# Extreme Risk Protection Orders (ERPOs)

## SUMMARY

Nationwide, firearm violence is a leading cause of premature death. In 2021, firearms killed more than 48,830 people. (1) In 2021, the majority of homicides (81%) and suicides (55%) in the United States involved a firearm. (1) During the COVID-19 pandemic, the firearm homicide rate in the United States reached its highest level since 1994. (2) Extreme Risk Protection Orders (ERPOs), also called red flag laws, aim to address this rise in firearm injury rates by allowing law enforcement officials, family members, and others to petition for a temporary removal of firearms from individuals who are deemed to be a danger to themselves or others. Although research on ERPOs is in its nascency due to the laws being relatively new, research suggests their implementation could help to reduce firearm-related suicide (11), prevent mass violence events (15), address domestic violence in ways that differ from prior legislation, and appeal to firearm owners and non-firearm owners alike. (3)

## OVERVIEW

Extreme Risk Protection Orders (ERPOs) are designed to prevent firearm violence by reducing the availability of firearms to those that are deemed, in a civil court, to be a danger to themselves or others. The petitioner, such as law enforcement or an intimate partner or family member, must go through a series of steps. Then, in order for a judge to grant the order, the respondent (the person the ERPO is against) must meet a certain set of legal requirements.

The first step to obtaining an ERPO is the detection of an individual who is a danger to themselves or others. Then, those who detect the danger can file a formal petition. Generally, a member of law enforcement can officially petition a court to issue an ERPO to the person that they believe is imminently capable of harming themselves or others. In some states, a family or household member can also petition. When this person submits a petition, they must also present evidence to support their claim such as credible threats from the respondent, patterns of violent behavior or rhetoric, or recent violations of other types of protective orders. In states where ERPOs laws have been passed, there are generally two categories of orders: ex parte and final orders. Ex parte orders are the orders that are granted in a situation that requires immediate attention and action, and before a hearing can be held that the respondent can attend. These orders can last for a few days or up to a month. Final orders are issued after a hearing and can, but do not have to, be issued after an ex parte order. Depending on the state, final ERPOs can last from 6 months to up to five years (in California) for cases when it is demonstrated that the respondent is significantly dangerous to themselves and the people around them. (6) After this petition is filed, the respondent is given the opportunity to appear in court within a short time period. A judge can decide whether the ex parte order is granted immediately. After the ex parte is granted, the judge will re-evaluate the evidence, hear from the respondent, and decide whether to grant a final order. After an ERPO is granted, members of law enforcement will serve the order to the respondent in person. The firearm will be removed from the respondent's possession, and law enforcement will place it in a secure location designated by the jurisdiction. (5) (Continued on page 2)

ERPOs are similar to policies such as domestic violence protection orders but differ in the sense that they can be brought to the court by law enforcement and, often, members of the household, whereas domestic violence protection orders are brought by those with intimate relationships with the abuser. ERPOs are designed to address risk for violence against a more broad category of people, including oneself, whereas domestic violence protection orders deal with risk against an intimate partner. In addition, many domestic violence protection orders do not include provisions to remove firearms from the hands of the respondent to the order. As such, ERPOs may provide victims of domestic violence another type of protective legal tool to remove firearms from a dangerous situation.

Extreme risk protection order laws have been enacted in 20 states as well as the District of Columbia. (7) In these states, ERPOs can be used as a way to de-escalate a crisis. In Maryland, there were over 300 ERPOs filed within the first three months of the law being enacted in 2018. After two years of the law being in effect, the state has given out about 8.2 orders per 100,000 residents per year. (8) In Connecticut, research suggests that the orders have been effective in lowering the rate of suicide by firearm by as much as 14%. (7) Between 2016 and 2018, California recorded 414 ERPO cases. (9) More research is needed to better understand the impact of ERPOs on violent outcomes, but the preliminary evidence suggests they have promise.

## HISTORY OF ERPOS

Connecticut passed the first extreme risk law in 1999 after a mass shooting at the state lottery headquarters. (10) It granted law enforcement the legal authority to temporarily remove firearms from individuals when there is probable cause that they are at significant risk of harm to themself or others. This preliminary extreme risk law was effective in reducing access to firearms. In the first 14 years of its existence, 762 risk warrants were issued, police found firearms in 99% of cases, and police removed an average of 7 firearms per individual. (10) In 2005, Indiana passed an extreme risk law. Indiana's risk warrant law, known as the "Jake Laird Law," allows a law enforcement officer to seize firearms from a person who poses a danger or injury to self or others. (12) Studies of individual-level outcomes found that ERPO laws in Connecticut and Indiana are effective for suicide prevention, estimating that one life is saved for every 10 to 20 orders issued. (11)

