



THE EXTREME RISK PROTECTION ORDER ACT OF 2019

H.R.1236/S.506

H.R.1236/S.506 would make grants available to state governments that have enacted extreme risk laws to help provide critical funding for implementation, allowing the law to be enforced at its highest potential. This bill provides minimum standards that state-level extreme risk laws must meet in order to be eligible for grant funding while providing enough flexibility for states that do not mirror or that may exceed those standards to remain eligible -- allowing the largest number of states to be eligible for funding.

As of March 2019, fourteen states plus the District of Columbia have an Extreme Risk Law (California, Connecticut, Delaware, Florida, Illinois, Indiana, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington). Extreme risk protection orders temporarily prohibit the purchase and possession of a firearm and/or requires the removal of firearms from persons demonstrating behavioral risk factors for harming themselves or others. Law enforcement and, in some states, family or household members, health care providers, and school administrators can request that a court issue an order.

EXTREME RISK LAWS FOCUS ON RISKY BEHAVIOR -- NOT A MENTAL HEALTH DIAGNOSIS¹

- While dialogue around mass shootings and gun violence often focuses on the relationship between mental illness and violence, research evidence shows that the majority of people with mental illness are not violent, and most violence is caused by factors other than mental illness.
• Policies that focus solely on restricting access to firearms by those diagnosed with mental illness are neither justified nor likely to be effective in reducing gun violence.
• Rather than focusing primarily on people with mental illness -- the majority of whom will never be violent -- extreme risk laws focus on preventing access to firearms by persons exhibiting dangerous behavior. Examples of dangerous behaviors include history or patterns of violence, threats of violence, alcohol or substance misuse, and reckless firearm behavior.
• Extreme risk laws can be used in a multitude of life saving ways; however, research shows that these laws are particularly impactful in preventing suicide. Suicides comprise the majority of gun deaths, and temporarily reducing access to firearms for individuals at risk of suicide is an effective suicide prevention strategy.

EXTREME RISK LAWS IN ACTION

Firearm Suicide:

A bartender in Florida told her co-worker she was suicidal and wanted to die. A Risk Protection Order was issued and law enforcement seized an AR-15.

A woman in Washington had tried to shoot herself in the head, but had gotten scared or startled and ended up shooting herself in the leg. Police responded to a 911 call and found evidence she had practiced firing a recently purchased firearm. An Extreme Risk Protection Order (ERPO) was issued.

Domestic Violence:

A 40-year-old California man told his fiancé by text message that he wanted to shoot her in the head, then visited his fiancé's ex-boyfriend and threatened to kill him while holding a knife behind his back. A GVRO was issued and the man surrendered a handgun and an AR-15.

A 35-year-old man in California with a small arsenal and a history of domestic violence, whose wife suffered a serious laceration to her forehead and feared he might kill her. A GVRO was issued. The man owned a 9mm pistol, a Mosquito semi-automatic pistol, a Ruger .22, a Springfield .40 caliber pistol, a Ruger rifle, a Mossberg shotgun, and an unmarked handgun.

1 Consortium for Risk-Based Firearm Policy. Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy. December 2013. http://efsgv.wpengine.com/wp-content/uploads/2014/10/Final-State-Report.



EXTREME RISK LAWS ARE EVIDENCE-BASED²

The most thorough analysis of an extreme risk law is an evaluation of Connecticut’s risk warrant law. Researchers found that risk-warrants reached individuals who were at a dangerously elevated risk of suicide and prevented additional suicide deaths by intervening in crises.

In the first 14 years of Connecticut’s law (1999-2013):

- 762 risk-warrants were issued, with increasing frequency after the 2007 Virginia Tech shooting.
- The typical risk-warrant subject was a middle-aged or older man and suicidality or self-injury was listed as a concern in at least 61% of cases where such information was available.
- Police found firearms in 99% of instances when an order was issued, removing an average of seven guns per subject.
- People in Connecticut subject to orders had an annual suicide rate 40 times higher than the general population, showing the increased risk among this population.
- **For every 10-20 orders issued, at least one suicide was prevented.**

FEDERAL FUNDING IS NEEDED FOR IMPLEMENTATION

The extreme risk law model is relatively new and may be unfamiliar to stakeholders and petitioners alike. This includes lack of awareness of its existence, why it is important, how it may be applied, and processes for seeking and enforcing orders.

