A WORKING GUIDE TOWARDS
MORE RACIALLY EQUITABLE EXTREME RISK LAWS

Addressing racial equity in gun violence prevention policy and its implementation is crucial for working towards a more just and peaceful society. Extreme risk laws are a promising tool for preventing gun violence and are being rapidly adopted across the country. This guide provides lawmakers, advocates, implementers, and other key stakeholders with guidance towards more equitable extreme risk laws.

WHAT ARE EXTREME RISK LAWS?

Far too often, warning signs of tragedy are visible but legal tools to address them are limited. Extreme risk laws are state-level policies that empower law enforcement and other eligible petitioners to intervene and prevent tragedy before it occurs through extreme risk protection orders (ERPO) and similar mechanisms. ERPOs provide eligible petitioners a formal legal process to temporarily reduce an individual’s access to firearms if they pose a danger to themselves or others. This legal process may look somewhat different across states, but most are civil court orders and based on the long-standing infrastructure and procedures of domestic violence protection orders (in place in all 50 states). The order temporarily prohibits a person from possessing or purchasing firearms and provides a process for the temporary removal of firearms already in the person’s possession. As of April 2021, 19 states and D.C. have extreme risk laws.

WHAT IS EQUITY?

Equity is about fairness, justice, and representation. Equity embodies the values, policies, and practices that ensure the voices and visions of diverse communities—including but not limited to those who have been historically underrepresented based on race, ethnicity, age, disability, sexual orientation, gender, gender identity, socioeconomic status, geography, citizenship status, or religion—are both represented and heard and resources are distributed in a manner that advances those visions.

Racial equity is achieved when the distribution of resources and opportunities is neither determined nor predicted by race, racial bias, or racial ideology. Racial equity only occurs when communities of color have autonomy in naming their reality, are part of developing solutions to address structures that impact their communities, and have access to mechanisms to achieve mobility afforded to other communities.

In gun violence prevention, historically underrepresented communities’ voices and visions must be central in the development, advocacy, implementation, and evaluation of policies, programs, and practices as well as in the distribution of resources.
THE DEVELOPMENT OF EXTREME RISK LAWS

Extreme risk laws were developed by the Consortium for Risk-Based Firearm Policy (Consortium) in 2013. Following the shooting at Sandy Hook Elementary School, the national conversation around preventing gun violence focused on mental illness. EFSGV brought together the nation’s leading researchers, practitioners, and advocates in gun violence prevention, public health, law, and mental health to form the Consortium to examine the relationship between mental illness and gun violence.

Despite popular belief at the time, the Consortium concluded that focusing firearm prohibitions based on mental illness was misguided, not supported by research evidence, and stigmatizing. Research shows that the overwhelming majority of people with mental illness are never violent towards others, and that violence has many interacting factors, with mental illness alone very rarely the cause. People with mental illness are in fact more likely to be victims than perpetrators of violence.

Instead of focusing on mental illness, the Consortium focused on risk factors for violence to self and others that are supported by research. They conceptualized a new type of civil order based on the framework of existing domestic violence protection orders. These recommendations became the basis of the modern extreme risk law.

ADDRESSING RACIAL EQUITY AND EXTREME RISK LAWS

CSGV and EFSGV recognize the criminal justice system is infused with bias towards historically underrepresented communities, particularly racial bias, and the application of laws is inequitable. Thus, it is vital that gun violence prevention policies, including ERPOs, are advocated for, implemented, and evaluated with these inequities in mind, recognizing that intersecting identities can complicate and compound these inequities.

1. ADVOCACY FOR EXTREME RISK LAWS

Authentically Engage Stakeholders

Appropriate, accurate, and effective messaging is critical for building support and momentum to pass extreme risk laws, as well as to provide education for key stakeholders. It is important for advocates of ERPO bills to authentically engage and seek advice from a diverse set of stakeholders before a bill is introduced or signed into law. A diverse stakeholder coalition to strive toward would include domestic violence service providers, social service providers, behavioral health providers, healthcare professionals, suicide prevention advocates, violence intervention specialists, community-based groups working to prevent violence, people from communities most impacted by gun violence, and gun owners. As a part of this outreach, it is necessary to acknowledge the relationship between law enforcement and communities of color or other marginalized groups but to also not make generalizations on how individuals and communities will perceive the tool. Ideally, advocates would present the facts about the
proposed law; facilitate ongoing engagement with Black, Indigenous, people of color, LGBTQ+, immigrant, mental health and disability rights advocates, and other marginalized communities; and provide transparency to the data surrounding the petitions, which can facilitate community engagement in developing potential guardrails that may need to be added to reduce disparities.

