



Frequently Asked Questions About Extreme Risk Protection Orders

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This fact sheet will be periodically updated to account for new policy developments. It was last updated on February 10, 2021. [Click here](#) to view other fact sheets in this series.

What is an extreme risk protection order?

An extreme risk protection order (ERPO) is a civil remedy that allows law enforcement or family members to petition a court to temporarily remove firearms from a person who poses a risk of harm to self or others. For the duration of the order, the individual is also prohibited from purchasing firearms. ERPO laws are designed to provide a legal tool to intervene when there is demonstrable evidence that an individual is experiencing a temporary crisis, poses an imminent risk of harm to self or others, and has a firearm. ERPOs are sometimes referred to as gun violence restraining orders or extreme risk laws. ERPO laws have been enacted in 19 states and Washington, D.C.¹

What is the legal process for obtaining an ERPO?

While the process varies by state, generally law enforcement or family members may file a petition asking a court to temporarily prohibit an individual's access to firearms when there is evidence that the person poses a risk of harm to themselves or others. In many instances, law enforcement will commence the process at the request of concerned family members in states where they are not able to petition directly. Once the petition has been filed, a judge will review the evidence, considering risk factors such as patterns or recent threats of violence, history of dangerous behavior with guns, substance abuse, or recent acquisition of firearms. Importantly, a diagnosis for a mental illness alone is not sufficient to warrant issuing an ERPO.

At the first hearing, the judge may issue a temporary order and set a date for a final hearing. During the final hearing, the individual is given an opportunity to be heard before the court and may present evidence challenging the petition. Based on this hearing and after consideration of all the evidence, the judge will either issue a final ERPO, typically set to expire after one year, or deny the petition.

After an ERPO is issued, law enforcement will serve the order to the person in question, clarifying the legal restrictions regarding gun ownership and possession. The respondent's guns will be held by law enforcement or another authorized party until the expiration or termination of the order. The order will also be added to the National Instant Criminal Background Check System (NICS), preventing the individual from purchasing a firearm while the ERPO is in effect. Once the order expires or is terminated, the individual can request the return of their firearms and the NICS system is updated to allow the individual to purchase guns. An ERPO can be extended if there is additional evidence that the individual poses an ongoing risk of harm to themselves or others.²

Are ERPOs effective at preventing gun violence?

Early research suggests that ERPO laws have a significant impact on preventing gun-related suicide. More than 50 percent of all suicides in the United States involve a firearm;³ however, a very small proportion of those who die by firearm suicide would have been barred from possessing a firearm under current law.⁴ ERPO laws have been successful in filling this gap by allowing law enforcement and family members to temporarily remove firearms from individuals in times of self-harm crisis. For example, Indiana documented a 7.5 percent reduction in firearm suicides in the 10 years following the enactment of an ERPO law.⁵ Likewise, there was a 1.6 percent reduction in gun suicides immediately following the enactment of an ERPO law in Connecticut in 1999 and a 13.7 percent reduction between 2007 and 2015, when enforcement of ERPOs was more common.⁶ Furthermore, preliminary data on ERPO laws in Connecticut suggest that one life is saved for every 10 to 20 ERPOs issued.⁷

In addition to preventing gun suicides, research finds that ERPO laws can help prevent mass shootings. In many instances of gun violence, family members, coworkers, or law enforcement are able to identify that an individual is exhibiting signs that they might pose a serious risk of harm to themselves or others.⁸ In states that have an ERPO law, law enforcement has the opportunity to intervene at a critical point to remove the person's firearms, thereby helping to prevent a tragedy before it occurs. A study by researchers at the University of California, Davis Violence Prevention Research Program on ERPO implementation in California found that between 2016 and 2018, ERPOs helped remove 52 firearms and potentially prevent 21 mass shootings in the state.⁹

Do ERPO laws infringe on constitutional rights?

No. ERPO laws are an effective way to temporarily remove someone's firearms during a period of crisis without violating due process or Second Amendment rights. Extreme risk laws include vigorous due process protections, which include notifying the respondent when an ERPO petition has been filed; providing an opportunity for the respondent to be heard and present evidence; and requiring a judicial finding of risk prior to the issuance of an ERPO. The respondent is also able to submit a request

for the court to reevaluate an ERPO based on new evidence each time that an ERPO is renewed. Additionally, most states include penalties for filing false ERPO petitions.¹⁰ ERPOs are also a modest and temporary restriction on an individual's ability to possess guns that is narrowly tailored to a specific risk imposed only after a judicial finding and therefore does not violate the Second Amendment. Despite legal challenges to ERPO laws in Indiana, Connecticut, and Florida, the courts ruled in each case that the laws do not violate due process and have upheld their constitutionality under the Second Amendment.¹¹

Endnotes

- 1 Giffords Law Center to Prevent Gun Violence, "Extreme Risk Protection Orders," available at https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/#footnote_10_5623 (last accessed February 2021).
- 2 Johns Hopkins Bloomberg School of Public Health, "Extreme Risk Protection Orders: A Guide to the Process," available at https://americanhealth.jhu.edu/sites/default/files/website-media/high-impact/ERPO/resources/ERPO_A_Guide_To_The_Process_FINAL.pdf (last accessed February 2021).
- 3 Jeffrey W. Swanson and others, "Gun Violence, Mental Illness, And Laws That Prohibit Gun Possession: Evidence From Two Florida Counties," *Health Affairs* 35 (6) (2016): 1067–1075, available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.0017>.
- 4 Jeffrey W. Swanson and others, "Implementation And Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides?," *Law and Contemporary Problems* 80 (2017): 179–207, available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4830&context=lcp>.
- 5 Aaron J Kivisto and Peter Lee Phalen, "Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981-2015," *Psychiatric services* 69 (8) (2018): 855–862, available at <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201700250>.
- 6 Ibid.
- 7 Swanson and others, "Implementation And Effectiveness Of Connecticut's Risk-Based Gun Removal Law."
- 8 Brady United, "What Are Extreme Risk Protection Laws?," available at <https://www.bradyunited.org/fact-sheets/what-are-extreme-risk-laws>.
- 9 Garen J Wintemute, "Extreme Risk Protection Orders Intended to Prevent Mass Shootings: A Case Series," *Annals of internal medicine* 171 (9) (2019), available at <https://pubmed.ncbi.nlm.nih.gov/31426088/>.
- 10 Brady, "What Are Extreme Risk Protection Laws?," available at <https://www.bradyunited.org/fact-sheets/what-are-extreme-risk-laws> (last accessed February 2021).
- 11 Giffords Law Center, "Extreme Risk Protection Orders."