Federal funding is needed to help develop and implement tailored training, guidance, and resources for a wide variety of stakeholders. This is especially important for law enforcement officers, court clerks, and judges, as well as social services providers who may be working with potential petitioners.

Public education is important for successful implementation of the law when family members can petition. Making funding available for public awareness campaigns will help increase public knowledge of the law, including tools and instructions on the petitioning process— ensuring that that if a loved one is in crisis, family members have knowledge and access to available legal tools.

Furthermore, each state, county, and city is different. Making federal funding available to states is critical to ensure that the law can help address the different nuances and cultural values of that community, therefore allowing states to do what is best for them.

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 of 2019 would help provide critical funding for implementation, allowing extreme risk laws to be enforced at its highest potential.

School Shootings:

Two [Vermont](#) 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 got an Extreme Risk Order to seize the guns from the student’s home.

A [Maryland](#) student posted Snapchats of him holding a rifle and threatening a school shooting. Police issued a temporary protection order and seized a pair of loaded assault rifles and ammunition.

Interpersonal Violence:

A Veteran in [Oregon](#) threatened to shoot people at his church. An ERPO was issued.

A man in [Oregon](#) planned to shoot his boss who had just fired him, before being stopped by his sister. An ERPO was issued.

A 27-year-old armed security guard in [Florida](#) fired his gun into the air and pulled a knife during two arguments with his neighbors. A judge issued a temporary order.

Harassment:

A man in [Florida](#) confronted Black construction workers with two large knives and yelled racial slurs before slashing their car. A Risk Protection Order was issued and Police seized two handguns.

² Swanson, J. W., Norko, M. A., Lin, H. J., Alanis-Hirsch, K., Frisman, L. K., Baranoski, M. V., et al. (2017).

Implementation and effectiveness of Connecticut’s risk-based gun removal law: Does it prevent suicides? *Law and Contemporary Problems*. 80(2), 101-128.



COMPARISON OF FEDERAL EXTREME RISK LAW GRANT BILLS:

THE EXTREME RISK PROTECTION ORDER ACT OF 2019 (S. 506 & H.R. 1236)

PROTECTING OUR COMMUNITIES AND RIGHTS ACT OF 2019 (H.R. 744)

THE EXTREME RISK PROTECTION ORDER AND VIOLENCE PREVENTION ACT OF 2019 (S. 7)

Currently fourteen states and the District of Columbia have enacted Extreme Risk Laws that allow law enforcement and, in some states, family or household members, health care providers, and school administrators to request that a court issue an order prohibiting the purchase and possession of a firearm and/or requiring the removal of firearms from persons determined to be at risk of harming themselves or others.

Though the framework of most Extreme Risk Laws are very similar, the specific provisions of each vary. As noted above, the categories of individuals who may petition for such orders varies from state to state and may include law enforcement, family or household members, and health care providers. Burdens of proof for ex parte orders, the length of both ex parte and final orders, and the individuals or entities to whom firearms may be relinquished may also differ from state to state.

The “Extreme Risk Protection Order Act of 2019” (S. 506 and H.R. 1236)³, the “Protecting Our Communities and Rights Act of 2019” (H.R. 744), and the “Extreme Risk Protection Order and Violence Prevention Act of 2019” (S.7) would each authorize a federal government office or entity to make grants to state governments and, in some cases, tribal and local governments that have enacted Extreme Risk Laws. This document provides a non-exhaustive comparison of the three pieces of legislation, highlighting instances in which state governments that have already enacted Extreme Risk Laws would be ineligible for grants under H.R. 744 and S. 7.

S. 506 and H.R. 1236 provide minimum standards that state and tribal ERPO laws must meet in order to be eligible for grant funding but provide enough flexibility for states that do not mirror or **may exceed those standards to remain eligible**.

In contrast, H.R. 744, the “Protecting Our Communities and Rights Act of 2019” is not nearly as flexible and would prevent many states that have passed Extreme Risk Laws from being eligible for grant funding. In order to be eligible for grant funding under H.R. 744, for example, a state’s Extreme Risk Law may allow a judge to issue an ex parte order only upon a finding by a preponderance of the evidence that the respondent poses an imminent, particularized, and substantial risk of unlawfully using a firearm to cause death or serious physical injury to himself, herself, or to another person.⁴ Only two of the 15 Extreme Risk Laws that have been enacted use a preponderance of the evidence standard for ex parte orders. **Therefore, 13 of the 15 Extreme Risk Laws enacted would be ineligible for grant funding under H.R. 744.**