It may be beneficial to formally establish a multidisciplinary stakeholder working group that meets routinely throughout the advocacy process to ensure that diverse stakeholder engagement is ongoing, building authentic and cooperative relationships, and facilitating communication among stakeholders. Working group responsibilities should include developing guiding policies to clarify how extreme risk orders should work. This group can evolve into an implementation working group once the ERPO bill is signed into law.

Conduct a Policy Impact Assessment
Before drafting a new state ERPO law, it may be helpful to create a policy impact assessment or apply a similar evaluation tool. A policy impact assessment can help proactively identify unintended consequences and/or disproportionate impacts on certain communities. Race Forward developed a Racial Equity Impact Assessment Guide to help reduce, eliminate, and prevent racial discrimination and inequities before a law is in place. The following topics are outlined in their guide:¹

- Identifying stakeholders
- Engaging stakeholders
- Identifying and documenting racial inequities
- Examining the causes
- Clarifying the purpose
- Considering adverse impacts
- Advancing equitable impacts
- Examining alternatives or improvements
- Ensuring viability and sustainability
- Identifying success indicators

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CSGV and EFSGV developed policy impact assessment questions based on the guiding principles outlined in Race Forward’s Racial Equity Impact Assessment Guide. While each state’s ERPO bill or law and the circumstances around its passage and implementation will be unique and require a tailored policy impact assessment, below is an excerpt of our policy impact assessment on the general ERPO policy.

Are you clear on the objective of the policy?
In most states there is no legal process for removing firearms from individuals who are temporarily at a higher risk of violence towards self or others but who are not prohibited from purchasing and possessing firearms because of a criminal conviction or other existing prohibitor. 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. ERPOs are legal tools to help intervene before tragedy occurs by temporarily prohibiting the possession and purchase of firearms by a person deemed by a court to pose a significant danger of causing injury to themself or others by possessing firearms. By temporarily removing guns from a person at elevated risk of violence, these laws also create a safer opportunity for the individual to access resources they may need.

How have impacted stakeholders been engaged in defining the issue and recommendations put forth in the legislation or policy?
Following the shooting at Sandy Hook Elementary School, the national conversation around preventing gun violence focused on mental illness. EFSGV brought together the nation’s leading researchers, practitioners, and advocates in gun violence prevention, public health, law, and mental health to form the Consortium for Risk-Based Firearm Policy to examine the relationship between mental illness and gun violence. Despite popular belief at the time, the Consortium concluded that focusing firearm prohibitions based on mental illness was misguided, not supported by research evidence, and stigmatizing. They conceptualized a new type of civil order based on the legal framework of existing domestic violence protection orders and focused on the principles of risk as they relate to firearm access. These recommendations became the basis of the modern extreme risk law.

California was the first state to pass the nation’s first Consortium-recommended extreme risk law, known as a Gun Violence Restraining Order (GVRO). Before the bill was introduced, EFSGV and the Consortium held forums across the state to engage relevant stakeholders, seek feedback on the policy, and speak with individuals who expressed concern. Stakeholders included law enforcement, mental health groups, medical groups, public health professionals, and policymakers. EFSGV and the Consortium have held similar forums in states across the country.

As new research and evaluation of ERPO policies become available, the Consortium continues to issue updated recommendations on ERPO policy and implementation and seeks to incorporate diverse perspectives in the recommendation development process. Moving forward, EFSGV and the Consortium hope to focus additional attention on engaging groups led by people of color.
What is the historical and contemporary context of this issue?
The first extreme risk law was Connecticut’s “risk warrant,” which passed in 1999 following a mass shooting at the state’s lottery headquarters. Six years later, in 2005, Indiana passed another early version of an extreme risk law. Both laws allow only law enforcement to petition for a warrant. Extreme risk laws were further developed from risk warrants to the protection orders that are common today by the Consortium for Risk-Based Firearm Policy in 2013.

