Gun seizures in Clark County surge in law's 2nd year. *The Columbian*.

¹⁴ Defined as an "indiscriminate rampages in public places resulting in four or more victims killed" from 2007-2012, and three or more victims killed from 2013-present.

¹⁵ Follman M, Aronsen G, & Pan D. (2020). [A guide to mass shootings in America](#). *Mother Jones*.

¹⁶ *Id.*

¹⁷ Rockville Teen Charged with threatening mass violence at Walter Johnson high School. *Bethesda Magazine*. 2018. <https://bethesdamagazine.com/bethesda-beat/rockville-teen-charged-with-threatening-mass-violence-at-walter-johnson-high-school/>