

Extreme Risk Protection Orders: Comparing Legislation in the 116th Congress

Extreme risk protection orders (ERPOs) are designed to help keep guns out of the hands of people who are a threat to themselves or others. ERPOs allow families, household members, and law enforcement officers to petition courts to temporarily restrict an individual's access to guns if the person is considered to be a threat. This policy is most effective at reducing suicides, and it also can help prevent instances of domestic abuse, interpersonal violence, and mass shootings.

There has been an increasing interest in ERPOs, both at the federal and state level. Seventeen states and the District of Columbia have passed ERPO laws. Of those states, 14 (including DC) passed these laws within the last 2 years. Congress is currently considering four proposals for ERPOs at the federal level.

FCNL considers seven factors when evaluating federal ERPO proposals:

- **Standard of evidence and length** of the initial (ex parte) court order
 - These standards set the terms of the ERPO, prevent any due process violations from occurring, and ensure that the firearms are removed from a dangerous situation for an adequate amount of time.
 - 14 days is an adequate length of time to withhold firearms from the subject of an ex parte order. Any shorter than this, and it's difficult for law enforcement and the justice system to adequately handle the ERPO.
 - Probable cause is an ideal standard of evidence. It balances the needs of petitioners, who often are in dangerous situations because of the presence of a firearm and therefore may not have enough time to amass evidence to meet a higher standard, and ensures that enough evidence is gathered to prevent a false claim from being filed.
- **Standard of evidence and length** of the final order
 - These standards ensure that an individual receives a fair trial and that the firearms remain removed for an adequate period of time.
 - We believe that 1 year is enough time for a final ERPO, provided that there is an opportunity to renew the order after a year.
 - At a minimum, a preponderance of the evidence should be the standard at a final hearing. We would support a higher standard, such as clear and convincing evidence, if that's what's needed for ERPO legislation to gain bipartisan support.
- **Who can file an ERPO?**
 - We believe that the more people who can file ERPOs, the better. At a minimum, we believe that family and household members, as well as law enforcement, should be allowed to file petitions. Ideally, medical and health professionals should also be allowed to file an ERPO.
- **States allowed to exceed federal minimum standards**
 - States should be allowed to exceed minimum standards outlined by these bills, so that states who have already passed ERPOs aren't punished for going above and beyond what is required at the federal level.
- **Limit on amount of times ERPO can be issued**
 - There should not be limits on the number of times an ERPO can be issued. A renewal limit on ERPOs could lead to someone getting a firearm who shouldn't have one in the first place.

In addition to these elements, we believe that any provision which requires a judge to determine whether a mental health or chemical dependency evaluation is appropriate is problematic and should be avoided in a bill. Such evaluations should be conducted by a trained medical professional, in part because a judge may not have all of the necessary information to make a determination in an ERPO hearing.





	Extreme Risk Protection Order Act of 2019 H.R. 1236 / S. 506 (Federal funding for states with ERPO laws)	Extreme Risk Protection Order Act of 2019 H.R. 1236 (Creation of new federal ERPO law)	Extreme Risk Protection Order and Violence Prevention Act of 2019 S. 7	Protecting Our Communities and Rights Act of 2019 H.R. 744
Standard of evidence for filing initial (ex parte) ERPO	Reasonable cause	Probable cause	Probable cause; petitioner required to make good faith effort to provide notice to family/household members who may be at risk of violence.	Preponderance of the evidence; respondent poses imminent, particularized, and substantial risk of unlawfully using firearm.
Standard of evidence for filing final ERPO	Preponderance of the evidence	Clear and convincing evidence	Clear and convincing evidence that respondent poses imminent, particularized, and substantial risk of unlawfully using firearm. Court must also consider whether a mental health or chemical dependency evaluation is appropriate.	Clear and convincing evidence that respondent poses imminent, particularized, and substantial risk of unlawfully using firearm. Court must also consider whether a mental health or chemical dependency evaluation is appropriate.
Who can file for ERPO	Whomever is on the books in that state (including law enforcement officers)	Law enforcement, family, or household member	Law enforcement, family, or household member	Family member or law enforcement officer
Can states exceed minimum standards?	Yes	N/A	Yes	Yes
Any limit on amount of time ERPOs can be filed/renewed?	No	No	No	Yes – Cannot renew an order more than twice
Length of initial (ex parte) ERPO	No longer than 30 days	14 days	No longer than 14 days	No longer than 14 days
Length of final ERPO	No longer than 1 year	No more than 180 days	No longer than 1 year	No longer than 1 year