After the May 2014 mass shooting near the University of California, Santa Barbara campus, community members, law enforcement, and policymakers reflected on how this tragedy could have been averted. On September 30, 2014, four months after the shooting, EFSGV assisted California lawmakers in passing the nation’s first Consortium-recommended extreme risk law, known as a Gun Violence Restraining Order (GVRO), that included both law enforcement and family or household members as petitioners. In the wake of the 2018 mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, the number of states with ERPO laws has grown from four to 19 states and Washington, DC. As recently as 2019, a research poll found that 77% of Americans support extreme risk laws petitioned for by family members and 70% by law enforcement. Nearly every state has introduced extreme risk protection order-type legislation.

What are potential benefits, unintended consequences or disproportionate impacts? Are there known equity concerns, if so what are they?
Though ERPOs are civil court orders, they do involve potential criminal penalties for falsely petitioning for or violating them. It is well documented how the criminal justice system disproportionately incarcerates and penalizes people of color, so it is incumbent upon lawmakers to be careful when creating new pathways for people to interact with the system.

All states with ERPO laws allow for law enforcement to petition for ERPOs. Given how law enforcement officers have been shown to view people of color as being much more likely to be “dangerous,” it is possible that they will request ERPOs more readily and unnecessarily against them. However, there is no available data to affirm or rebut this claim at this time.

Is there data on how similar laws have been implemented that provide insight to unintended consequences or disproportionate impacts?
ERPOs are based on the long-standing domestic violence protection orders ("DVPOs"), which are available in all 50 states. Some, but not all, states with DVPO laws prevent the subjects of a final order from possessing firearms while the order is active, and even fewer prohibit the possession of firearms while temporary orders are active. However, comprehensive demographic data on who petitions for and receives DVPOs is lacking. The information necessary to identify potential disparate impacts in DVPO implementation is not available at this time.
**Policy Impact Assessment Excerpt Continued**

**Does this recommendation have a different impact on different population groups?**

ERPO is still relatively new and was designed as a tool to be used only in high risk situations. As such, demographic data for ERPO implementation is currently difficult to come by and there has been little research on demographic differences.

The most thorough analyses of ERPO laws have been of Connecticut’s and Indiana’s risk warrant laws. The Connecticut study reviewed 762 cases from 1999-2013 and found the majority of ERPO respondents were male (92%).\(^2\) However, it did not include racial demographic data. The Indiana study reviewed 395 cases from 2006-2013 and found the majority of respondents were male (80.5%, 318 respondents) and White (76.2%, 301 respondents).\(^3\) All cases were in Marion County, where the White people make up just 63.5% of the population, suggesting White men were overrepresented demographically in firearm removals in Indiana by comparison, though this may be expected due to the higher risk of firearm suicide among this population.

A recent study in Washington reviewed 75 cases from 2017-2018 in King County.\(^4\) The majority of respondents were male (84%, 63 respondents) and White (75%, 56 respondents). Nine ERPO respondents were Black representing 12% of the cases. Since White people make up 66% of the King County population and Black people make up only 6.9%, this suggests both White people and Black people were overrepresented demographically in firearm removals. However, since the sample size was so small, no statistically informative analyses could be conducted.

More research is needed to further assess the impact of ERPO on communities of color. It is important to note that law enforcement most often initiate ERPOs, which has the potential to result in disparate impacts on different demographics.

**How often should and will this law or policy be reviewed?**

ERPO laws should be reviewed annually to make corrections during subsequent legislative sessions. For example, in the 2021 legislative session, Connecticut lawmakers introduced a bill to expand ERPO petitioners and amend other aspects of the law to offer stronger protections for individuals at risk of violence. Other states, including Illinois, New Jersey, Virginia, and New York, have introduced legislation to amend and improve their existing extreme risk protection order-type laws.

**Are there other options (regulation, ordinance) that could achieve more equitable outcomes?**

Not currently. ERPOs are novel, preventative measures to address potential gun violence. If implemented as intended, ERPOs would have no peer in terms of the wide breadth of gun violence-related issues they could avert.

