Extreme Risk Protection Orders:
An intervention to allow family members and law enforcement to prevent tragedies
Introduction

“The NRA believes that anyone who is a danger to themselves or others should not be allowed to have a firearm. Period...We need to stop dangerous people before they act so congress should provide funding for states to adopt risk protection orders. This can protect violent behavior before it turns into a tragedy. These laws allow a court to intervene and temporarily remove firearms when a person threatens violence against themselves of others.

These proposals can be done right now. While they won’t solve everything, they will help lead to a broader discussion on how to address a culture of violence in America...There will always be evil in the world - that will never change. But, we can change our response. We can take action and prevent violence and protect the second amendment rights of law abiding citizens at the same time.”

- Chris Cox, Director of the NRA Institute for Legislative Affairs, March 12th, a month after the Parkland shooting

Extreme Risk Protection Orders (ERPOs), also known as Gun Violence Restraining Orders (GVROs), or “red flag laws” allow an immediate family member or a member of law enforcement to petition a judge to temporarily remove firearms from the possession of a person believed to be an imminent threat to themselves or others. These laws are one of the single most important ways that family members and law enforcement can prevent a tragedy, be it a firearm suicide, a homicide, or mass shooting.

Families Know First
While mental illness is not a predictor of violence, there are certain behaviors that can indicate a person is more likely to commit a violent act, either against another person or themselves. Research shows that a history of unmanaged anger, domestic violence, and substance abuse are often antecedents of gun violence. Triggering events such as loss of a job or the dissolution of a relationship can exacerbate the situation. Often, family members may be the only individuals aware that person may be a danger to themselves or someone else. Currently in Tennessee and number of other states, there is no mechanism in place for concerned family members to intervene and remove firearms from a loved one they believe to be dangerous.

Broad, Bipartisan Support
GVROs are supported by members of both political parties. The National Review has written a number of articles on them, encouraging state and federal lawmakers to pass them. The American Bar Association also supports them as does the American Medical Association.

Suicide Prevention
A study on Connecticut’s GVRO law (called a “risk warrant”) conducted by a team of researcher led by Jeffrey Swanson of Duke, found that removing guns from high risk individuals resulted in a reduction of suicides.

The Tennessee Suicide Prevention Network says one person between the ages of 10-24 commits suicide every four days, and every day at least one person over the age of 45 also takes their own life, with adults in midlife and older adults remaining at higher risk.

Firearms remain the most common means of suicide death in Tennessee, accounting for 677 of the recorded suicide deaths in 2016. In 2016, 1.85 people used a gun to take their own life every day.

According to CDC data, between 2010 and 2016, 4,435 Tennesseans used a gun to take their own life.
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“Data behind Extreme Risk Protection Orders” - The Educational Fund to Stop Gun Violence “Extreme Risk Protection Orders FAQs” - The Educational Fund to Stop Gun Violence


“AMA Recommends New, Common-sense Policies to Prevent Gun Violence” - The American Medical Association issues press release calling for gun law reforms, including gun violence restraining orders, published June 12, 2018

“Major Cities Police Chiefs Call for Universal Background Checks on All Gun Sales” (also includes call for red flag laws) published by PoliceOne.com, June 2018

Press Release from Major Cities Police Chiefs

“Red Flag Laws Gain Momentum in States” published in USA Today, March 25, 2018

“Gun Restraining Order Might Have Thwarted Florida Shooting: Experts” published by Reuters, February 15, 2018

Republican Support for GVROs

“A Gun Control Measure Conservatives Should Consider” by conservative David French, published in The National Review, February 16, 2018

“Gun Violence Restraining Orders Can Save Lives” by conservative David French, published in The National Review, March 1, 2018

“A New Gun Control Measure Could Temporarily Seize People’s Firearms if They Raise “Red Flags” - and a Growing Number of Republicans Are On Board” published in The Business Insider, February 27, 2018

“Under Pressure, NRA Voices Support for Gun Violence Restraining Orders” published in USA Today, March 19, 2018

GVROs and Suicide


“Suicide in Tennessee Reach Record-Breaking High” published by US News and World Report, January 9, 2018

Information contained in this report was compiled from data from the Giffords Law Center to Prevent Gun Violence, various advocacy groups, and media outlets.

The Safe Tennessee Project is a grassroots organization dedicated to addressing the epidemic of gun-related injuries and gun violence in Tennessee through education, advocacy, and outreach. Safe Tennessee is made up of physicians, academics, legal experts, and concerned citizens who view gun violence as a public health issue and seek evidenced-based policies and interventions to reduce the number of Tennesseans injured and killed with firearms.

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Status of State GVRO/ERPO Laws

Eight states have enacted comprehensive laws allowing family or household members, in addition to law enforcement officers (LEOs), to petition a court to keep guns away from a dangerous person in the throes of a crisis. These laws closely mirror the domestic violence restraining order processes in their respective states.

In order to prevent individuals from abusing this process, most of these states have expressly made it a crime to knowingly file a false or intentionally harassing petition.

In response to the deadly school shooting that occurred at Marjory Stoneman Douglas High School in Parkland, Florida, in 2018, Florida legislators enacted an ERPO law that allows law enforcement officers or agencies to petition a court for an order preventing a dangerous person from possessing or purchasing firearms. Unlike Connecticut’s and Indiana’s laws, Florida’s law allows officers and agencies to file for an order that prevents an individual from purchasing or possessing firearms even if he or she does not already possess them. Legislators in Rhode Island also enacted similar legislation in 2018.

A threatened school shooting in Vermont following the Parkland massacre also motivated lawmakers in that state to enact an extreme risk protection order law. Vermont's law authorizes prosecutors—either State’s Attorneys or the Office of the Attorney General—to petition for an order.

**California**
Who can petition: Family and LEOs Passed:
2014

**Connecticut**
Who can petition: LEOs only Passed:
1999

**Delaware**
Who can petition: Family and LEOs Passed:
2018

**District of Columbia**
Who can petition:
Passed: 2018

**Florida**
Who can petition: LEOs only Passed:
2018

**Illinois**
Who can petition: Family and LEOs Passed:
Effective 2019

**Indiana**
Who can petition: LEOs only Passed:
2005

**Maryland**
Who can petition: Family, LEOs, and certain categories of mental and other health workers Passed:
2018

**Massachusetts**
Who can petition: Family and LEOs Passed:
2018

**New Jersey**
Who can petition: Family and LEOs Passed:
Effective 2019
Oregon
Who can petition: Family and LEOs can petition Passed:
2017

Rhode Island
Who can petition: LEOs only Passed:
2018

Vermont
Who can petition: LEOs only Passed:
2018

Washington
Who can petition: Family and LEOs can petition Passed:
2016

Although we don’t yet know how many states will file ERPO legislation in 2019, a number of legislatures considered the legislation in 2018.

States that were considering ERPO legislation in 2018:
(*states who passed ERPO legislation in 2018, post Parkland)

Alabama
Alaska
Arizona
Delaware
District of Columbia*
Florida*
Hawaii
Iowa Kentucky Louisiana
North Carolina
Maryland*
Massachusetts*
Michigan Minnesota
New Jersey*
New York
Oregon*
Pennsylvania
Rhode Island*
Tennessee
Vermont*

Thanks to the Giffords Center to Prevent Gun Violence for the state data. More information can be found on their website:
www.lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/#state
Extreme Risk Protection Orders

Recent years have seen a number of mass shootings in which family members or friends noticed warning signs that shooters were dangerous and at risk of harming themselves or others. In response to these tragedies, states have begun enacting lifesaving tools that can prevent gun tragedies before they occur. Extreme risk protection order (ERPO) laws empower families, household members, or law enforcement officers to temporarily remove a person’s access to firearms before they commit violence.

BACKGROUND

On May 23, 2014, a disturbed and angry young man shot 10 people in the college town of Isla Vista, California. Before turning the gun on himself, the assailant also hit seven people with his car and stabbed three more. Six of his 15 victims died from their injuries. Before this massacre, however, the killer displayed such concerning behavior that his parents contacted his therapist, who alerted the police that their son was likely to do harm to himself or others. Although law enforcement interviewed him, the officers stated that, based on the information available to them, they were unable to remove the killer’s guns or take him into custody.

Similarly, the shooter who killed six people and wounded 13 others, including Congresswoman Gabrielle Giffords, in a parking lot in Tucson in January 2011, had given many indications that he was dangerous. At one point, his parents became so concerned about his behavior that they took away his shotgun. But they could not take any further action to restrict his access to guns.

On Valentine’s Day, 2018, a 20-year-old man whom his guardian described as a “ticking time bomb” massacred 17 students at Marjory Stoneman Douglas High School in Parkland, Florida. These situations are not uncommon, but they are preventable. Extreme risk protection order (ERPO) laws allow families, household members, or law enforcement officers to petition a court directly for an order temporarily restricting a person’s access to guns. This vital tool save lives by allowing the people who are most likely to notice when a loved one or community member becomes a danger to take concrete steps to disarm them.

In fact, these laws are being used to prevent mass shootings, suicides, terrorism, and other types of gun violence. In California, where an ERPO law has been in effect the longest, it has been used to disarm domestic abusers, individuals on the FBI’s terror watchlist, and suicidal family members. On April 12, the day after Vermont enacted this lifesaving policy, and two months after the Parkland massacre, Vermont law enforcement obtained an ERPO against an 18-year old who had planned a mass shooting at a high school. The would-be murderer kept a diary called “Journal of an Active Shooter,” in which he detailed his plans to cause more casualties than any previous school shooting.

FAMILY AND COMMUNITY MEMBERS OFTEN NOTICE WARNING SIGNS BEFORE SHOOTINGS

A person entering a mental health crisis often exhibits signs that may alert community members to the person’s mental state. For example, 80% of people considering suicide give some sign of their intentions and 38 out of the 62 mass shooters in the last 20 years were reported as displaying signs of dangerous mental health problems prior to the killings. Additionally, an FBI study of the pre-attack behaviors of active shooters from 2000-2013 found that the average shooter displayed four to five concerning behaviors over time, often related to the shooter’s mental health, problematic interpersonal interactions, or other signs of violent intentions. In many of these shootings, people who knew the shooter observed these signs, but federal and state laws provided no clear legal process to restrict his or her access to guns, even temporarily.
Academic researchers, including prominent experts in psychiatry and the law, have found that a person who is engaging in certain kinds of behavior, such as violence, self-harm, or ongoing abuse of drugs or alcohol, is significantly more likely to commit an act of violence towards him- or herself or others within the near future. This behavior should act as a warning sign that the person might soon commit an act of violence. In fact, research has shown that these behaviors are a stronger predictor of future violence than mental illness. In December 2013, the Consortium for Risk-Based Firearms Policy, a group of the nation’s leading researchers, practitioners, and advocates in gun violence prevention and mental health, released a report endorsing the extreme risk protection order process.

STATE EFFORTS TO RESTRICT GUN ACCESS BY PEOPLE IN CRISIS

Prior to the Isla Vista shooting, two states, Connecticut and Indiana, enacted laws allowing law enforcement officers or certain other individuals to obtain court orders removing firearms from a dangerous person. Connecticut’s law, enacted in 1999, allows two law enforcement officers, or one state’s attorney, to petition a court for a firearms removal order. Although the law was initially underutilized due to a lack of public awareness and limited law enforcement resources, use of the law increased after the 2007 Virginia Tech massacre, in which a mentally ill man killed 32 people and injured 17 others. A 2016 study demonstrated that in Connecticut, for every 10 to 20 guns seized under the law, one suicide was prevented. A 2018 study similarly found that Connecticut’s law was associated initially with a 1.6% reduction in firearm suicides, followed by a 13.7% reduction after the Virginia Tech massacre when enforcement was greatly enhanced. Additionally, Indiana’s version of this law was associated with 7.5% fewer suicides in Indiana over the decade following the law’s passage in 2005.

Following Isla Vista, states began enacting expanded versions of the laws in Connecticut and Indiana. These laws allow family or household members, in addition to law enforcement, to petition for orders that not only remove guns—and in some cases, ammunition—from the respondent, but also prevent him or her from acquiring them.

SUMMARY OF FEDERAL LAW

Under federal law, a person suffering from mental illness is not prohibited from purchasing and possessing a gun unless he or she has been formally, and involuntarily, committed to a mental institution, found not guilty by reason of insanity, or undergone some other formalized court proceeding regarding his or her mental illness. Similarly, a person who has committed a violent act towards others is not prohibited from possessing guns under federal law unless he or she is the subject of a domestic violence restraining order, has been convicted of a felony, or has been convicted of a domestic violence misdemeanor.