In order to be eligible for grant funding under H.R. 744, a state’s ex parte order may *only* prohibit the subject of the order from receiving firearms or transporting or carrying firearms in public.⁵ The prohibition may not include possession of firearms. 14 of the 15 Extreme Risk Laws that have been enacted include prohibitions on possession of firearms by persons subject to ex parte orders. **Thus, 14 of the 15 Extreme Risk Laws enacted would be ineligible for grant funding under H.R. 744.**

Additionally, in order to be eligible for grant funding under H.R. 744, a state’s Extreme Risk Law may not allow an order to be renewed more than two times.⁶ None of the 15 Extreme Risk Laws that have been enacted impose

³ Extreme Risk Protection Order Act of 2019, S. 506, H.R. 1236, 116th Cong. (2019);

⁴ Protecting Our Communities and Rights Act of 2019, H.R. 744, 116th Cong. § 3 (2019).

⁵ *Id.*

⁶ *Id.*



limitations on the number of times an order may be renewed, **as such, none of the currently enacted Extreme Risk Laws would be eligible for grant funding under H.R. 744.**

Similarly, S. 7, the “Extreme Risk Protection Order and Violence Prevention Act of 2019” is not nearly as flexible as S. 506 and H.R. 1236, “the Extreme Risk Protection Order Act,” and would prevent many states that have passed Extreme Risk Laws from being eligible for grant funding. To be eligible for grant funding under S. 7, a State or Tribal law shall require an individual who petitions for an order “to make a good faith effort to provide notice to other family or household members of the respondent, or to any other known third party, who may be at risk of violence because of the submission of such petition.”⁷ Just one of the 15 Extreme Risk Laws require a petitioner to make a good faith effort to provide notice of the order petition to a family or household member of the respondent, an intimate partner, or a known third party. **Therefore, 14 of the 15 Extreme Risk Laws enacted would be ineligible for grant funding under S. 7.**

S. 506 and H.R. 1236 would allow the most states with enacted ERPO laws to be eligible for grant funding to implement those laws. As states and tribes continue to consider passing Extreme Risk Laws, S. 506 and H.R. 1236 will also allow them more flexibility in drafting those policies while still creating a reasonable minimum set of requirements so they remain eligible for grant funding. **Because S. 506 and H.R. 1236 would allow the largest number of states to be eligible for critical funding to implement these life-saving Extreme Risk Laws, the Coalition to Stop Gun Violence supports S. 506 and H.R. 1236.**

⁷ *Id.*



**STATES INELIGIBLE FOR FUNDING UNDER
“PROTECTING OUR COMMUNITIES AND RIGHTS ACT OF 2019” (H.R. 744)**

Provision of the “Protecting Our Communities and Rights Act of 2019” (H.R. 744)	States that would not be eligible for grant funding	
A state’s ERPO law may allow a judge to issue an ex parte ERPO only upon a finding by a <i>preponderance of the evidence</i> that the respondent poses an <i>imminent</i> , particularized, and substantial risk of unlawfully using a firearm to cause death or serious physical injury to himself, herself, or to another person.	California Connecticut District of Columbia Florida Illinois Indiana Maryland	Massachusetts New Jersey New York Oregon Rhode Island Washington
A state’s ex parte ERPO may only prohibit the subject of the order from receiving firearms or transporting or carrying firearms in public.	California Connecticut Delaware District of Columbia Florida Illinois Maryland	Massachusetts New Jersey New York Oregon Rhode Island Vermont Washington
Not later than 14 days after the date on which a court issues an ex parte ERPO, the issuing court, or another court in the same jurisdiction, shall hold a hearing to determine whether to issue a permanent ERPO.	California Connecticut Delaware	Indiana New York Oregon
At a hearing on a permanent ERPO, the petitioner shall bear the burden of establishing by <i>clear and convincing evidence</i> that the respondent poses an <i>imminent</i> , particularized, and substantial risk of unlawfully using a firearm to cause death or serious physical injury to himself or herself or to another person.	California Delaware District of Columbia Florida Illinois Maryland	Massachusetts New Jersey New York Oregon Vermont Washington
At a hearing to rescind a permanent ERPO, the respondent shall bear the burden of establishing by a <i>preponderance of evidence</i> that his or her possession of a firearm does not pose an <i>imminent</i> , particularized, and substantial risk of death or serious bodily injury to the individual or another person.	California Delaware District of Columbia Florida Illinois Maryland Massachusetts	New Jersey New York Oregon Rhode Island Vermont Washington
A state’s ERPO law may not allow an ERPO to be renewed more than two times.	California Connecticut Delaware District of Columbia Florida Illinois Indiana Maryland	Massachusetts New Jersey New York Oregon Rhode Island Vermont Washington

