

THE EXTREME RISK PROTECTION ORDER ACT

Sponsors: Senator Feinstein and Representative Carbajal

WHAT IS AN EXTREME RISK LAW?

Extreme risk laws (also called Extreme Risk Protection Order or ERPO laws) allow law enforcement, and, depending on the state, family members, health professionals, and school administrators, to prevent incidents of interpersonal violence and suicide that take place across this country every day by temporarily prohibiting someone from accessing firearms if a court finds they pose a threat to themselves or others.

Based on its explicit focus on evidence-based risk factors and the growing body of research suggesting its effectiveness in preventing gun violence, extreme risk laws have gained the support of legislators, stakeholders, and citizens across the political spectrum. As of March 2021, 19 states and D.C. have enacted extreme risk laws.

HOW DO EXTREME RISK LAWS WORK?

- The process for obtaining ERPOs is modeled significantly after domestic violence protection orders found nationwide and issued by state courts.
- ERPOs are most often a civil court order, prompted by a petition by a family member or law enforcement officer, and issued by a judge upon consideration of the evidence that the person poses a threat to themselves or others.
- The order temporarily prohibits the person from possessing or purchasing firearms and includes provisions for relinquishment or removal of firearms already in their possession.
- There are typically two types of orders. Ex parte orders last up to three weeks and are issued if the person poses an *immediate* risk of harm to self or others by having access to a firearm. Final orders last up to one year and are issued if there is sufficient evidence that the person poses a significant danger of injury to themselves or others.
- Examples of evidence a judge may consider when issuing an order generally include recent acts, threats, or history of violence towards self or others; convictions of violent misdemeanors; cruelty to animals; and unlawful or reckless use, display, or brandishing of a firearm. Notably, mental illness is not a factor to consider, as mental illness is not a reliable predictor of gun violence.
- Extreme risk laws help prevent acts of gun violence by removing firearms from the high-risk situation and also create safer circumstances for an at-risk person to engage in resources to address the underlying causes of the dangerous behaviors.

EXTREME RISK LAWS AT WORK

Firearm Suicide: A woman petitioned for an order for her boyfriend after he had previously attempted suicide and now wanted to purchase a firearm. At the hearing, the couple came to court together holding hands. The man had no objection to the order and was thankful that someone cared enough to ensure he did not have access to a gun during his suicidal crisis.

Dementia: An order was issued after an 81-year-old man known to be in the early stages of dementia threatened to shoot his wife and a neighbor.

Hate Crime: A man posted numerous mass shooting threats on social media including stating that he planned on shooting 30 Jewish people, accompanied with pictures of Nazi artifacts and of his gun collection. An order was granted and 12 firearms were removed.

Domestic Violence: A 40-year-old man texted his fiancé that he wanted to shoot her in the head, then visited her ex-boyfriend and threatened to kill him while holding a knife behind his back. An order was issued and the man surrendered a handgun and an AR-15.

School Shooting: Two middle school students were plotting a school shooting, with one student volunteering to use a relative's guns, when a separate student overheard the plan and alerted authorities. Prosecutors issued the order and seized the guns from the student's home.

HOW IS DUE PROCESS ENSURED?

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, which have been routinely upheld against due process challenges. Additionally, in September 2019, the Florida First District Court of Appeals upheld Florida's Risk Protection Order law on due process grounds.

WHAT ROLE DOES THE FEDERAL GOVERNMENT HAVE?

ERPO laws cannot be effective if they are not implemented fully and with fidelity. The Extreme Risk Protection Order Act would play an important role in helping states and localities implement these laws by establishing a federal grant program through the Department of Justice's Office of Community Oriented Policing Services (COPS) to support implementation efforts, while also creating an incentive for additional states to enact these laws. Funding could be used for:

- Enhancing the capacity of law enforcement and state and local courts by providing personnel, training, technical assistance, data collection, and other resources.
- Training judges, court personnel, healthcare professionals, legal professionals, and law enforcement officers.
- Developing and implementing law enforcement and court protocols, forms, and orders so they can carry out the law in a safe, equitable, and effective manner.
- Raising public awareness and understanding of the law.

HOW IS EQUITY ACHIEVED?

Grantees would be required to train law enforcement in the safe, impartial, effective, and equitable use and administration of ERPOs, by requiring training on:

- Bias based on race, racism, ethnicity, gender, sexual orientation, gender identity, religion, language proficiency, and classism in the use of ERPOs.
- Best practices on interacting with people living with mental illness or who are experiencing emotional distress, including de-escalation and crisis intervention.
- Best practices for referring people subject to ERPOs and associated victims of violence to social service providers, including health care, mental health, substance abuse, legal services, employment and vocational services, housing assistance, case management, and veterans and disability benefits.

EXTREME RISK LAWS AT WORK

Domestic Terrorism: A suspected leader of a neo-Nazi group was reportedly preparing for a "race war." While the FBI was aware of him, they could not charge him with any crime. Instead, they collaborated with the ERPO prosecutor unit in Seattle to issue an order. The man ignored the order and fled to Texas (a state without ERPO), where he was later pulled over with his small arsenal. Prosecutors in Seattle then charged him with unlawful possession of firearms and issued a warrant for his arrest. He was later apprehended by the FBI.

A man was considered of the most infamous neo-Nazi leaders in the U.S. who was still anonymous and using a pseudonym. He had called for the murder and rape of Jewish people and law enforcement, and stated he was attempting to obtain an "80% AR." After anonymous researchers uncovered his identity, the Sacramento County Sheriff's Office was concerned about him becoming a "lone wolf" attacker and filed an emergency order against him, seizing a 9mm semi-automatic pistol and two magazines.

Mass Shooting: A 24-year-old man threatened to kill his family and employees of his family business. He had a history of threatening employees and was previously convicted for a weapons offense. The man's mother petitioned for an order and 26 firearms were surrendered.

Laws are only as effective as they are implemented, and legislators and law enforcement alike are told to fully enforce existing gun safety laws. The Extreme Risk Protection Order Act would help provide critical funding for implementation, allowing extreme risk laws to be enforced at its highest potential.