SUMMARY OF STATE LAW

Most states have laws mirroring the federal prohibitions on gun possession by seriously mentally ill individuals. (For more information about these state laws, visit our Categories of Prohibited People policy page). These laws allow states to enforce prohibitions on gun possession by mentally ill individuals utilizing their own law enforcement agencies and criminal justice systems. Similar to federal law, however, these laws do not provide a process for law enforcement or family members to disarm a dangerous individual who has not been adjudicated mentally ill or committed to a mental institution.

Similarly, state domestic violence laws allow a victim to seek a court order to prevent further acts of abuse and restrict the abuser’s access to guns. These laws have been enacted in all 50 states. Research has shown the laws to be effective, and courts have upheld them against various constitutional challenges. These laws are limited, however, to preventing abuse against an identifiable person and do not allow an individual to seek an order generally restraining a dangerous person’s access to guns. Because every state has a system for issuing domestic violence restraining and protective orders, and due process protections are built into those systems, ERPO laws draw heavily from the domestic violence protective order systems in their states.
LAWS THAT ALLOW FAMILY OR HOUSEHOLD MEMBERS, OR OTHERS, TO SEEK A COURT ORDER DISARMING A DANGEROUS PERSON

Four states—California, Washington, Oregon, and Maryland—have enacted comprehensive laws allowing family or household members, in addition to law enforcement officers, to petition a court to keep guns away from a dangerous person in the throes of a crisis. These laws closely mirror the domestic violence restraining order processes in their respective states.

In order to prevent individuals from abusing this process, California, Oregon, and Washington have made it a crime to knowingly file a false or intentionally harassing petition.

States that Allow Family or Household Members to Petition

- California
- Maryland
- Oregon
- Washington

States that Allow Other Categories of Non-law Enforcement to Petition

- Maryland (Certain categories of mental and other health workers)

LAWS THAT ONLY ALLOW LAW ENFORCEMENT OFFICERS OR OTHER STATE OFFICIALS TO PETITION FOR AN ERPO

In response to the deadly school shooting that occurred at Marjory Stoneman Douglas High School in Parkland, Florida, state legislators enacted an ERPO law that allows law enforcement officers or agencies to petition a court for an order preventing a dangerous person from possessing or purchasing firearms. Unlike Connecticut's and Indiana's laws, Florida's law allows officers and agencies to file for an order that prevents an individual from purchasing or possessing firearms even if he or she does not already possess them.

Also in 2018, a threatened school shooting in Vermont following the Parkland massacre motivated lawmakers to enact an extreme risk protection order similar to the one enacted in Florida, however, only a state’s attorney or the Office of the Attorney General may petition for an order.

States that Only Allow Law Enforcement Officers or Other State Officials to Petition

- Florida
- Vermont

TYPES OF ORDERS

Similar to domestic violence restraining and protection orders, ERPOs can be issued on an emergency basis or for a longer period.

Ex Parte Orders

*Ex parte* orders are orders that may be issued by a court without giving notice to the respondent. This process allows a court to quickly issue an order, but because the restrained individual is not given notice or an opportunity to contest it, the order may only last for a short period of time during which the court must set a date for a full hearing that gives the respondent an opportunity to contest the order.

In California, Maryland, Oregon, and Washington, family and household members, as well as law enforcement officers, may seek ex parte orders. In California, an ex parte order lasts no more than 21 days. In Washington, an ex parte ERPO lasts for 14 days or less. After issuing an ex parte order in Maryland (known as an “interim order,”) the court must schedule a hearing for the “first or second day on which a district court judge is sitting” after issuing the ex parte order.
In Oregon, after an ex parte order is issued, the respondent has 30 days to request a hearing to contest the order. If the respondent requests a hearing, one must be held within 21 days from the date the order was issued. If the respondent fails to request a hearing, the ex parte order becomes a final order and remains in effect for a period of one year from the date the original order was issued or until the order is terminated, whichever is sooner.33

Florida similarly allows law enforcement and Vermont allows state officials to petition for ex parte orders that can last up to 14 days.34

California also has a special procedure that allows a law enforcement officer to petition a court, orally or in writing, for a temporary emergency gun violence restraining order at any time of day or night that lasts for 21 days.35

Yearlong Orders

After a court issues an ex parte order, it must promptly hold a subsequent hearing at which the respondent has the opportunity to be heard and present evidence. If the petitioner meets the standard of proof (discussed below), the court will issue an order that lasts for one year. Discussed later in this section, each state allows the respondent to request a hearing to terminate the order during the effective period of the yearlong order.

EXTREME RISK PROTECTION ORDER PETITIONS

Evidence Showing Dangerousness

Extreme risk protection orders are designed to keep guns away from people who are at a high risk of committing violence temporarily. Accordingly, these laws are often referred to as “risk-based removal” laws. To determine a person’s level of risk, states often require or authorize courts to consider certain types of evidence that research has demonstrated indicates a person is at an elevated risk of committing violence.36 For example, in California, when filing a petition for an order, the court must consider the following evidence:37

- Threats or acts of violence by the respondent towards self or another within the past six months
- A violation of a domestic violence emergency protective order that is in effect at the time the court is considering the petition
- A violation of an unexpired domestic violence protective order within the past six months
- Any conviction for any crime that prohibits purchase and possession of firearms (Even if a person is prohibited from purchasing or possessing firearms due to a criminal conviction, an ERPO may be necessary to require the individual to relinquish his or her firearms. Read more about disarming dangerous people in our report, Keeping Illegal Guns Out of Dangerous Hands)
- A pattern of violent acts or threats within the past 12 months

California courts are also authorized, but not required, to consider any other evidence that is indicative of an increased risk for violence, such as:38

- Unlawful and reckless use, display, or brandishing of a firearm
- Use or threats of physical force against another person
- Prior arrests for felonies
- History of violations of domestic violence protective orders
• Police reports and conviction records of criminal offenses within the past six months that involve controlled substances or alcohol, or documentary evidence of ongoing abuse of controlled substances or alcohol

• Recent acquisition of firearms, ammunition, or other deadly weapons

**Number, Types, and Locations of Firearms**

ERPO petitioners are also generally required to include information they have about firearms, and in some cases, ammunition, the respondent possesses. For example, Washington requires a petition to identify the number, types, and locations of any firearms the petitioner believes to be in the respondent’s current ownership, possession, custody, or control. By including this information in the petition, if a court issues an order and the respondent fails to relinquish the identified firearms, the court may issue a search warrant allowing law enforcement to search the respondent's property for these firearms.

**Standard of Proof**

In order for the court to issue an extreme risk protection order, the petitioner must prove that the respondent is dangerous. The standard the petitioner has to meet depends on the type of order and the length of time it restrains the respondent from possessing guns. For an emergency order that can be issued ex parte without notice to the respondent, the standard of proof is often lower to make it easier for a petitioner to obtain the order and prevent violence in an emergency situation. The lower standard of proof for an ex parte order is justified by the fact that the ex parte order only lasts for a short period of time before the court holds a hearing at which the petitioner must meet a higher standard.

For example, in Florida, a law enforcement officer who petitions for an ex parte order must prove that there is "reasonable cause to believe that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having . . . a firearm or ammunition." However, to obtain an order that lasts for one year, the petitioner must prove by "clear and convincing evidence" that the respondent poses a significant danger—a significantly higher legal standard.

**Relinquishment Procedures**

A critical component of any law that seeks to disarm a dangerous person is the process that requires the individual to relinquish his or her guns. In California, when a court issues an order, the respondent is required to immediately relinquish all firearms and ammunition. If a law enforcement officer serves an order that indicates that the respondent possesses any firearms or ammunition, the officer must request that the respondent turn over the firearms and ammunition to the control of the requesting officer. If a law enforcement officer is unable to personally serve the order, the respondent is required to relinquish his or her guns and ammunition to the local law enforcement agency within 24 hours of being served the order. In lieu of transferring his or her guns to a law enforcement agency, the respondent may sell or transfer all firearms and ammunition to a licensed firearms dealer. The law enforcement officer or licensed firearms dealer taking possession of any firearms or ammunition must issue a receipt to the person surrendering the firearms or ammunition. Within 48 hours after being served the order, the respondent must file the receipt with the court that issued the order and with the law enforcement agency that served the order.

Florida, Maryland, Oregon, Vermont, and Washington have similar provisions requiring people subject to extreme risk protection orders to relinquish their firearms and, in some cases, licenses to possess or carry firearms.

**Order Renewal and Termination**

Extreme risk protection orders may be renewed. To renew an order, the petitioner must request a hearing and prove that the respondent still poses a risk of harm to the safety of him or herself, or others, by possessing firearms. At the renewal hearing, the petitioner generally must meet the same burden of proof using the same categories of evidence he or she used to obtain the initial, one-year order.
Individuals subject to extreme risk protection orders may also request a hearing to prove they no longer pose the risk that initially justified the order. Generally, respondents may request one hearing during the effective period of the order at which they bear the burden of proving, by the same standard used to obtain the order, that they no longer pose the risk of harm.

FIREARM REMOVAL LAWS

Firearm removal laws are similar to extreme risk protection orders in that they allow certain categories of people to obtain court orders removing guns from dangerous people. These laws differ from extreme risk protection orders in that the orders may only be used to remove firearms already in the possession of a respondent whereas extreme risk protection orders may be obtained against individuals who do not possess firearms.

Connecticut

In 1999, Connecticut enacted a firearms removal law. The law allows a state’s attorney, or any two police officers, to file a complaint for seizure of a firearm or ammunition when they have probable cause to believe that:

- A person poses a risk of imminent personal injury to himself, herself or others
- The person possesses one or more firearms
- The firearm is within or upon any place, thing or person

Probable cause may be based on evidence similar to the categories of evidence courts must review when reviewing petitions for ex parte GVROs and ERPOS. The Connecticut law also allows a court to issue a search and seizure warrant for firearms or ammunition possessed by the dangerous individual. The court must hold a hearing no later than 14 days after execution of the warrant to determine whether the seized firearms and ammunition should be returned to the person named in the warrant. If the court finds by clear and convincing evidence that the person poses a risk of imminent personal injury to himself or herself or others, it may order the state to continue to hold the firearms and ammunition for up to one year.

Although Connecticut’s law could not be used to prevent a person who does not possess firearms from acquiring them in the future, a person whose guns have been removed pursuant to the state’s removal law is prohibited from purchasing new firearms for the duration of the order.

Indiana

Indiana also has a law similar to Connecticut’s that allows a law enforcement officer to file a sworn affidavit with a court describing the facts that have led the officer to believe an individual is dangerous and in possession of a firearm. A dangerous individual is someone who presents one, or more, of the following:

- An “imminent risk” of personal injury to himself, herself or another person
- A risk of personal injury to himself, herself, or another person in the future and he or she either:
  - Has a mental illness that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual’s medication while not under supervision
  - Is the subject of documented evidence that would give rise to a reasonable belief that he or she has a propensity for violent or emotionally unstable conduct

The affidavit must also describe the officer’s interactions and conversations with the individual who is alleged to be dangerous or another individual, if the law enforcement officer believes that information obtained from this individual is credible and reliable.
If the court concludes probable cause exists to believe the individual is dangerous and in possession of a firearm, the court may issue a search and seizure warrant for the individual’s firearms.\textsuperscript{57}

Law enforcement officers may also seize firearms without a warrant from any individual whom the law enforcement officer believes to be dangerous.\textsuperscript{58} In such an instance, the court must ultimately hold a hearing within 14 to 16 days to determine whether probable cause exists to find that the individual is dangerous and law enforcement should retain his or her firearms and concealed carry license, if applicable.\textsuperscript{59}

Law enforcement will retain the individual’s firearms indefinitely unless he or she petitions the court no less than 180 days after the initial ruling and proves by a “preponderance of the evidence” that he or she is no longer dangerous.\textsuperscript{60} If the court denies return of the firearm, the petitioner must wait another 180 days before filing a subsequent petition. If at least five years have passed since a court conducted the first hearing, the court, after giving notice to the parties and conducting a hearing, may order the law enforcement agency having custody of the firearm to dispose of the firearm.\textsuperscript{61}

Unlike Connecticut’s firearm removal law, Indiana has no provision preventing a person subject to a seizure warrant from acquiring new firearms.