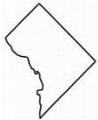


STATES INELIGIBLE FOR FUNDING UNDER THE “EXTREME RISK PROTECTION ORDER AND VIOLENCE PREVENTION ACT OF 2019” (S. 7)

Provision of the “Extreme Risk Protection Order and Violence Prevention Act of 2019” (S. 7)	States that would not be eligible for grant funding
<p>A state or tribal law must require a petitioner to make a good faith effort to provide notice to other family or household members of the respondent, or to any other known third party, who may be at risk of violence because of the submission of the petition.</p>	<p>California Connecticut District of Columbia Delaware Illinois Indiana Maryland Massachusetts New Jersey New York Oregon Rhode Island Vermont Washington</p>
<p>At a hearing on a permanent ERPO, the petitioner shall bear the burden of establishing by <i>clear and convincing evidence</i> that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.</p>	<p>District of Columbia Maryland New Jersey Washington</p>
<p>At a hearing on a permanent ERPO, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate.</p>	<p>California Delaware District of Columbia Illinois Indiana Massachusetts New Jersey New York Oregon Rhode Island Vermont</p>

COMPARISON OF STATE EXTREME RISK LAWS

Currently fourteen states and the District of Columbia have an extreme risk law. However, these laws vary. The chart below gives a brief overview of the different states' laws, including the eligible petitioners, the orders available, the length of the orders, and the legal standard petitioners must meet to prove that the subject of the order is at an elevated risk of harming themselves or others. While each state may use different names for the orders, for simplicity we classify all "emergency", "ex parte", or "temporary" orders issued without notice and hearing as "Ex Parte" orders, and all orders issued after notice and hearing as "Final" orders.

STATE	PETITIONERS	ORDERS AVAILABLE
CALIFORNIA  <i>Gun Violence Restraining Order</i>	LAW ENFORCEMENT <i>Temporary Emergency, Ex Parte, Final</i> FAMILY OR HOUSEHOLD MEMBER <i>Ex Parte, Final</i>	TEMPORARY EMERGENCY <i>21 days</i> <i>Reasonable cause</i> EX PARTE <i>Up to 21 days</i> <i>Substantial likelihood</i> FINAL <i>One year</i> <i>Clear and convincing</i>
CONNECTICUT  <i>Seizure of Firearms (Risk-Warrant)</i>	LAW ENFORCEMENT <i>Warrant</i> [ASSISTANT] STATE'S ATTORNEY <i>Warrant</i>	WARRANT <i>Up to 1 year</i> <i>Probable cause (initial warrant)</i> <i>Clear and convincing (at hearing)</i>
DELAWARE  <i>Lethal Violence Protective Order</i>	LAW ENFORCEMENT <i>Ex Parte, Final</i> FAMILY MEMBER <i>Final</i>	EX PARTE <i>Up to 15 days</i> <i>Preponderance of the evidence</i> FINAL <i>Up to 1 year</i> <i>Clear and convincing</i>
DISTRICT OF COLUMBIA  <i>Extreme Risk Protection Order</i>	LAW ENFORCEMENT <i>Ex Parte, Final</i> FAMILY OR HOUSEHOLD MEMBER <i>Ex Parte, Final</i> MENTAL HEALTH PROFESSIONALS <i>Ex Parte, Final</i>	EX PARTE <i>Up to 15 days</i> <i>Probable cause</i> FINAL <i>One year</i> <i>Preponderance of the evidence</i>
FLORIDA  <i>Risk Protection Order</i>	LAW ENFORCEMENT <i>Ex Parte, Final</i>	EX PARTE <i>Up to 14 days</i> <i>Reasonable cause</i> FINAL <i>Up to 1 year</i> <i>Clear and convincing</i>



