

Extreme Risk Protective Order in Massachusetts

EMPOWERING FAMILIES & LAW ENFORCEMENT TO PREVENT GUN TRAGEDIES

House Bill 3081 | INTRODUCED BY Rep. David Linsky (LD5)

Extreme Risk Protective Orders empower Massachusetts families and law enforcement to prevent gun tragedies by temporarily reducing access to guns by individuals at an elevated risk of endangering themselves or others.

A common thread in many high profile shootings are the family members of the shooters who saw their loved ones engage in dangerous behaviors and grew concerned about their risk of harming themselves or others—even before any violence occurred. In fact, family members are often the first to know when loved ones are in crisis in the many incidents of interpersonal violence and suicide that take place across this country every day. However, a gap in Massachusetts' laws makes it hard for families to intervene. An Extreme Risk Protective Order fills this gap by creating a mechanism for family and household members to temporarily remove guns and prevent the purchase of new guns by individuals who pose an elevated risk of endangering themselves or others. This law will save lives while ensuring critical legal protections for respondents, just as it has in states that have already taken this responsible step.

WHAT IS AN EXTREME RISK PROTECTIVE ORDER?

An Extreme Risk Protective Order (ERPO) is a civil court order issued by a judge upon consideration of the evidence, prompted by petition by a family member, law enforcement officer, district attorney, or licensed health care provider⁴ that temporarily prohibits a person in crisis from possessing or purchasing firearms or ammunition. ERPOs provide families and law enforcement officers with a formal legal process to temporarily reduce an individual's access to firearms if they pose a danger to themselves or others.

In many shootings, family and household members of the shooters noticed the person exhibiting dangerous behaviors and became concerned that they may harm him or herself or others. Unfortunately, there are few tools for family members to intervene during these periods of crisis. The ERPO offers family and household members – as well as law enforcement and licensed health care providers – a legal tool for helping a loved one who is displaying signs of endangering themselves or others by temporarily removing guns that are already in possession and prohibiting them from purchasing new ones for the duration of the order. In addition to potentially preventing an act of gun violence, the ERPO creates safer circumstances for the individual to seek treatment or engage other resources to address the underlying causes of the dangerous behaviors.

2,286

People from Massachusetts were killed by gunfire in the last decade.¹

**ONE LIFE IS
SAVED FOR
EVERY 10-20
RISK-WARRANTS
ISSUED.**

(Connecticut's ERPO-style law).²

55%

of Massachusetts gun deaths in 2015 were suicides.³

EXTREME RISK PROTECTIVE ORDER | MASSACHUSETTS

HOW DOES THE ERPO WORK?

The ERPO is based on the long-standing infrastructure and procedure of domestic violence protective orders (in place in all 50 states) and involves both a court hearing and clearly defined due process protections. A qualifying petitioner (family member, household member, law enforcement officer, district attorney, or licensed health care providers) would petition the civil court in their jurisdiction for an ERPO based on the evidence they present through a written application and at a hearing before a judge. This *does not* involve a criminal complaint. Specifically, the court process would include (this process will differ for health care providers):

STAGE 1 At an initial hearing, a judge considers the information presented in the written petition and assesses whether the person poses an immediate and present danger of causing injury to themselves, the petitioner, or others by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition. The individual (respondent) may or may not receive notice about the hearing beforehand. If the respondent does not receive notice of the hearing beforehand, the hearing is “ex parte.”

If issued, an ex parte or temporary ERPO will be in effect for up to 10 days. If the respondent does not own or possess firearms, he or she is temporarily prohibited from purchasing or otherwise acquiring a firearm. If the respondent does own firearms, he or she must surrender his or her guns for the duration of the order.

STAGE 2 Before the ex parte or temporary ERPO expires, a subsequent hearing will take place to address the claim of dangerousness. **For an order to be issued, ERPO petitioners will be required to testify and present evidence in a court of law. Respondents will also have an opportunity to present evidence to show that he or she is not a danger to him or herself or others and a ERPO is not necessary.**

If the court determines that the preponderance of evidence demonstrates that the respondent poses the risk alleged in the petition, the order prohibiting the purchase and possession of firearms will be extended for one year.

To terminate the ERPO before its expiration, the respondent may file one written request. The court must set a hearing no sooner than 14 days from service on the petitioner. At the hearing, the respondent bears the burden of proving by a preponderance of the evidence that he or she does not pose a significant danger of causing physical injury to him- or herself, or others, by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

To renew the ERPO, the petitioner may file a written request at any time within 30 days of the order’s expiration date. For a judge to renew the ERPO, an additional hearing will be held according to the same procedure and burden of proof as stage 2.

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- 1 National Center for Injury Prevention and Control, CDC. United States Firearm Deaths and Rates per 100,000. *Fatal Injury Reports 1999-2015, for National, Regional, and States (RESTRICTED)*. Retrieved April 19, 2017, from http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html.
 - 2 Swanson, Jeffrey W. and Norko, Michael and Lin, Hsiu-Ju and Alanis-Hirsch, Kelly and Frisman, Linda and Baranoski, Madelon and Easter, Michele and Gilbert, Allison and Swartz, Marvin and Bonnie, Richard J., Implementation and Effectiveness of Connecticut’s Risk-Based Gun Removal Law: Does it Prevent Suicides? (August 24, 2016). Law and Contemporary Problems. Available at SSRN: <http://ssrn.com/abstract=2828847>.
 - 3 National Center for Injury Prevention and Control, CDC. 2015. Massachusetts Firearm Deaths and Rates per 100,000. *Fatal Injury Reports 1999-2015, for National, Regional, and States (RESTRICTED)*. Retrieved April 19, 2017, from http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html
 - 4 ¹ “Health care provider” is defined as “a licensed physician, licensed clinical psychologist, licensed social worker, or licensed mental health clinician.” HB 3081

ABOUT THE EDUCATIONAL FUND TO STOP GUN VIOLENCE

The Educational Fund to Stop Gun Violence (Ed Fund) was founded in 1978 as a 501(c)(3) organization that makes communities safer by translating research into policy to reduce gun violence. The Ed Fund achieves this by engaging in policy development, advocacy, community and stakeholder engagement, and technical assistance.

ABOUT THE LAW CENTER TO PREVENT GUN VIOLENCE & AMERICANS FOR RESPONSIBLE SOLUTIONS

Led by former Congresswoman Gabrielle Giffords and Navy combat veteran and retired NASA astronaut Captain Mark Kelly, Americans for Responsible Solutions and the Law Center to Prevent Gun Violence are committed to advancing commonsense change that makes communities safer from gun violence. Operating out of offices in Washington DC, San Francisco, and New York, our staff partners with lawmakers and advocates at the federal, state, and local levels to craft and enact the smart gun laws that save lives. We provide expertise in critical firearms litigation, lead grassroots coalitions, and educate the public on the proven solutions to America’s gun violence epidemic.