Both the Connecticut and Indiana laws have been upheld by state courts as constitutional under the Second Amendment.\textsuperscript{62}

\**Illinois**

In Illinois, the Firearms Seizure Act\textsuperscript{63} allows any person to bring a complaint before a circuit court that a person possessing a firearm(s) has threatened to use the firearm(s) illegally. If the court is “satisfied that there is any danger of such illegal use of firearms,” it must issue a warrant to apprehend the person for appearance before the court, and authorize the seizure of any firearm in the person’s possession. The court must order any firearm taken from the person to be kept by the state for safekeeping for a stated period of time no longer than one year. The firearm(s) must be returned to the person at the end of the stated period. The court may enter judgment against a person who files a complaint maliciously and without probable cause.

Because the Firearms Seizure Act does not require an individual to relinquish his or her Firearm Owners Identification (FOID) card which is required to purchase or possess a firearm in the state, (Illinois has a separate law that requires this, see below), a person whose firearms have been removed pursuant to the Act may not prohibited from acquiring new ones.

\**LICENSE REVOCATION PROCEDURES**

Three states—Illinois, Massachusetts, and New York—require a license to possess firearms. Each state has a procedure to revoke a person’s firearm license if the individual poses a danger to themselves, others, or the general public.

\**Illinois**

In addition to its Firearms Seizure Act discussed in the preceding section, in Illinois, a person is prohibited from possessing a firearm if his or her mental condition (meaning a state of mind manifested by violent, suicidal, threatening, or assaultive behavior) is of such a nature that it poses a clear and present danger to self, others, or the community.\textsuperscript{64} A person poses a clear and present danger if he or she (1) communicates a serious threat of physical violence against a reasonably identifiable victim or poses a clear and imminent risk of serious physical injury to self or others or (2) demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior.\textsuperscript{65}

The individuals listed below are required to report to the Department of State Police (DSP) within 24 hours when they determine a person poses a clear and present danger to himself, herself, or others.
• Law enforcement officials and officers
• School administrators
• A physician, clinical psychologist, or qualified examiner (must report to the Department of Human Services which is required to transfer the information to DSP)

If a person is determined by DSP to pose a clear and present danger to self, others, or the community, it may revoke the individuals FOID card. Once a person's FOID card has been revoked, he or she is required to surrender his or her FOID card to the local law enforcement agency where the person resides. The local law enforcement agency must provide the person with a receipt and transfer the FOID card to the DSP.

The individual must also complete a Firearm Disposition Record form which must disclose the make, model, and serial number of each firearm owned by the person, the location where each firearm will be maintained during the prohibited term, and if any firearm will be transferred to another person, the name, address, and FOID card number of the transferee. A copy of this form must be provided to the person whose FOID card has been revoked and to the DSP.

A violation of these requirements is a misdemeanor. If a person who receives a notice of revocation fails to comply with these requirements, the local law enforcement agency may petition the circuit court to issue a warrant to search for and seize the FOID card and firearms in the possession of that person.

On April 22, 2018, an individual whose FOID card had been revoked by DSP for posing a clear and present danger shot and killed four people at a Waffle House in Nashville, Tennessee. Pursuant to Illinois law, the shooter turned his firearms over to his father, who illegally returned the firearms to his son.

Massachusetts

In order to purchase a long gun in Massachusetts, an individual must have either a License to Carry or a Firearms Identification Card (FID). For handgun purchases, anyone without a License to Carry must possess an FID as well as a purchase permit.

If the licensing authority deems an applicant for a FID “unsuitable,” it must file a petition with a court and, at a hearing, prove by a preponderance of reliable, articulable, and credible evidence that the applicant has behaved in a way to suggest he or she could potentially create a risk to public safety. The licensing authority may also deny or revoke a License to Carry if reliable and credible evidence exists to believe the applicant poses a public safety risk. It is not necessary for the licensing authority to petition a court to deny or revoke a License to Carry, though the applicant may request a court hearing to contest the denial.

When a person receives a notice of revocation, he or she must “without delay” deliver or surrender all firearms and ammunition in his or her possession to the licensing authority where he or she resides. After taking possession, the licensing authority may transfer possession of any firearms and ammunition to a licensed firearms dealer for storage purposes. The dealer must issue a receipt to the prohibited person, who is liable to the dealer for reasonable storage charges. Through the dealer, the prohibited person may then transfer any relinquished firearms to a person lawfully permitted to purchase or take possession of the weapon.

New York

New York requires individuals wishing to possess a handgun to obtain a license. The licensing authority is required to issue an order suspending or revoking the individual’s license when it receives a report regarding a mental health patient who may be a danger to himself, herself, or others. A person whose license has been revoked is entitled to a court hearing.

Whenever a person’s license is suspended or revoked, that person must surrender his or her license to the appropriate licensing official. In addition, any and all firearms possessed by the person must be
surrendered to an appropriate law enforcement agency. If these firearms are not surrendered, law enforcement must remove all such weapons and declare them a nuisance.80

KEY LEGISLATIVE ELEMENTS

Giffords Law Center has drafted model ERPO legislation. Please contact us directly for a copy of our model law. Any ERPO legislation should include:

• **Immediate ERPOs:** The court must consider any petition for an ERPO within 24 hours and should be able to issue an ERPO immediately to prevent the harm that might result if the person continues to have access to firearms. When determining whether to issue an ERPO before notice to the person, the court must consider the risk that he or she may attempt to conceal guns that are already in his or her possession.

• **Hearing and Duration:** An ERPO issued without a hearing should only be valid until the court can hold a hearing where the respondent has the opportunity to participate. At the hearing, the court should be able to issue an ERPO for a longer period, such as one year. The petitioner should be able to ask the court to renew the order.

• **Surrender of Guns:** A person who is served with an ERPO must be required to immediately surrender all firearms in his or her possession. Law enforcement must provide the person with a receipt and take these weapons into custody for the duration of the ERPO. The law may allow the restrained person to immediately surrender all firearms and ammunition to law enforcement or sell them to a licensed dealer. In either circumstance, the restrained person must obtain a receipt, which must be filed with law enforcement and the court that issued the order.

• **Search Warrant:** If a person subject to an ERPO does not file a receipt demonstrating that he or she has relinquished firearms believed to be in his or her possession, the court should be required to issue a search and seizure warrant upon a finding of probable cause that the person possesses firearms.

• **Fee Waivers:** No fees should be charged to file or serve an ERPO. In many states, fees for filing and service of domestic violence protection orders are not required.

• **Protections for Co-habitants:** The law should provide that a gun may not be seized pursuant to a warrant if the gun is owned by someone other than the person subject to the ERPO and is stored so that he or she does not have access to it. Also, a gun safe owned solely by someone else may not be searched.

• **Notice to Law Enforcement:** Law enforcement should be notified when a petition for an ERPO is filed, so that law enforcement can determine whether the dangerous person already has a gun. Law enforcement may also have other relevant evidence that can assist the court in determining whether to issue an ERPO.

• **Penalty for False Petitions:** The law should impose a criminal penalty on any person who files a petition for an ERPO that contains statements the person knows are false.

• **Reporting for Background Checks:** Upon issuing an ERPO, the court must ensure that records identifying the person subject to the ERPO who is restrained from having a gun are promptly submitted to the background check system. This requirement will help ensure that the person cannot purchase any new guns.

• **Ammunition:** Each provision of the law should apply to ammunition as well as firearms.
NOTES


2. California’s law is known as a Gun Violence Restraining Order or GVRO.


7. Id. at 8.

8. Id. at 24–31.


10. Id.


12. Id.

13. 18 U.S.C. § 922(d)(4); See 27 C.F.R. § 478.11 (Defines “adjudicated as a mental defective” and “committed to a mental institution.”).


16. Rev. Code Wash. §§ 7.94.030(1) and 7.94.020(2).

17. 2017 OR SB 719.


22. 2017 OR SB 719.

23. Rev. Code Wash. §§ 7.94.030(1) and 7.94.020(2).


33. 2017 OR SB 719.


42. Cal. Pen Code § 18180(b).
43. *Id.*
44. Fla. Stat. § 790.401(7).
46. 2017 OR SB 719.
52. *Id.*
63. 725 Ill. Comp. Stat. 165/0.01 et seq.
64. 430 Ill. Comp. Stat. 65/1.1.
68. 430 Ill. Stat. Comp. 65/9.5(a), (b).
69. *Id.*
70. *Id.* at (c), (d).
76. *Id.*
77. N.Y. Penal Law §§ 265.00 et seq., 400.00, 400.01.
78. N.Y. Penal Law § 400.00(11)(b).
80. N.Y. Penal Law § 400.00(11)(c).
Key Features of a Red Flag Law

The purpose of Red Flag legislation (sometimes called a “gun violence restraining order” or GVRO, or an Emergency Risk Protection Order, or ERPO) is to create a new type of civil restraining order that can temporarily restrict a person’s access to firearms if they pose a risk of harming themselves or others with a gun.

A red flag law would allow family members and/or law enforcement officials to petition a judge to temporarily remove firearms from individuals in crisis. The policy, which is based on behavioral risk factors for dangerousness rather than a mental health diagnosis, gives loved ones the tools to protect individuals in crisis. Concerned relatives can get help for a family member they know to be suicidal, a loved one who is having thoughts of harming others, or a family member whose erratic behavior, violence, and co-occurring substance abuse suggest additional violence is imminent.

When a person is believed to pose an imminent risk to themselves or others, law enforcement and family members would be able to seek these orders, temporarily prohibiting the person from possessing firearms and ensuring that the person turns in any firearms in their possession.

When those who recognize red flags are empowered to act, they can prevent warning signs from turning into tragedy.

Eligible Petitioners

Ideal petitioners are law enforcement officers and family or household members, those who are most likely to see warning signs.

Required Contents of Red Flag Order Petitions

Sworn factual allegations that the person who would be restrained poses a significant risk of causing injury to themselves or others by having guns in their possession or by having access to guns.

Supported by specific evidence of why the petitioner believes the respondent poses such a risk.

Petitions would also identify the number, types, and locations of any firearms currently in the respondent’s possession (if known to the petitioner).

Types and Durations of Orders

Ex parte orders—issued before notice to the respondent and before a hearing—may be issued if the petitioner demonstrates to the court that the order is necessary to prevent imminent harm or harm that is likely to occur before a full hearing can be conducted.

Ex parte orders are vitally important to an effective Red Flag law. When there are signs of immediate danger, any delay can be the difference between life and death.

If courts are not authorized to act quickly in cases where the risk of harm is most serious, the law’s ability to ensure public safety will be seriously undermined.
As is the case with domestic violence restraining orders, ex parte red flag orders remain in effect only for a short time—usually between 7 and 21 days—balancing the pressing need to ensure public safety with the due process rights of all those involved.

The standard of issuance for an ex parte Red Flag order should match the existing standard for issuance of an ex parte domestic violence restraining order.

Final orders, which typically last for up to one year, can only be issued after a hearing at which the respondent has an opportunity to appear and to present evidence as to why an order should not be issued.

The standard for final Red Flag orders should match the existing standard for issuance of final domestic violence restraining orders.

**Factors Courts Should Consider when Evaluating Petitions**

- Recent acts or threats of violence against self or others.
- A history of using violence against self or others.
- Prior convictions for crimes of violence, domestic violence crimes, stalking, and other relevant criminal history.
- Evidence of drug or alcohol abuse.
- The existence or previous violations of protective orders, no-contact orders, or red flag orders.
- Prior unlawful or reckless use of firearms.
- The respondent's ownership, access to, and recent attempts to acquire firearms.
- Courts may also consider any other reliable evidence that is relevant to the risk the respondent poses to self or others by having access to firearms.

**Mental health and Red Flag Laws**

Red flag laws may acknowledge that behavior linked to mental health issues may be among the warning signs that indicate a person poses a risk of harming themselves or others. *However, the fact that a person suffers from mental illness does not necessarily make them dangerous, and many people who are dangerous are not suffering from mental illness.*

Therefore, red flag laws must not be conflated with laws governing the involuntary commitment of those who suffer from mental illness, which generally focus on whether a person suffering from severe mental illness poses a danger to themselves or others.

All 50 states have laws in place that allow authorities to involuntarily detain a person who is dangerous due to mental illness for psychiatric evaluation. *Though state laws vary, the*
standards for involuntary commitment are very high and are only applicable to those whose severe mental illness makes them a danger to themselves or others.