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<p>ILLINOIS</p>  <p><i>Firearms Restraining Order</i></p>	<p>LAW ENFORCEMENT <i>Ex Parte, Final</i></p> <p>FAMILY OR HOUSEHOLD MEMBER <i>Ex Parte, Final</i></p>	<p>EX PARTE <i>Up to 14 days</i> <i>Probable cause</i></p> <p>FINAL <i>6 months</i> <i>Clear and convincing</i></p>
<p>INDIANA</p>  <p><i>Seizure and Retention of a Firearm (Risk-Warrant)</i></p>	<p>LAW ENFORCEMENT <i>Warrant, Warrantless</i></p>	<p>WARRANT <i>At least 180 days</i> <i>Probable cause (initial warrant)</i> <i>Clear and convincing (at hearing)</i></p> <p>WARRANTLESS <i>At least 180 days</i> <i>Probable cause (after firearm seizure)</i> <i>Clear and convincing (at hearing)</i></p>
<p>MARYLAND</p>  <p><i>Extreme Risk Protective Order</i></p>	<p>LAW ENFORCEMENT <i>Interim, Ex Parte, Final</i></p> <p>FAMILY OR HOUSEHOLD MEMBER <i>Interim, Ex Parte, Final</i></p> <p>HEALTHCARE PROFESSIONAL <i>Interim, Ex Parte, Final</i></p>	<p>INTERIM <i>Expires/terminates on the first or second day court is in session</i> <i>Reasonable grounds</i></p> <p>EX PARTE <i>Up to 7 days</i> <i>Reasonable grounds</i></p> <p>FINAL <i>Up to 1 year</i> <i>Clear and convincing</i></p>
<p>MASSACHUSETTS</p>  <p><i>Extreme Risk Protection Order</i></p>	<p>LAW ENFORCEMENT <i>Ex Parte, Final</i></p> <p>FAMILY OR HOUSEHOLD MEMBER <i>Ex Parte, Final</i></p>	<p>EX PARTE <i>Up to 10 days</i> <i>Reasonable cause</i></p> <p>FINAL <i>Up to 1 year</i> <i>Preponderance of the evidence</i></p>
<p>NEW JERSEY</p>  <p><i>Extreme Risk Protective Order</i></p>	<p>LAW ENFORCEMENT <i>Ex Parte, Final</i></p> <p>FAMILY OR HOUSEHOLD MEMBER <i>Ex Parte, Final</i></p>	<p>EX PARTE <i>Up to 10 days</i> <i>Good cause</i></p> <p>FINAL <i>1 year</i> <i>Preponderance of the evidence</i></p>
<p>NEW YORK</p>  <p><i>Extreme Risk Protection Order</i></p>	<p>LAW ENFORCEMENT <i>Ex Parte, Final</i></p> <p>DISTRICT ATTORNEY <i>Ex Parte, Final</i></p> <p>FAMILY OR HOUSEHOLD MEMBER <i>Ex Parte, Final</i></p> <p>SCHOOL ADMINISTRATOR <i>Ex Parte, Final</i></p>	<p>EX PARTE <i>Up to business 6 days</i> <i>Probable cause</i></p> <p>FINAL <i>Up to 1 year</i> <i>Clear and convincing</i></p>



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<p>OREGON</p>  <p><i>Extreme Risk Protection Order</i></p>	<p>LAW ENFORCEMENT <i>Final</i></p> <p>FAMILY OR HOUSEHOLD MEMBER <i>Final</i></p>	<p>FINAL* <i>1 year</i> <i>Clear and convincing</i></p> <p><i>*Court may issue an order at an ex parte hearing</i></p>
<p>RHODE ISLAND</p>  <p><i>Extreme Risk Protection Order</i></p>	<p>LAW ENFORCEMENT <i>Ex Parte, Final</i></p>	<p>EX PARTE <i>Up to 14 days</i> <i>Probable cause</i></p> <p>FINAL <i>1 year</i> <i>Clear and convincing</i></p>
<p>VERMONT</p>  <p><i>Extreme Risk Protection Order</i></p>	<p>STATE'S ATTORNEY <i>Ex Parte, Final</i></p> <p>OFFICE OF THE ATTORNEY GENERAL <i>Ex Parte, Final</i></p>	<p>EX PARTE <i>14 days</i> <i>Preponderance of the evidence</i></p> <p>FINAL <i>Up to 6 months</i> <i>Clear and convincing</i></p>
<p>WASHINGTON</p>  <p><i>Extreme Risk Protection Order</i></p>	<p>LAW ENFORCEMENT <i>Ex Parte, Final</i></p> <p>FAMILY OR HOUSEHOLD MEMBER <i>Ex Parte, Final</i></p>	<p>EX PARTE <i>Up to 14 days</i> <i>Reasonable cause</i></p> <p>FINAL <i>1 year</i> <i>Preponderance of the evidence</i></p>