Following the shooting at Sandy Hook Elementary School in 2012, extreme risk laws gained more support and attention. In 2014, after a mass shooting in Isla Vista, California enacted the nation's first ERPO law. The Gun Violence Restraining Order (GRVO) is a civil order that temporarily prohibits an individual who poses a significant risk of injuring themself or others from purchasing or possessing any firearms or ammunition. Law enforcement, family and household members, employers and co-workers, and teachers and employees at a secondary or post-secondary school that the respondent has attended in the last 6 months are all now authorized to petition for GRVOs in California. However, many of these groups were not included when the law was passed; only law enforcement and immediate family members could petition for GRVOs. Additionally, law enforcement in California may request emergency GRVOs over the phone outside of normal court hours. (13) In the first three years of California's ERPO law, 28.7% of cases involved threatened mass shootings, with six involving minors targeting schools, demonstrating that ERPOs have been used to stop potential mass shootings. (24)

Other studies have also pointed to the effectiveness of ERPOs: a 2018 study found that extreme risk laws were associated with a 7.5% reduction in suicides in Indiana and a 1.6% reduction in Connecticut. (16) After the Virginia Tech shooting, the extreme risk law was more strongly enforced in Connecticut, and a 13.7% reduction in firearm suicides was observed.

## CURRENT NATIONAL LEGISLATION

In June 2022, The Bipartisan Safer Communities Act introduced sweeping changes nationally in what is recognized as some of the most substantial and meaningful firearm safety legislation in the recent past. This act expands background checks, strengthens laws on illegal firearm trafficking, works to close the boyfriend loophole (preventing convicted domestic abusers from owning a firearm), and allocates $750 million to create a fund that all states would be able to access to implement ERPOs and other crisis intervention. (17) Personal Protection Orders (PPO) already serve as precedent for the emergency removal of firearms, however ERPO legislation widen the scope of situations in which they could be removed. (18)

On August 15th, 2022, state legislators met to discuss how to successfully implement ERPOs, as only 19 states had ERPO legislation at that point. State legislators from Kentucky, Louisiana, Minnesota, New Hampshire, North Carolina, Pennsylvania, and Texas were present, and legislators from Florida and Maryland discussed their success with ERPO legislation. (19) Pending national legislation includes the Federal Extreme Risk Protection Order Act of 2022, which would broaden the criteria for who could serve as a petitioner, imposes greater limits to firearm access for respondents, and requires the FBI to collect information on respondents. However, this is unlikely to become law, as it was sent to the Senate Judiciary Committee after passing the House on June 6, 2022, and has remained there. (20) Legislation such as this often has the best chance of being passed at the state level.

## FIREARM POLICY IN MICHIGAN

Firearm violence in Michigan urgently needs to be addressed. Michigan ranks 15th in the nation in firearm violence rates, and firearms are the leading cause of death among Michigan children and teens. (21) In an average year, 1,212 people die and 3,507 people are wounded by firearms in Michigan. Additionally, the rate of firearm suicides has increased by 17% from 2011 to 2020. (21) Mass shootings in recent years, such as the ones at Oxford High School in November 2021 and at Michigan State University in February 2023, show the immediate need for firearm violence prevention through measures like ERPOs.

In 2017, an ERPO bill was introduced which would allow the seizure of firearms from specific individuals who had been reported by family members, significant others, or law enforcement officers. Furthermore, this law would have prevented the possession or purchase of firearms by these individuals. However, this bill ultimately failed to pass. As of 2023, Michigan has successfully passed ERPO legislation on the state level. (22) It is being signed into law in May 2023 and will be in place by January 2024.

## RECOMMENDATIONS

In the continued fight against firearm violence in Michigan, ERPOs are one way to counteract it and stop tragedies from happening. In other states, the enactment of ERPOs has already been associated with significant improvements. As mentioned above, in Indiana and Connecticut, a reduction in gun-related suicides was found after the implementation of ERPOs. This association between emergency removal of firearms and reduction of suicide rates is especially pertinent when 56.4% of all firearm deaths from 2018 to 2021 in Michigan were suicides. (23) It is, however, important to note that ERPOs are relatively new and as such, there is still more research to be done to document its effectiveness. (Continued on Page 4)

When considering best practices for enacting ERPO legislation, several considerations should be taken into account. ERPO legislation should contain clear language designating the role and authority of each involved in the ERPO process, including law enforcement and judges. Both of these groups should be trained adequately in order to ensure full understanding of their roles. Additionally, public education about the ERPO petitioning process and standards for implementation should be available to high-risk individuals and families who may benefit from increased understanding. Education should include clarification that the main goal of ERPOs is to save lives and protect those at risk, not a criminal tool. With these pertinent clarifications, ERPOs can be most effectively implemented to ensure ideal outcomes.


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