Red Flag laws are meant to address risks of harm evidenced by a wide range of warning signs, such as acts of violence, threats, drug and alcohol abuse, or stalking behavior. These warning signs may have nothing to do with mental illness, so involuntary commitment is not an option.

Even in cases where mental illness is among the warning signs, a person's mental illness might not be severe enough to justify an involuntary commitment. Because involuntary commitment deprives the patient of their liberty, the bar for such commitments is extremely high. As a result, someone who poses a risk of harm to themselves or others may not meet the requirements, and thus would not be prohibited from possessing firearms.

The fact that a person's mental illness doesn't meet the high legal standard for involuntary commitment does not mean they pose any less of a threat with a firearm. In those cases, a Red Flag law can fill a dangerous gap, restricting a person’s access to firearms when they are in crisis even if their diagnosis and behavior doesn't meet the very high standard for involuntary commitment.

Indeed, recent mass shootings demonstrate how commitment law may be insufficient for law enforcement to intervene. For example, before killing six people in Isla Vista, California in May 2014, the shooter displayed numerous warning signs, including making homicidal and suicidal threats. His parents alerted law enforcement, but he did not meet the criteria for emergency mental health commitment. As a result, he kept his guns and used them in the killing spree three weeks later. In response to that tragic shooting, California passed its Red Flag Law.

**Surrender of Firearms by Restrained Persons**

When any red flag order is issued, a copy of the order (including a clear explanation of its effects) is personally served on the restrained person by a law enforcement officer.

At the time of service, the law enforcement officer ensures that any firearms in the restrained person’s possession be surrendered in accordance with the order. The officer may also conduct any searches authorized by law to remove prohibited firearms.

Any firearms not immediately surrendered at the time of service must be surrendered within 24 hours to a law enforcement officer or sold to or stored with a licensed firearms dealer.

Law enforcement officers and dealers must issue a receipt for all surrendered firearms and those receipts must be filed with the court.

If there is evidence that a restrained person has failed to surrender any prohibited firearms, prosecutors or law enforcement may seek a search warrant. If the court finds probable cause to believe the restrained person possesses prohibited firearms, they may issue a warrant to search for and remove those firearms.
Renewal and Termination of Orders

If a final order is issued by the court, the restrained person is entitled to one hearing to request that the order be terminated. The restrained person has the burden of proving at the hearing that they no longer pose a threat to self or others by having access to firearms.

Final red flag orders can be renewed after they expire, but only after a new hearing is held at which all parties have an opportunity to appear. At the renewal hearing (as at the hearing for the initial order), the petitioner must show that the respondent still poses a threat to self or others by having access to firearms.

Return of Firearms upon Expiration of Red Flag Orders

When a red flag order expires, and is not renewed, the order’s firearms prohibition and surrender requirement are lifted.

Any firearms that were surrendered by the respondent may be returned to them, but only after a background check confirms that the respondent is not otherwise prohibited from possessing firearms.

Penalties

A restrained person who knowingly violates a red flag order by purchasing or possessing a firearm are guilty of an offense.

As a protection against abuse, the law may create an offense for a person who knowingly makes false statements in a petition for a red flag order, or who files an order with the intent to harass a person.
Data Behind Extreme Risk Laws
A Look at Connecticut’s Risk-Warrant Law

Law enforcement and families are in desperate need of tools to temporarily suspend firearms access for at-risk individuals during periods of crisis. Extreme Risk Laws fill this need.

**Risk-Warrant in Connecticut**
In 1999, Connecticut became the first state to pass a law granting law enforcement the clear legal authority to temporarily remove firearms from individuals when there is probable cause to believe they are at a significant risk of harm to self or others (called a risk-warrant).

A dozen more states now have similar laws, though some also allow family members to petition for these orders.

A recent analysis of Connecticut’s risk-warrant law by Dr. Jeffrey Swanson of Duke University, with a team of nine other researchers, adds to the evidence for risk-based firearms removal laws by demonstrating that such policies are promising and effective tools to save lives. Their findings are detailed below.

**Reaching high-risk people and saving lives**
In the first 14 years of Connecticut’s risk-warrant law (1999-2013):
- 762 risk-warrants were issued, with increasing frequency after the 2007 Virginia Tech shooting.
- Police found firearms in 99% of cases.
- Police removed an average of seven guns per subject.

**Suicide Prevention**
- Typical risk-warrant subject was a middle-aged or older man - the same demographic that, nationwide, is most at risk for firearm suicide.
- Suicidality or self-injury was a listed concern in ≥61% of cases where such material was available.
- 21 risk-warrant subjects went on to die by suicide, a rate about 40 times higher than the adult suicide rate in Connecticut.
- 6 of 21 suicides were by firearm. Known case fatality rates of suicide methods were used to estimate that the 21 suicides likely represent 142 attempts, mostly by means less lethal than guns.
- In the absence of a risk-warrant and if firearms had been available and used in more of the risk-warrant subjects’ attempts, more would have died by suicide.

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**States with Extreme Risk Laws**

<table>
<thead>
<tr>
<th>State</th>
<th>Law Description</th>
</tr>
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<tbody>
<tr>
<td>California</td>
<td>Gun Violence Restraining Order</td>
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<tr>
<td>Connecticut</td>
<td>Risk-warrant</td>
</tr>
<tr>
<td>Delaware</td>
<td>Lethal Violence Protection Order</td>
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<tr>
<td>Florida</td>
<td>Risk Protection Order</td>
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<tr>
<td>Illinois</td>
<td>Firearms Restraining Order</td>
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<tr>
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<td>Proceedings for the Seizure and Retention of a Firearm</td>
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<tr>
<td>Maryland</td>
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<tr>
<td>Massachusetts</td>
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<tr>
<td>New Jersey</td>
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<td>Oregon</td>
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<td>Rhode Island</td>
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<td>Vermont</td>
<td>Extreme Risk Protection Order</td>
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<tr>
<td>Washington</td>
<td>Extreme Risk Protection Order</td>
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</table>
How did the researchers reach this conclusion?

Since attempted suicide with a firearm has such a high case fatality rate, reducing the percentage of suicide attempts with a firearm saves lives. The researchers developed a model to estimate how many suicides would likely be averted by limiting access to guns through risk-warrants.

1. Estimated the likelihood of choosing a gun in a suicide attempt:
   Used national data to estimate the likelihood that a matched population of gun owners would have chosen a gun in attempting suicide.

2. Applied this likelihood to develop a model that:
   Calculates how many more estimated suicide attempts would have been fatal had risk-warrant subjects still been in possession of firearms in the absence of the risk-warrant.

3. The resulting model:
   Considers various levels of risk and results in the range that for every 10 to 20 risk-warrants, one life is saved.

Access to Health Care

- **Before risk-warrant**: Most risk-warrant subjects (88%) were not known to Connecticut’s public behavioral health system when the warrants were served – despite their elevated risk of self-harm.
- **After risk-warrant**: Nearly one-third (29%) of subjects received treatment in the state system
- **Significance**: Risk-warrants provided a portal to critical mental health and substance abuse services.

Conclusion

This analysis by Swanson and colleagues shows that risk-warrants:

- Reached individuals who were at a dangerously elevated risk of suicide.
- Prevented additional suicide deaths by intervening in crises.
- Provided safe periods for subjects to obtain much-needed treatment services.
- Saved lives by shifting suicide attempt methods from firearms to less lethal means.

Research estimates for every 10-20 risk-warrants issued, one life is saved.

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6 Case fatality rates (or ratios) represent the percent of people who die in a suicide attempt, in this case by specific methods.

7 29% is a conservative estimate; it is likely that additional risk warrant subjects sought private mental health and substance use treatment services that are not included in this figure.
A Extreme Risk Protection Order (ERPO) is a court-issued civil order that empowers families and law enforcement to prevent gun tragedies by reducing access to guns for individuals at an elevated risk of endangering themselves or others. A ERPO temporarily prohibits the purchase and possession of firearms and requires the removal of any firearms currently possessed while the order is in effect.

HOW DOES THE ERPO LEGISLATION FILL A GAP IN CURRENT LAW?

Many state laws prohibit individuals who are at high risk of committing violence, such as violent misdemeanants and domestic abusers, from purchasing and possessing firearms.1 However, there is often no legal process for removing firearms already possessed by such individuals, even if family members or law enforcement believe them to pose an elevated risk of violence to themselves or others. Moreover, there are times when individuals are temporarily

1. 114,000 Americans were shot in 2014 alone—over one million in the last decade.7,8

2. ONE LIFE IS SAVED FOR EVERY 10-20 RISK-WARRANTS ISSUED. (Connecticut’s ERPO-style law).9

3. 60% of gun deaths are suicides.10

4. 85% of suicide attempts with a firearm are fatal, making firearms the most lethal suicide attempt method that is commonly available. Temporarily reducing access to guns significantly increases the likelihood of surviving a suicidal crisis.11

5. 90% of people who survive a suicide attempt do not ultimately die by suicide.12
at a higher risk of violence towards self or others, but have no accompanying prohibition from purchasing and possessing firearms. This can leave families and law enforcement in a dangerous situation without legal tools for intervention. Waiting for an individual to act in a manner that would prompt a firearm prohibition sometimes means that the opportunity for intervention comes too late to prevent a tragedy. An ERPO fills a gap in state laws by initiating a stronger preventative measure through the judicial system that allows family members and law enforcement to reduce access to firearms by individuals who pose a threat to themselves or others.

WHY ARE ERPOS NEEDED?

The ERPO is a policy tool that was developed by the Consortium for Risk-Based Firearm Policy in 2013 and first enacted into law after the deadly shooting on the University of California, Santa Barbara campus in 2014. The shooter had exhibited dangerous behaviors prior to the shooting, and his parents shared their concerns with his therapist who contacted law enforcement. The police briefly interviewed him but had no legal authority to intervene. Situations like this leave family members and law enforcement with limited options. An ERPO provides a legal process to prevent tragedies from occurring.

WHO CAN PETITION FOR AN ERPO?

Law enforcement officers and immediate family and household members of the individual exhibiting dangerous behaviors have the ability to petition for an ERPO. Family members may include:

- spouses, current or former
- cohabiting couples
- children
- parents
- siblings
- persons in a current or former dating relationship

WHAT TYPE OF EVIDENCE HAS TO BE PROVIDED TO OBTAIN AN ERPO?

There are two types of ERPOs: an ex parte ERPO that may be sought by both family and law enforcement that would only be issued if an individual poses an immediate risk of harm to himself or herself and others in the near future by having access to a firearm; and a non-emergency, year-long ERPO if there is sufficient evidence that the respondent poses a significant danger of injury to himself or herself and others. The petitioner must allege in writing that the respondent poses a threat of personal injury to themselves or others by owning, possessing, or purchasing a firearm. The petitioner must provide credible evidence that the respondent poses the risk alleged in the petition. This evidence may include recent threats or acts of violence by the respondent toward him or herself, recent violations of domestic violence protection orders, or evidence of a pattern of violent threats or acts.
HOW LONG DOES IT TAKE FOR A HEARING TO HAPPEN AFTER A FAMILY MEMBER OR LAW ENFORCEMENT OFFICER FILES A PETITION?

After a family member or police officer files a petition, a judge may issue an ex parte ERPO without notice to the respondent. However, a full hearing where the respondent has an opportunity to be present must be scheduled within a short time frame, typically 21 days. At this hearing, the judge will determine if the order should remain in effect for a longer time period, typically up to one year, or if it should be terminated.

HOW ARE DUE PROCESS PROTECTIONS ADDRESSED DURING AN EX PARTE ERPO?

Similar to the domestic violence ex parte order, an emergency ERPO requires a petitioner to file an affidavit with the court alleging that the respondent poses an immediate and present danger to himself or herself and others. The judge must then determine whether the petitioner has met the standard of proof to issue the ex parte ERPO. If it is issued, the person subject to the order is entitled to a full hearing before a judge within a short time frame, typically 21 days, to determine if the order should remain in effect or be dismissed. The ERPO process provides the respondent with adequate due process before restricting his or her access to firearms. The due process protections afforded by the ex parte ERPO are nearly identical in substance and form to those afforded by the domestic violence ex parte (or temporary) protective order.

HOW WILL THE RESPONDENT’S INFORMATION BE SHARED?

No names, addresses, or other identifying data of any individuals or firearms identified in the ERPO will become a public record.

WHAT HAPPENS TO THE RESPONDENT’S FIREARMS?

