



EXTREME RISK PROTECTION ORDERS: NEW RECOMMENDATIONS FOR POLICY AND IMPLEMENTATION

Recommendations

In 2013, the Consortium for Risk-Based Firearm Policy (Consortium) developed and recommended that states enact a novel risk-based firearm removal policy now 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.

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 resulted in a new report, "[Extreme Risk Protection Orders: New Recommendations for Policy and Implementation](#)," that provides new consensus recommendations to address contemporary issues in ERPO policy and implementation.

AT THE STATE LEVEL, THE CONSORTIUM RECOMMENDS:

Duration of Orders

- Temporary (ex parte) orders should be in effect for two to three weeks.
- Final orders should be in effect for one year.
 - 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.
 - 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.



CONSORTIUM FOR
RISK-BASED FIREARM POLICY

EXTREME RISK PROTECTION ORDERS: NEW RECOMMENDATIONS FOR POLICY AND IMPLEMENTATION

- 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.
- 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:
 - 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**
 - When the respondent requests a longer prohibition (i.e., as avenue for self-prohibition).
- 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:
 - 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.
 - 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

- 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.
 - In the absence of a court-approved plan, at a minimum:
 - 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.



EXTREME RISK PROTECTION ORDERS: NEW RECOMMENDATIONS FOR POLICY AND IMPLEMENTATION

- 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.

Cases Involving Minors at Risk of Violence

- 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:
 - 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.
 - Law enforcement officers serving ERPOs to minor respondents should have experience working with minors as well as in crisis intervention.¹
 - 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

- 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:

¹ 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).



CONSORTIUM FOR
RISK-BASED FIREARM POLICY

EXTREME RISK PROTECTION ORDERS: NEW RECOMMENDATIONS FOR POLICY AND IMPLEMENTATION

- 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.
- Licensed healthcare providers should be offered tailored training on ERPOs, including their use and function, petitioning requirements, court processes, etc.
- 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

- 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.

Data Reporting and Availability

- States should assure that ERPO case data are entered into a centralized state database and should facilitate access to these data for research and policy purposes.

AT THE FEDERAL LEVEL, THE CONSORTIUM RECOMMENDS:

Supporting State Policy Implementation

- 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 to Assure that ERPOs Effectively Serve as Firearm Purchase Prohibitors

- Congress should appropriate additional funding for NICS to take the necessary action to assure that ERPOs effectively serve as firearm prohibitors at the point of firearm purchases.

ABOUT THE CONSORTIUM:

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