

H.R. 1236 & S. 506

The Extreme Risk Protection Order Act of 2019



The “Extreme Risk Protection Order Act,” sponsored by Representative Carbajal (D-CA 24) establishes a program under the Department of Justice to award grants to states to implement extreme risk laws. The bill also creates an extreme risk protection order process at the federal level to ensure individuals living in states that have not yet passed their own version of an extreme risk law have equal access to these laws.

WHAT IS AN EXTREME RISK LAW?

Extreme risk laws give law enforcement, family members, dating partners, and in certain states¹ other individuals like housemates, health professionals, or school administrators, an avenue to prevent an individual in crisis from harming themselves or others by temporarily removing guns and prohibiting the purchase of firearms.

17 states and Washington, D.C. have enacted versions of extreme risk laws.²

THE EXTREME RISK PROTECTION ORDER ACT

This law provides for the establishment of a grant program, and provides minimum standards (such as the inclusion of an ex parte process) that states must meet or exceed in order to be eligible for grants.

- Funds may be used to enhance capacity of law enforcement and courts; to train court personnel and law enforcement to accurately identify those at risk; to implement protocols; and to raise public awareness of extreme risk laws.
- At least 25% of the grant received must be used to train law enforcement.
- This process allows states to tailor a law to their unique circumstances and provides flexibility for states to outline procedures for termination & renewal of orders, establishing burdens of proof, and to limit the individuals who can submit a petition.

Additionally, this legislation creates a system by which a resident of any state can petition a federal court to request an extreme risk protection order be issued against an individual in crisis, which is critical for Americans living in states that have not yet passed an ERPO law.

- Under this legislation, the standard of proof for an ex parte order is a finding of probable cause that the respondent poses an imminent risk of injury to self or

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others, and the standard of proof for a long-term order is a finding by clear and convincing evidence that the respondent poses a risk to self or others.

- An ex parte order must expire when a final order is either issued or denied, and a long-term order may last no longer than 180 days.
- Service of the order and surrender of firearms shall be requested by the U.S. Marshals or a state/local law enforcement officer.
- The order may be renewed by the petitioner, and after a hearing by which evidence may be evaluated under a clear and convincing standard.

HOW DO EXTREME RISK LAWS WORK?

A petitioner (law enforcement, family, other individuals in states that allow it) presents to a judge in a civil court evidence of this individual being a risk to themselves or others.

The facts that are typically considered by a judge include:

- Patterns or recent threats and acts of violence;
- dangerous past behavior with guns;
- substance abuse;
- recent firearms or ammunition acquisition.³

The at-risk individual is allowed an opportunity to be heard and present evidence before the judge at a hearing. If the judge finds that the evidence warrants temporarily removing guns from the individual, the judge issues an extreme risk order, which prevents the individual in crisis from purchasing a gun, and allows law enforcement to temporarily remove firearms and from their possession. When the order is terminated, law enforcement returns the guns to the individual, as long as they are the legal owner. In many states, there is a process by which the individual can petition during the course of the order to have another hearing for termination.

DO EXTREME RISK LAWS WORK?

A study of Connecticut's extreme risk law from 1999 to 2013 found that 99% of extreme risk orders resulted in the removal of at least one gun. Law enforcement removed, on average, seven guns per individual.

In 44% of cases, this order led to the respondent receiving psychiatric treatment they may not have otherwise received. Researches estimated that one suicide was averted per 10-11 orders issued.⁴

Further, a recent study found that extreme risk laws may provide exactly the type of urgent and individualized intervention that could prevent mass shootings in the future.⁵

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DEBUNKING MYTHS ABOUT EXTREME RISK LAWS

- Extreme risk laws are **not** a permanent prohibition on gun or ammunition ownership or purchase;
- Extreme risk laws do **not** create a new avenue for criminality - all proceedings take place in a civil court;
- Extreme risk laws are **not** a substitute for domestic violence restraining, or protection, orders;
- Extreme risk laws are **not** based off an individual's mental health diagnosis, and are instead created to identify indicators of risk and potential violence;
- Extreme risk laws do **not** remove due process protections - they allow an individual to be notified and present evidence in their defense before a court.

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1. *While laws vary state-to-state, all allow law enforcement to bring a court petition. Some allow family or household members, which is typically defined rather broadly. A smaller number of states have extended the category of petitioners further: Maryland allows medical and mental health professional petitioners, Washington, D.C. allows mental health professional petitioners, and New York allows school administrator petitioners.*
 2. *The 17 states are: Connecticut, Indiana, California, Washington, Oregon, Florida, Vermont, Maryland, New Jersey, Delaware, Illinois, Massachusetts, Rhode Island, New York, and Colorado, Nevada, and Hawaii*
 3. *These factors vary state by state - some include recent criminal or civil convictions, violation of previous extreme risk or protective orders, history of stalking, past animal abuse, or parole status.*
 4. <https://scholarship.law.duke.edu/lcp/vol80/iss2/8/>
 5. <https://annals.org/aim/fullarticle/2748711/extreme-risk-protection-orders-intended-prevent-mass-shootings-case-series>