"Respondents to a ERPO shall be required to remove all firearms from their possession. Firearms that have been removed may be stored by law enforcement, a federally licensed firearms dealer, a neutral third party, or some combination thereof." Once the order has expired, the respondent may petition the court to have their firearms returned.

CAN THE RESPONDENT REQUEST THAT THE ERPO BE TERMINATED?

Yes, the respondent may file a written request for a hearing to terminate a ERPO at any time during the period that the order is in effect. The specifics of this request may vary state to state. During the hearing, the respondent would be required to provide proof that he or she does not pose a serious threat of causing personal injury to him or herself or others by having access to firearms.
DOES THE ERPO VIOLATE AN INDIVIDUAL’S SECOND AMENDMENT RIGHTS?

No, the ERPO is a tool to empower families and law enforcement that is permissible under the Second Amendment. The Supreme Court noted in the 2008 *Heller* decision that the Second Amendment is not unlimited and there are categories of people, such as people with felony convictions and people who have been adjudicated as a “mental defective” or have been “committed to any mental institution,” that should be prohibited from possessing firearms. Subsequent court rulings in Connecticut and Indiana have upheld ERPO laws stating that states may restrict access to firearms by dangerous people if it is in the interest of public safety or an individual’s welfare.

WHICH STATES HAVE SIMILAR LAWS?

In 2014, California became the first state to enact an ERPO-type law, known as both the Gun Violence Restraining Order (GVRO) and Firearms Restraining Order (FRO). In November 2016, Washington voters overwhelmingly passed an Extreme Risk Protection Order law. Connecticut and Indiana have had longstanding similar laws that enable only law enforcement to petition the court system to temporarily remove firearms from an individual who is at risk of harming themselves or others.

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3. The GVPO is known as the Gun Violence Restraining Order (GVRO) in the Consortium for Risk-Based Firearm Policy report.
4. Refer to individual state law to see state definitions of family and household members.
ANNUAL MEETING

Gun violence restraining orders backed by House of Delegates

BY DEBRA CASSENS WEISS

POSTED AUGUST 15, 2017, 9:25 AM CDT

Updated: A measure addressing gun violence won approval from the ABA House of Delegates on Tuesday, despite some opposition by those who raised due process issues.

Resolution 118B

urges state and local governments to enact laws and regulations authorizing courts to issue gun violence restraining orders, including ex parte orders that don’t require the presence of the targeted person.

Those petitioning for a restraining order should provide documented evidence that a person poses a serious threat to himself or to others, according to the resolution. There should also be a verifiable procedure to ensure surrender of guns and ammunition pursuant to a restraining order, the resolution says.

The restraining order should be reported to appropriate state and federal databases so that a person subject to the order is unable to obtain a gun or gun license while the order is in effect, the resolution says.

Estelle Rogers of the Section of Civil Rights and Social Justice spoke in favor of the resolution. “Gun violence restraining orders are a modest common-sense reform to address at least one piece” of the gun violence problem, she said.

The right to keep and bear arms isn’t absolute, Rogers told the House. The Second Amendment protects the rights of law-abiding and responsible citizens, but not those who pose a serious threat to themselves or others, she said.
Also speaking in favor of the resolution was Monte Frank of Newtown, Connecticut, who lives close to the elementary school where 20 children and six school staff members were killed in a mass shooting in 2012.

Connecticut had enacted a gun seizure law in 1999 that was used 762 times to remove guns from potentially violent people from 1999 to 2013. “I wish it had been used in Newtown,” said Frank.

Police found guns in 96 percent of the cases in which they conducted a search under the law, he said. Researchers estimated that for every 10 to 20 gun seizures under the law, one suicide had been averted, according to Frank, a Connecticut Bar Association delegate.

Peter Langrock of Vermont spoke against the resolution. “I’m here because I’m a lawyer and I believe in the Constitution,” he said.

Langrock said such orders raise First Amendment concerns because they could target people based on speech, including statements on social media. Langrock also said the ex parte orders raise 14th Amendment due process concerns, and gun seizures based on such orders raise Fourth Amendment concerns.

The Law Student Division also opposed the resolution because of concerns about ex parte orders, said delegate Rene Morency.

The resolution was approved by a voice vote.

A report to the House of Delegates says incidents of mass shootings have demonstrated the need for gun violence protection orders. “In many of these incidents,” the report says, “community members noted warning signs beforehand, but there was nothing they could do to remove the shooter’s access to guns before the tragedy.”

California, Connecticut, Indiana and Washington have laws providing for gun violence restraining orders, while police in Illinois and Massachusetts can try to remove guns from potentially dangerous people through gun licensing laws.

Follow along with our full coverage of the 2017 ABA Annual Meeting (http://www.abajournal.com/topic/annual-meeting).

Updated headline at 3:50 p.m. on Aug. 17.
AMA Recommends New, Common-sense Policies to Prevent Gun Violence

For immediate release: Jun 12, 2018

CHICAGO – Shocked by the massacre at the Pulse Nightclub in Orlando in 2016, the American Medical Association (AMA) declared that gun violence in America is a public health crisis. Since then, tens of thousands more Americans have died in gun violence, in mass shootings and suicides, incidents that often stunned the nation and sometimes went unnoticed even locally. Delegates to the AMA Annual Meeting this week seized on this sense of urgency and passed numerous resolutions that bolstered the AMA's already strong policy on gun violence prevention, ranging from banning bump stocks to opposing concealed carry reciprocity legislation.

“People are dying of gun violence in our homes, churches, schools, on street corners and at public gatherings, and it’s important that lawmakers, policy leaders and advocates on all sides seek common ground to address this public health crisis,” said AMA Immediate Past President David O. Barbe, M.D. “In emergency rooms across the country, the carnage of gun violence has become too routine experience. Every day, physicians are treating suicide victims, victims of domestic partner violence, and men and women simply in the wrong place at the wrong time. It doesn't have to be this way, and we urge lawmakers to act.”

Delegates adopted the following policies regarding guns:

Advocating for schools as gun-free zones

The AMA will advocate for schools to remain gun-free zones—with the exception of school-sanctioned activities and professional law enforcement officials. The AMA also opposes requirements or incentives for teachers to carry weapons in schools.

Calling for ban on sale of assault-type weapons, high-capacity magazines

New policy calls for banning the sale and ownership of all assault-type weapons, bump stocks and related devices, high capacity magazines, and armor piercing bullets. This policy also requires that firearm owners are licensed, complete a safety course and register all firearms.

Expanding domestic violence restraining orders to include dating partners

The AMA supports laws that would prevent anyone who is under a domestic violence restraining order or convicted of misdemeanor violent crimes—including stalking, from purchasing or owning a firearm. Additionally, the policy supports closing the loophole that currently exists in federal law to extend domestic violence restraining orders to include protection for dating partners.

Removing firearms from high-risk individuals

Delegates voted to support gun violence restraining orders that would allow family members, intimate partners, household members, and law enforcement personnel to petition a court to remove firearms from individuals who pose a high or imminent risk for violence. The new policy also requires states to have protocols or processes in place for requiring the removal of firearms by prohibited people, and requiring gun violence restraining orders to be entered into the National Instant Criminal Background Check System.

Supporting increase in legal age of purchasing ammunition and firearms from 18 to 21
While federal law limits the purchase of handguns to age 21 and purchase of long guns to age 18 from a licensed firearms dealer, unlicensed persons may sell a long gun to a person of any age and handguns to individuals 18 and older; and federal law and laws in 38 states allow 18- to 20-year-olds to legally possess handguns from unlicensed sellers, such as online retailers and sellers at gun shows. Twelve states and the District of Columbia have laws that impose a minimum age of 21 for all handgun sales. Dick's Sporting Goods, L.L. Bean, and Walmart have recently changed their age of firearm purchase to 21.

**Opposing federal legislation permitting “concealed carry reciprocity” across state lines**

Such a law would require all states to recognize concealed carry permits granted by other states and allow citizens with concealed carry permits in one state to carry guns into states that have stricter laws. The law could endanger law enforcement agents, victims of domestic violence, and the public. AMA has supported the right of local jurisdictions to enact firearm regulations that are stricter than those that exist in state statutes, but concealed carry laws lower standards to the lowest common denominator.

**Supporting gun buyback programs in order to reduce the number of circulating, unwanted firearms**

The AMA is supporting the concept of gun buyback programs as well as research to determine the effectiveness of the program in reducing firearm injuries and deaths.

Over the past two decades, the AMA has developed numerous additional policy recommendations to reduce gun violence, including:

- A waiting period for firearm availability
- Background checks for all firearm purchasers
- Firearm safety and research and enhancing access to mental health care
- Gun safety education and regulation of interstate traffic of guns
- Distribution of firearm safety materials in the clinical setting
- Limit and control the possession and storage of weapons on school property
- Firearm safety counseling with patients
- Trigger locks and gun cabinets to improve firearm safety
- Data on firearm deaths and injuries
- Prevention of unintentional shooting deaths among children
- Ban on handguns and automatic repeating weapons
- Prevention of firearm accidents in children
- Waiting period before gun purchase
- Restriction of assault weapons
- Mandated penalties for crimes committed with firearms
- Public health policy approach for preventing violence in America

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**About the AMA**
The American Medical Association is the powerful ally and unifying voice for America's physicians, the patients they serve, and the promise of a healthier nation. The AMA attacks the dysfunction in health care by removing obstacles and burdens that interfere with patient care. It reimagines medical education, training, and lifelong learning for the digital age to help physicians grow at every stage of their careers, and it improves the health of the nation by confronting the increasing chronic disease burden. For more information, visit ama-assn.org.
WASHINGTON — The Major Cities Chiefs Association recently released an updated and expanded Firearms Violence Policy in light of mass shootings across the country.

The association announced on Wednesday that police chiefs recently gathered in Nashville, Tennessee to consider measures to prevent gun violence in wake of shootings in Florida and Texas. After a vote, the chiefs adopted new policy statement that includes calling on Congress to:

- Adopt a Universal Background Check for all gun sales and transfers;
- Expand screening for prohibited buyers to include persons with violent mental health history;
- Seek “Red Flag” measures to prevent guns from reaching persons who threaten violence and murder; and
- Urge legislation that permits court orders barring gun purchases in domestic violence cases.

The association said the new policy “reflects the lessons learned” in recent mass shootings and pleas from parents and youth from Marjory Stoneman Douglas High School, where 17 people were killed in a shooting in February.

“As first responders, we have seen the toll that firearms violence takes on our communities and it is time that we as a Nation take the necessary steps to reduce the risk of such tragic events,” said J. Thomas Manger, Major Cities Chiefs Association President and Montgomery County Police Chief. “Reform to this system is overdue and we must all play a role in keeping firearms off our streets and out of our schools.”

The association, which is comprised of chiefs and sheriffs representing the largest cities in the U.S. and Canada, has been “a strong advocate for sensible gun policy for many years.”

To see the association’s full updated and expanded policy statements, see below:

[060618 Mcca Press Release Firearms Policy by Ed Praetorian on Scribd]
FOR IMMEDIATE RELEASE

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Major Cities Chiefs Association
719-325-6665

Major Cities Chiefs Release Firearms Violence Policy

WASHINGTON, June 6, 2018 – On behalf of the largest law enforcement agencies in the Nation, Major Cities Chiefs Association President and Montgomery County Police Chief J. Thomas Manger issued a statement today announcing the release of an updated and expanded Firearms Violence Policy. Chiefs of Police gathered in Nashville, TN, and considered measures to prevent gun violence seen in recent cases in Florida, Texas, and throughout the Nation.

Adopted by a vote of Chiefs at their meeting, the new policy statement includes calling on Congress to:

- Adopt a Universal Background Check for all gun sales and transfers;
- Expand screening for prohibited buyers to include persons with violent mental health history;
- Seek “Red Flag” measures to prevent guns from reaching persons who threaten violence and murder; and
- Urge legislation that permits court orders barring gun purchases in domestic violence cases.

The new policy reflects lessons learned from recent tragic gun murders and pleas of both parents and youth from Marjory Stoneman High School, in Parkland, Florida, who attended the Chiefs’ conference.

Chief Manger said: “As first responders, we have seen the toll that firearms violence takes on our communities and it is time that we as a Nation take the necessary steps to reduce the risk of such tragic events. Reform to this system is overdue and we must all play a role in keeping firearms off our streets and out of our schools.”

Houston Police Chief Art Acevedo said: “The Major Cities Chiefs Association joins with those we are sworn to protect in our commitment to reform that will reduce the threat of gun violence in America, and we will use the strength of our nationwide membership to move these important proposals forward.”

Miami-Dade Police Director Juan Perez said: “As representatives of the largest urban areas in the Nation, where gun violence takes the highest toll, we have seen first-hand the dangers that firearms pose to our cities and urge Congress to do everything it can to eliminate the incalculable risk that these firearms pose to our entire society.”

###
Firearms Violence Policy
Adopted by Membership Vote on May 30, 2018

The Major Cities Chiefs Association has been a strong advocate for sensible gun policy for many years and has taken these positions on key issues.

Legislative Positions

- Adopt Universal Background Checks for all gun sales and close both gun show and internet loopholes
- Strengthen NICS definitions of prohibited purchasers to cover all appropriate domestic violence cases, with strict judicial procedures for appeal and reinstatement
- Support “Red Flag” legislation and regulations to preclude gun purchases by mentally disturbed persons with histories of violent behavior
- Ban “bump-stock” devices that replicate fully automatic weapons fire
- Maintain ATF regulations and restrictions regarding silencers
- Reinstate the assault weapons ban and encourage stiffer penalties for illegal guns
- Ban high capacity magazines (10+ rounds)
- Ban internet ammo sales, require in-person transactions, records of sales and licensing of ammo vendors
- Oppose legislation that would require States to recognize any and all concealed carry permits
- Oppose legislation that further erodes ATF authority
- Prevent known terrorists from purchasing firearms and/or ammunition

Policy Statements

- Establish a strong system for universal background checks to cover all firearms purchases, with no exceptions.
- Strengthen the national criminal instant background check system. The background check system does not have complete data and measures should be undertaken to ensure comprehensive reporting. Mental health information, for example, is inadequate, inconsistent and incomplete. The NICS system must be improved.
- Encourage aggressive federal prosecution of violent offenders using guns. Conviction in Federal Court generally results in stronger sanctions, removes the offenders from the streets and serves as a deterrent.
- Encourage mandatory reporting of all purchases, transfers and stolen firearms. This measure would assist law enforcement agencies with identification, criminal investigations and recovery of stolen firearms.
- Establish harsher penalties and aggressively prosecute straw purchasers, who are responsible for putting a substantial number of guns used in criminal acts. More aggressive prosecution with strong penalties would hold them accountable and act as a deterrent.
- Court orders can and should be used to prevent purchase of firearms by persons who pose a threat to public safety.
- Support and strengthen the authorities of ATF, rather than to restrict and handicap enforcement of gun laws.

Major Cities Chiefs is a professional association of Chiefs and Sheriffs representing the largest cities in the United States and Canada. Membership is comprised of Chiefs and Sheriffs of the sixty-nine largest law enforcement agencies in the United States and ten largest in Canada. The Chiefs serve more than 82 million people.
WASHINGTON — States across the country are taking a closer look at "red flag" laws since an alleged gunman, long known to law enforcement as troubled, was accused in the mass shooting in February at Marjory Stoneman Douglas High School in Parkland, Fla.

The laws allow family members or law enforcement to seek a court order to temporarily restrict people's access to firearms when they show "red flags" that they are a danger to themselves or others.

After the shooting, Florida became the sixth state to pass a red-flag law, and other state lawmakers introduced a flurry of new bills, including first-time legislation in more than a handful of states, according to Everytown for Gun Safety, a gun control advocacy group. Bills are now pending in 22 states and the District of Columbia, while bipartisan efforts are coming together in Congress.

Many of those efforts came before Parkland, but they are getting more attention now as students protest legislative inaction on gun violence, including March for Our Lives protests Saturday (/story/news/2018/03/24/march-our-lives-hundreds-thousands-expected-rally-across-u-s/430245002/) in Washington, D.C., and across the nation.

"In this post-Parkland environment, those bills across the country are taking on renewed significance," said Robin Lloyd of the gun-control group Giffords, named for former congresswoman Gabby Giffords, who was shot in 2011 during a political event in her Arizona district. "I think what communities and legislators are asking themselves is: What can we do to make sure this doesn't happen here?"

Though supporters say the bills can prevent tragedies, critics say they have the potential to deprive gun owners of due process and their Second Amendment rights.

Here's more on the bills:

**How do they work?**

Red-flag laws vary by state, but they generally allow law enforcement or family members to petition a judge for a "gun violence restraining order" or "extreme risk protection order" to temporarily restrict a person's access to firearms.

The judge can issue an emergency, temporary order — without the gun owner being present — to prevent immediate danger. But a full hearing must be scheduled quickly, offering the gun owner the ability to respond.

A longer order can be issued during the full hearing if there is enough evidence that the person is dangerous.

Connecticut, Indiana and Florida allow law enforcement to petition the court system, while California, Washington and Oregon also allow petitions from family and household members in addition to law enforcement, according to Giffords.

A week after Florida's legislation was signed, a Broward County judge in Florida issued the state's first order to temporarily remove firearms from a man who allegedly believed he was being electrocuted by condominium electrical breakers and targeted by the FBI and a shape-shifting neighbor, according to the South Florida Sun Sentinel (http://www.sun-sentinel.com/local/broward/parkland/florida-school-shooting/fl-florida-school-shooting-guns-seized-lighthouse-point-20180316-story.html). Four firearms and 297 rounds of ammunition were removed, and the man was taken to a hospital for involuntary
“I think this is what the general public has been looking for — for law enforcement to be able to intervene in these kinds of situations — for a long time,” Lighthouse Point Police Chief Ross Licata told the Sun Sentinel.


“We’re here and coming to make a change”: Students pour into D.C. for March for Our Lives rally (/story/news/2018/03/24/march-our-lives-hundreds-thousands-expected-rally-across-u-s/430245002/)

Under pressure, NRA voices support for gun violence restraining orders (/story/news/politics/2018/03/19/under-pressure-nra-voices-support-gun-violence-restraining-orders/433716002/)

The Parkland survivors started a movement when they took on gun violence. Here’s how it happened. (/story/news/nation/2018/02/22/parkland-survivors-started-movement-when-they-took-gun-violence-heres-how-happened/361297002/)

**Whose bills have momentum?**

States are clearly taking the lead on these laws. Even before Parkland, 19 states and the District of Columbia had red-flag bills pending in their legislatures, according to Everytown.

Among the 22 states with pending bills is Maryland, where the latest school shooting killed two students, including the shooter. The bill passed the state House of Delegates 116-17 this month and now awaits Senate action.

Democratic Del. Geraldine Valentino-Smith, the bill’s sponsor, said most people who contacted her office about the bill when she introduced it last fall were more directly concerned about preventing suicide. Then came other shootings in Maryland and Parkland.

“Certainly, the interest in it has been heightened by the recent tragedies,” she said.

While Florida passed its law, a small number of other states defeated bills that were introduced or carried over this year, according to Everytown.

In Congress, bipartisan bills are pending to give states incentives to enact such laws or create a process for federal courts to issue the restraining orders.

**What does the NRA say?**

The National Rifle Association has started talking about the types of red-flag provisions the group would support, rather than the types it opposes — a subtle change in emphasis that recently caught the attention of gun-control advocates.

In an NRATV video, the group’s top lobbyist said Congress should provide funding for states to adopt “risk protection orders.”

But the association says its position hasn’t changed. “Our position has always been dangerous people should not have access to firearms,” said NRA spokeswoman Jennifer Baker.

Baker couldn’t point to pending legislation the NRA believes provides adequate due-process protections, but she said she’s confident such a bill will be offered. NRA support hinges on multiple requirements, including that the gun owner get treatment.

The NRA has fought red-flag legislation in at least 17 states as “anti-gun.” This month, the NRA helped defeat a red-flag law in Utah. More recently, the association urged its members to lobby against the Maryland legislation because it “lacks basic due process protections and is ripe for abuse.”

**What’s the president’s position?**

Vice President Pence highlighted the restraining orders during a meeting last month with President Trump and members of Congress in response to the Parkland shooting. Pence, a former governor of Indiana, said the laws allow due process, “so that no one’s rights are trampled.”

That prompted the president’s now famous complaint about lengthy court proceedings. “Take the guns first, go through due process second,” he recommended.

In the end, the White House’s gun safety plan calls on states to adopt extreme risk protection orders that are “carefully tailored to ensure due process rights.”

Trump directed the Department of Justice to provide technical assistance to states that want to implement the orders, but that effort isn’t yet underway. The Justice Department is in the process of studying the orders and evaluating what kind of assistance it can provide, said Ian Prior, a department spokesman.

“Only a small number of states currently have laws of this type but bills are pending in many others, so the landscape is rapidly evolving and it is difficult to forecast how we might best assist states, at their request,” Prior said.
Gun restraining order might have thwarted Florida shooting: experts

Tina Bellon, Jan Wolfe

A few U.S. states have laws allowing police and family members to obtain orders barring people suspected of being a threat from possessing guns, but Florida does not. Some gun control proponents and legal experts said Wednesday's school shooting might have been thwarted if it had.

Suspected shooter Nikolas Cruz's history of violence in school and disturbing social media posts would have allowed authorities to prevent him from legally obtaining a firearm in California and Connecticut, which have gun violence restraining order (GVRO) statutes, the experts said.

The killing of 17 students and staff members at Marjory Stoneman Douglas High School in Parkland, Florida, could give new momentum to such laws.

A federal GVRO law was proposed last year, and its supporters in Congress on Thursday urged its passage.

"Americans are grappling today with the fact that multiple warning signs failed to stop a young man from killing 17 students and teachers at a Florida school," said Representative Don Beyer, a Democrat from Virginia, in a statement.

The National Rifle Association and other groups have opposed such laws as violating gun owners’ due process rights. A judge can issue an initial restraining order and confiscation of firearms without a hearing.

The NRA did not respond to a request for comment on Thursday.

Florida gun rights advocate Jon Gutmacher dismissed the idea that a GVRO law would have stopped the Parkland shooting.

"Intervention, counseling, and meaningful support are our only hope at preventing these things," he said.

A large number of states have laws allowing gun confiscation in cases involving suspected domestic violence or stalking offenses. GVRO codes allow such an order to be issued when a person more broadly poses a risk to themselves or others.

Connecticut, Indiana and Texas allow law enforcement to seek such an order. California, Washington and Oregon extend the right to family, household members, and domestic partners.

The initial hearing takes place without the subject present, and the subject usually will not learn a restraining order has been issued until police contact them about turning over their guns. A hearing will then follow two or three weeks later, after which the order may be vacated or extended for up to a year.
Former classmates described Cruz, 19, as troubled and “crazy about guns” - talking a lot about firearms and knives.

One of the school’s math teachers told media that Cruz had been banned from returning to campus after he threatened students last year and that administrators sent an email to teachers, warning them about Cruz.

Cruz may have also left warning signs on social media. A person with his name wrote a comment last year under a YouTube video that read “I’m going to be a professional school shooter.”

Cruz also participated in paramilitary training with a white nationalist militia called the Republic of Florida, a leader of the group said on Thursday.

If Cruz had lived in California, for example, a report by a household member or police officer would have been sufficient grounds for preventing Cruz from obtaining his AR-15 assault rifle, said John Donohue, a professor at Stanford Law School.

Cruz’s YouTube comment was reported to the FBI in 2017 but FBI Special Agent in Charge Robert Lasky told reporters on Thursday that investigators were unable to find Cruz based on the comment.

The comment was likely too vague to trigger FBI action even if the agents had been able to locate him, said James Jacobs, a law professor at New York University School of Law.

Two Democratic lawmakers in Florida proposed GVRO bills for that state in October. Hearings have yet to take place, but Patricia Brigham, co-chair of the Florida Coalition to Prevent Gun Violence, said the proposals face long odds in a statehouse controlled by Republicans who tend to toe the NRA line.

Florida Governor Rick Scott’s office did not respond to a call seeking comment.

“Florida should absolutely enact one ASAP,” said Kris Brown, co-president of the Brady Campaign to Prevent Gun Violence, one of the largest gun control groups. “If one had been in place in this case, we do believe it would have had the potential to save lives.”

Reporting by Tina Bellon and Jan Wolfe; Editing by Anthony Lin and Grant McCool

Gun-violence restraining orders (GVROs) make us all safer while empowering the individual and protecting liberty.

To understand the American gun-control debate, you have to understand the fundamentally different starting positions of the two sides. Among conservatives, there is the broad belief that the right to own a weapon for self-defense is every bit as inherent and unalienable as the right to speak freely or practice your religion. It’s a co-equal liberty in the Bill of Rights, grounded not just in the minds of the Founders but in natural law.

Against this backdrop, most forms of gun control proposed after each mass killing represent a collective punishment. The rights of the law-abiding are restricted with no real evidence that these alleged “common sense” reforms will prevent future tragedies in any meaningful way.

FBI Failed to Investigate Tip About Florida Gunman
Many progressives, however, simply don't care about restrictions on gun ownership. They don't view it as an individual right, much less an unalienable one. To them, the Second Amendment is an embarrassment, an American quirk that should be limited and confined as much as possible. To them, gun ownership is a privilege, not a right, and can be heavily regulated and restricted without doing any violence at all to individual liberty.

To describe these differences is not to say that the two sides never meet. Putting aside the relatively meaningless polls about various gun-control measures — the polls that truly matter are at the ballot box, and there the results are very clear and very distinct for both red and blue — there is broad conceptual agreement that regardless of whether you view gun ownership as a right or a privilege, a person can demonstrate through their conduct that they have no business possessing a weapon.

Felons, the dangerously mentally ill, perpetrators of domestic violence — these people have not only demonstrated their unfitness to own a weapon, they’ve been granted due process to contest the charges or claims against them. There is no arbitrary state action. There is no collective punishment. There is, rather, an individual, constitutional state process, and the result of that process is a set of defined consequences that includes revoking the right to gun ownership.

Now, let’s back up for a moment and apply this reasoning to our contagion of mass shootings. Time and again mass shooters give off warning signals. They issue generalized threats. They post disturbing images. They exhibit fascination with mass killings. But before the deadly act itself, there is no clear path to denying them access to guns. Though people can report their concerns to authorities, sometimes those authorities fail or have limited tools to deal with the emerging danger.

What if, however, there was an evidence-based process for temporarily denying a troubled person access to guns? What if this process empowered family members and others close to a potential shooter, allowing them to “do something” after they “see something” and “say something”? I’ve written that the best line of defense against mass shootings is an empowered, vigilant citizenry. There is a method that has the potential to empower citizens even more, when it’s carefully and properly implemented.

It’s called a gun-violence restraining order, or GVRO.

While there are various versions of these laws working their way through the states (California passed a GVRO statute in 2014, and it went into effect in 2016), broadly speaking they permit a spouse, parent, sibling, or person living with a troubled individual to petition a court for an order enabling law enforcement to temporarily take that individual’s guns right away. A well-crafted GVRO should contain the following elements (“petitioners” are those who seek the order, “the respondent” is its subject):

1. It should limit those who have standing to seek the order to a narrowly defined class of people (close relatives, those living with the respondent);
2. It should require petitioners to come forward with clear, convincing, admissible evidence that the respondent is a significant danger to himself or others;
3. It should grant the respondent an opportunity to contest the claims against him;
4. In the event of an emergency, ex parte order (an order granted before the respondent can contest the claims), a full hearing should be scheduled quickly — preferably within 72 hours; and
5. The order should lapse after a defined period of time unless petitioners can come forward with clear and convincing evidence that it should remain in place.

The concept of the GVRO is simple, not substantially different from the restraining orders that are common in family law, and far easier to explain to the public than our nation’s mental-health adjudications. Moreover, the requirement that the order come from people close to the respondent and that they come forward with real evidence (e.g. sworn statements, screenshots of social-media posts, copies of journal entries) minimizes the chance of bad-faith claims.

The great benefit of the GVRO is that it provides citizens with options other than relying on, say, the FBI. As the bureau admitted today, it did not respond appropriately to a timely warning from a “person close to Nikolas Cruz.” According the FBI, that person provided “information about Cruz’s gun ownership, desire to kill people, erratic behavior, and disturbing social media posts, as well as the potential of him conducting a school shooting.”

In other words, it appears the FBI received exactly the kind of information that would justify granting a GVRO.

Just since 2015, the Charleston church shooter, the Orlando nightclub shooter, the Sutherland Springs church shooter, and the Parkland school shooter each happened after federal authorities missed chances to stop them. For those keeping score, that’s four horrific mass shootings in four years where federal systems failed, at a cost of more than 100 lives.

In other words, proper application of existing policies and procedures could have saved lives, but the people in the federal government failed. And they keep failing. So let’s empower different people. Let’s empower the people who have the most to lose, and let’s place accountability on the lowest possible level of government: the local judges who consistently and regularly adjudicate similar claims in the context of family and criminal law.

The GVRO is consistent with and recognizes both the inherent right of self-defense and the inherent right of due process. It is not collective punishment. It is precisely targeted.

Advocates for GVROs have been mostly clustered on the left, but there is nothing inherently leftist about the concept. After all, the GVRO is consistent with and recognizes both the inherent right of self-defense and the inherent right of due process. It is not collective punishment. It is precisely targeted.

As I wrote the night of the Parkland shooting, a vigilant citizenry is a far better defense against a mass shooting than the sweeping, allegedly “common sense” gun-control measures debated after every massacre. But when individual citizens are vigilant and individual government officials are not, then it’s time to consider different measures. It’s time to consider rearranging the balance of power.

I don’t pretend that a GVRO is the solution to mass killings. There is no “solution.” It’s a tool, one among many. In 2016 California courts granted 86 restraining orders. Most of them applied for a mere 21 days. In ten instances those orders were extended for a year. Until I’m persuaded otherwise (and I look forward to the conversation), I’ll believe that a restraining order can give a family the power federal incompetence has taken away — the power to save lives.

DAVID FRENCH — David French is a senior writer for National Review, a senior fellow at the National Review Institute, and a veteran of Operation Iraqi Freedom. @davidafrench
An underused tool to prevent mass shootings.

In the annals of “See something, say something,” there are few more heartbreaking and infuriating reads than the transcript of an informant’s call to the FBI on January 5, 2018. In a 13-minute detailed report, a person claiming to be close to Parkland, Fla., school shooter Nikolas Cruz described in excruciating detail Cruz’s mental problems, his violent tendencies, and the concern that he would go “into a school and just [shoot] the place up.”

The caller listed Instagram accounts, described pictures of Cruz posing with guns, and said that Cruz was “into ISIS” and had threatened his mother with a rifle before she died. The FBI did nothing. Five weeks later, Cruz walked into Marjory Stoneman Douglas High School, opened fire with his AR-15 rifle, and killed 14 students, two coaches, and one teacher.

A single FBI failure to act would have been bad enough, but it turns out that person after person had called authorities to report Cruz’s behavior, including — most notably — Cruz himself. He called local authorities to say that he was “dealing with a bunch of things.” He told police that he’d been in a fight and was struggling with the death of his mother.

Nothing was done. No one acted. Then Cruz killed kids.

As America reels from the latest mass shooting, three trends are emerging. First, time and again mass shooters raise red flags before their fatal rampae. They’ll exhibit evidence of radicalization (as did the Orlando, Fla., nightclub shooter and the Fort Hood killer).
they’ll engage in dangerous or threatening behavior (as did Cruz). Both sane and insane killers have a hard time keeping their murderous intent to themselves. They broadcast their dangerous proclivities, especially to those who are closest to them.

Second, the bureaucratic systems designed to protect the public fail with depressing regularity. Since 2015, mass shootings in Charleston, S.C.; Orlando; Sutherland Springs, Texas; and Parkland happened after federal authorities either failed to properly update the background-check system or failed to follow up on warnings from the public. The Virginia Tech shooting happened after a state court judged the shooter to be a danger to himself, yet that information was never passed on to the federal background-check database.

Third, family members and others close to shooters often see warning signs but don’t possess the legal tools necessary to intervene. The Tucson mass shooter and the Aurora, Colo., killer both had extensive histories of troubling conduct but did not exhibit behavior that would have required institutionalization.

Conservatives and liberals respond to these failures differently. Liberal gun-control advocates lead with simple, repetitive responses: Make it harder to purchase firearms. Ban the “deadliest” weapons. Ban high-capacity magazines. Conservatives hear the rhetoric and roll their eyes. As Washington Post fact-checker Glenn Kessler has shown, not one of these so-called commonsense gun restrictions would have stopped any mass shooting since 2012.

Such restrictions also represent a form of collective punishment. The only people who we know would be affected by a so-called assault weapons ban are law-abiding Americans. Criminals — especially mass killers, who often plan their attacks months in advance — would have no problem circumventing purchase restrictions in a nation awash in millions of AR-15s, tens of millions of high-capacity magazines, and hundreds of millions of semi-automatic handguns and rifles.

Conservative responses are more promising. The leading “left of boom” suggestions — enforcing existing gun laws better and strengthening the nation’s mental-health system — at least have the virtue of targeting actual criminals or providing greater resources to identify and institutionalize the dangerously mentally ill. But they both still depend on large, impersonal bureaucracies to perform vital functions — the very bureaucracies that we’ve seen are most prone to failure.

But there is something new under the public-policy sun, a proposal that both the Left and the Right can embrace — a “left of boom” solution that can keep guns out of the hands of dangerous people without the collective punishment of larger gun-control proposals and without relying on vast bureaucracies to function beyond their demonstrated capacity. The proposal is targeted, protects due process, and is already saving lives.

It’s called a gun-violence restraining order, or GVRO.

On February 16 — two days after the Parkland massacre — I wrote about the GVRO in National Review Online. I described the GVRO as a local-court order that allows law enforcement to temporarily remove guns from a potential shooter’s home. It is usually sought by a person in a close relationship with the potential shooter. A well-crafted GVRO law should contain the following elements:

1) It should limit those who have standing to seek the order to close relatives, those living with the respondent, and perhaps also school principals or employers.

2) It should require petitioners to come forward with clear and convincing evidence that the respondent is a significant danger to himself or others.

3) It should grant the respondent an opportunity to contest the claims against him.

4) In the event of an emergency, ex parte order, a full hearing should be scheduled quickly — ideally within 72 hours.
5) The order should lapse after a defined period of time (30 days would be acceptable) unless petitioners can produce clear and convincing evidence of continued need.

The GVRO avoids bureaucracies. Family members or principals could go straight to local court. It imposes accountability. Local judges would be forced to rule promptly on the request, and if the order were granted, local law enforcement would be forced to respond quickly. It protects liberty. A high burden of proof and a requirement that petitioners provide admissible evidence such as sworn statements, photographs, or text messages would limit the chances of abuse. Finally, the process is familiar. Americans are used to restraining orders in other contexts, and the GVRO wouldn’t have a steep learning curve.

Though the idea originated in progressive circles, there’s nothing inherently left-wing about a GVRO. California, Washington, Oregon, Indiana, and Connecticut have passed various versions of GVRO laws, and similar proposals are under consideration in at least 18 states. The Trump administration is considering backing the concept.

In fact, I can’t remember writing a piece that received a larger, more positive bipartisan reaction than my online piece supporting GVROs. America faces a strange reality. Even as overall gun crime has decreased dramatically, mass killings are on the rise. Each one is a shock to our nation. Each one claims too many innocent lives. Each one escalates the gun-control debate and exacerbates political polarization. Americans are desperate for an effective and constitutional response.

There is no single solution to mass killings, but GVROs could help turn the tide. A number of people could have stopped the Parkland massacre. And that’s not the only killing that could have been prevented. The Las Vegas shooting is an exception, but it’s easy to identify other shootings before which a GVRO could have given family members or school officials a fighting chance to stop a tragedy.

When bureaucracies fail, “See something, say something” just isn’t enough. Empowered by a GVRO, families and school officials may finally be able to do something — and save lives.

DAVID FRENCH — David French is a senior writer for National Review, a senior fellow at the National Review Institute, and a veteran of Operation Iraqi Freedom. @davidafrench

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A new gun-control measure could temporarily seize people's firearms if they raise 'red flags' — and a growing number of Republicans are on board

Liberals and some conservatives are proposing states enact "red flag" laws to temporarily prevent dangerous people from buying or possessing guns.

The laws would allow people to request restraining orders if they're concerned a relative or someone close to them is a threat to themselves or others.

Some advocates believe such laws could have prevented Nikolas Cruz from owning the AR-15 he allegedly used in the Florida high-school shooting.

Public discourse on gun violence has followed a **familiar pattern** in the wake of a deadly high-school shooting in Florida. Gun-control advocates immediately demanded sweeping measures like assault weapons bans, and their opponents predictably shot them down as Second Amendment violations.

But a growing bipartisan group of lawmakers and advocates have begun championing "red flag laws" as a potential gun-control measure that could both prevent potentially dangerous people from possessing firearms and preserve gun rights.

The laws function similarly to those that govern common restraining orders. Someone who fears a family member or acquaintance is a threat to themselves or others can ask police to seize their weapons temporarily and bar them from buying more until a judge determines the person is no longer a risk.

They're called gun-violence restraining orders or extreme risk protection orders, and Connecticut, California, Washington, Oregon, and Indiana have **implemented them** in recent years to some success.

Were the laws in place in Florida during Cruz's upbringing, advocates speculated that he could have been barred from buying or owning the AR-15 he used to allegedly gun down 17 students and staff members.

'**This shooting may have been averted**'
Police and media reports revealed that a number of people close to Cruz were so disturbed by his behavior and violent outbursts that they contacted local or federal authorities to warn them he could snap.

Records of nearly two dozen 911 calls released by the Broward Sheriff’s Office show that authorities responded to a variety of reports where Cruz had become violent, run away from home, harmed himself, and even threatened to shoot up a school.

But none of those calls resulted in Cruz’s arrest, or had him committed to a mental health facility — and he got to keep his guns.

"I heard the [Broward County] sheriff lament the fact that he did not have the tools to remove the firearms from the shooter," Joshua Horwitz, the executive director of the Coalition to Stop Gun Violence, told The Washington Post. "Had he lived in one of those states where this law is in place, he would have had the tools, and this shooting may have been averted."

There's reason to believe other states' red flag laws have been effective. Though it's difficult to count the number of mass shootings that were prevented, a 2016 study found that Connecticut’s red flag law appeared to avert some suicides since it was enacted in 1999.
In California, the San Diego City Attorney's office has already filed 10 such restraining orders since it began issuing them in December 2017. The office issued its first order to a man whose neighbors had called police when he drunkenly shot at raccoons and rats in his backyard.

An order in San Diego lasts 12 months — enough time for the person time to seek mental-health treatment before a court decides whether to lift the order. But in other parts of the state, the orders can last as little as 21 days.

'Reight to due process'

Already, Florida's Republican governor has indicated support for similar laws, and states like Rhode Island and Maryland are also mulling them over.

"I want to make it virtually impossible for anyone who has mental issues to use a gun. I want to make it virtually impossible for anyone who is a danger to themselves or others to use a gun," Gov. Rick Scott said at a press conference last week.

Sen. Marco Rubio of Florida has also touted the laws, citing a recent National Review column by conservative writer David French.

"Not just me calling for conservatives to consider 'red flag' gun law," Rubio tweeted February 18. "It's called gun-violence restraining order & can be crafted to respect 2nd
Amendment & right to due process."

French's column argued that the federal government has consistently failed to prevent mass shootings, even when officials are tipped off, as the FBI was with Cruz. But gun-violence restraining orders would instead empower family members, local authorities, and judges to act, French argued.

"The great benefit of the [gun violence restraining order] is that it provides citizens with options other than relying on, say, the FBI," French wrote. "Let's place accountability on the lowest possible level of government: the local judges who consistently and regularly adjudicate similar claims in the context of family and criminal law."

The National Rifle Association has previously opposed red flag laws, arguing that Oregon's version could "deprive someone of their Second Amendment rights without due process of the law." But NRA spokeswoman Dana Loesch indicated at a CNN town hall that local authorities should have had better tools to deprive Cruz of his weapons.

"We have to develop better protocol to follow up on red flags. This monster carrying bullets to school, carrying knives to school, assaulting students, assaulting his parents, 39 visits in the past year," Loesch said. "That should never have been allowed to get that far."

An NRA spokeswoman also told The Hill that the organization "supports keeping firearms out of the hands of dangerously mentally ill people", and wouldn't comment on specific bills until seeing the language.
WASHINGTON — Facing intense public pressure, the National Rifle Association is starting to talk about the types of gun violence restraining orders it would support after years of opposing them.

The orders, also known as "extreme risk protection orders," allow a court to temporarily restrict individuals' access to firearms when they exhibit "red flags" that they are a danger to themselves or others. Such "red flag" laws have received additional attention following the Valentine’s Day mass shooting in Parkland, Fla.

The NRA has fought "red flag" legislation in at least 17 states as "anti-gun." But in a recent NRATV video, the group's top lobbyist said Congress should provide funding for states to adopt "risk protection orders."

“This can help prevent violent behavior before it turns into a tragedy,” Chris Cox said.

Gun-control advocates say it's unclear whether the comments represent a new opening to pass legislation — especially given the NRA's history of resistance to such laws.

In August, the NRA offered what appeared to be blanket opposition to gun violence restraining orders (https://www.nraila.org/articles/20170818/american-bar-association-continues-to-attack-gun-owners-due-process), saying on its website that they diminish due process and have "obvious potential for abuse."

Earlier this month, the NRA helped defeat a "red flag" law in Utah. And on Friday, the association urged its members to lobby against legislation in Maryland because it "lacks basic due process protections and is ripe for abuse."

"The NRA fought red flag laws for years," said John Feinblatt, president of Everytown for Gun Safety. “If they're serious about supporting them now, they'll signal as much to their lobbyists in the 22 states where red flag bills are currently pending.”

Sen. Richard Blumenthal, D-Conn., said, "It's one thing to put out videos attempting to sound reasonable – it's quite another to actually support and help pass life-saving legislation." 

NRA spokeswoman Jennifer Baker insisted the NRA hasn't changed positions.

“None of the pieces of legislation that have been introduced have included adequate due process so we’ve opposed them,” she said. "Our position has always been dangerous people should not have access to firearms."

Indeed, the NRA's support for such measures hinges on a multitude of requirements, which the association says are key to protecting Second Amendment rights and due process.

On Friday, NRA posted the lengthy list of conditions for a process it can support on its YouTube channel, as a comment beneath the Cox video. Among them:

— Criminal penalties for those who bring “false or frivolous” charges.

— A determination by a judge, by “clear and convincing evidence,” that the person poses a significant risk of danger.

A requirement that a judge determine whether the person meets the standard for involuntary commitment.

If the order is granted, the individual should receive community-based mental health treatment.

"To be effective and constitutional, they should have strong due process protections and require that the person get treatment," Cox says in the video.

Baker, the NRA spokeswoman, couldn’t point to a federal or state bill that the organization supports, but she said, "We’re confident that there will be a bill introduced that provides adequate due process while ensuring that people who are a danger to themselves or others don’t have access to firearms.”

The NRA statements coincide with student protests across the country against congressional inaction on gun violence. Last Wednesday, thousands of students staged “National Walkout Day” events, marking the one-month anniversary of the shooting deaths of 17 students and staff at Marjory Stoneman Douglas High School. The accused gunman, Nikolas Cruz, was long-known to law enforcement as troubled.

“My observation here is that the man did everything but take an ad out in the paper, ‘I’m going to kill somebody,’” Sen. Lindsey Graham, R-S.C., said at a Wednesday Senate Judiciary Committee hearing.

After the shooting, Florida became the sixth state to pass a red flag law. (The NRA sued the state of Florida to block part of the law but didn't take a position on the red flag provision.) Several other states introduced versions of "red flag" bills in response to the shooting.

President Trump, as part of his response to the shooting, called on all states to adopt extreme risk protection orders and directed the Department of Justice to provide technical assistance to states that want to implement the orders.

In Congress, other bills are pending and some are forthcoming.

A House bill would give states incentives to allow family members or law enforcement to get court orders to temporarily stop dangerous individuals from purchasing or possessing a gun. Sen. Dianne Feinstein, D-Calif., sponsored the Senate version of the bill – and took Cox’s statement as a sign of support.

"Now there can be no excuse from Republicans to oppose our legislation,” she said in a statement.

However, Baker said Feinstein’s bill doesn’t offer “meaningful due process,” uses a low evidentiary standard and doesn’t require the individual seek treatment.

Graham and Sen. Richard Blumenthal, D-Conn., proposed legislation to create an extreme risk protection order process for federal court. Baker said their bill is “not workable.” The NRA opposes efforts to create a federal law tasking federal agents with seizing firearms in federal court, according to the YouTube post.

Blumenthal said federal law is critical to ensure protection through a national safety net, since many states won’t adopt red flag laws "over gun lobby opposition."

“The NRA wants a Catch-22: oppose a federal statute, supposedly relying on the states, and then oppose state laws, as it has consistently done," Blumenthal said.

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In the outrage over yet another tragic school shooting, most lawmakers continue to offer divisive policy choices: either curtail access to firearms or allow more guns in more places. We believe a new policy called “risk warrants” could help break through this political paralysis.

Nearly everyone, including President Donald Trump and the NRA, seems to agree that people at genuine risk of harming themselves or others should not have guns. Background checks alone will never fix this problem, because background checks catch only a fraction of the people who truly pose a risk. That’s why bipartisan support is growing for laws authorizing judges to issue “risk warrants” — also called “gun violence restraining orders” or “extreme risk protective orders” — that temporarily remove firearms from those at risk of harming someone.

In gun policy debates, risky people who should not possess guns are often called “the mentally ill.” This phrase – used by all sides – is highly misleading, however. Forty million Americans have diagnosable mental health conditions yet pose no danger to anyone. Disqualifying all those people from gun ownership would be ineffective, unfair and stigmatizing. It would also exclude large numbers of people who are not mentally ill, but who do pose a danger.

“A recent study evaluating Connecticut’s law analyzed suicide mortality between 1999 and 2013. The researchers estimated that for every 10 to 20 risk warrants issued, one life was saved by averting a suicide.”
Most mass shooters have no histories of treatment for mental illness. However, many have exhibited extreme anger, loss of control and other behaviors that worried their families, co-workers, teachers or neighbors. We need laws allowing citizens to bring concerns about a person's dangerous behaviors to the attention of law enforcement, who can then seek a judicial order temporarily restricting the person's access to firearms. Such laws allow orders to be issued when evidence shows a person is suicidal or has exhibited alarming behavior, signaling they are likely to hurt someone else.

Five states — Connecticut, Indiana, California, Washington and Oregon — have enacted laws authorizing such pre-emptive, risk-based, time-limited gun removal orders. These civil orders neither require, nor produce, a criminal record. They simply give police officers clear legal authority to search for and remove firearms when the officer has probable cause to believe someone poses an imminent risk of injuring someone. Typically, a judge issues a risk warrant for immediate gun removal in such cases. Then, within two weeks, a court hearing takes place at which the state must show clear and convincing evidence that the person continues to pose a significant public safety risk. If the state meets this burden, it may retain the firearms for up to one year. These procedures fully respect the Second Amendment and the requirements of “due process.”

A recent study evaluating Connecticut's law analyzed suicide mortality between 1999 and 2013. The researchers estimated that for every 10 to 20 risk warrants issued, one life was saved by averting a suicide.

Risk protection order laws can be fairly administered and will save lives. Recent national polling shows these types of laws are supported by about two out of three gun owners and three out of four non-gun-owners. And national and state lawmakers increasingly appear ready to sign on to risk-based, time-limited gun removal as a concept. It is heartening that this approach has finally become part of the national conversation.

States are best suited to enact and carry out such laws, using state courts to issue risk warrants and local police to serve them. Congress should create incentives for more states to do so, however. The federal government should also bar people who are subject to risk protection orders from purchasing guns under the national instant background check system.

With about 100 people dying from gunfire in the United States every day, finding common ground on gun policy has become a moral imperative. Risk warrant laws are an important piece in the puzzle of gun violence prevention.

This article originally appeared in the Richmond Times-Dispatch, and the Charleston Post-Dispatch

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Suicides in Tennessee Reach Record-Breaking High

An average of three people died by suicide each day in Tennessee in 2016, the highest recorded in Tennessee in more than 35 years.

NASHVILLE, Tenn. (AP) — An average of three people died by suicide each day in Tennessee in 2016, the highest recorded in the state in more than 35 years.

News outlets cite Tennessee health officials as saying white middle-aged men in rural areas account for a majority of the deaths. White males make up 40 percent of Tennessee’s population, but made up 77 percent of suicide deaths in 2016.

But officials from the Tennessee Department of Health’s Office of Health Statistics say suicides also are increasing among those 10 to 19 years old.

East Tennessee Suicide Prevention Network official Amy Dolinky says the vast majority of people kill themselves with guns.

Dolinky says the difficulty of talking about feeling suicidal and the stigma surrounding mental illness have contributed to the rise in suicides.

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