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1. APM Research Lab. (2019). *APM Survey: Americans’ Views on Key Gun Policies*
2. IMPLEMENTATION OF EXTREME RISK LAWS

"All aspects and stages of implementation must be intentionally considered through an equity lens, which means anticipating unintended consequences and/or the disproportionate impacts on people of color and other historically underrepresented and marginalized communities. To accomplish this, we encourage that the perspectives of diverse stakeholders, including Black, Indigenous, people of color, LGBTQ+, immigrant, consumer mental health advocates, and other communities be considered in implementation efforts - and any related revisions to ERPO laws."

Consortium for Risk-Based Firearm Policy
Extreme Risk Protection Orders: New Recommendations for Policy and Implementation

Implementation Working Groups
After an extreme risk law is signed into law, it is best practice to convene a multidisciplinary working group at the state, county, and/or city level to raise awareness of the policy, develop an implementation strategy, address process questions, and create a space for ongoing problem-solving as the ERPO is being implemented, as well as ensure data is collected so the extreme risk law can be evaluated. A collaborative and process-oriented approach to proactive implementation and problem-solving helps to establish an effective and equitable ERPO policy.

Building off any working groups developed during the advocacy process, striving for a diverse implementation working group that represents the communities being served is important. Participants should ideally include law enforcement officers, prosecutors, survivors and community members impacted by gun violence, gun violence prevention advocates, domestic violence prevention advocates, suicide prevention advocates, mental health advocates, public health advocates, clinicians and representatives of other eligible petitioner groups (depending on state law), gun owners, and researchers.

This multidisciplinary stakeholder working group should meet routinely to facilitate discussions on allocating responsibility to ensure compliance and address challenges as they arise. This may facilitate cooperative relationships and communication among stakeholders. In addition to addressing the topics listed above, this working group should be responsible for developing and distributing policies, communicating changes, and establishing roles and responsibilities.
Community Engagement, Education, And Access

Community engagement and relationship building is a key part of implementation efforts. Community members and leaders from communities disproportionately impacted by gun violence (particularly communities of color) are essential stakeholder groups to engage in implementation outreach efforts, which could include having conversations, meetings, and/or conducting semi-structured interviews. These efforts should be mindfully structured to provide opportunities for community members to learn about the law, ask questions, and talk through any concerns they may have. Endeavoring to incorporate their feedback can help improve implementation and foster important relationships.

Provide Ongoing Training To Law Enforcement

The role of law enforcement and their relationship with communities of color and other marginalized communities continue to be front of mind for communities, law enforcement, and advocates alike. Although an ERPO is a civil order, the process of accessing an EPRO involves law enforcement and the judicial system which may make people apprehensive of taking advantage of this tool. We recommend training law enforcement and courts in the safe, impartial, effective, and equitable use and administration of ERPOs, including training on:

- Behavioral risk factors that should be considered when seeking and issuing ERPOs.
- Implicit bias based on race, racism, ethnicity, gender, sexual orientation, gender identity, religion, language proficiency, and classism in the usage of ERPOs.
- Best practices on interacting with individuals with mental illness or experiencing emotional distress, including de-escalation and crisis intervention.
- Best practices for working with minors subject to ERPOs, including ensuring officers have experience working with minors and with crisis intervention, keeping court records confidential (and sealed after the order’s expiration), and taking other action as appropriate or necessary to ensure the safety and protection of the minor respondent.
- Best practices for referring individuals subject to ERPOs and associated victims of violence to available social service providers that may be appropriate including healthcare, mental health, substance abuse, legal services, employment and vocational services, housing assistance, case management, and veterans and disability benefits.

Culturally Competent Resources

By investing in engagement via culturally competent resources, implementers can work to ensure that all communities have equitable access to ERPOs. To share knowledge about ERPOs, implementers should strive to develop and implement tailored training, guidance, and culturally competent resources that address the specific needs of the audience and are presented in the languages spoken by the intended recipients. These are necessary for a wide variety of stakeholders, including potential petitioners, healthcare providers, and others who

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may be referring potential petitioners such as social service workers, faith leaders, and other trusted community leaders. Consider the following training and resources:

- Training events including forums and webinars for key stakeholders, including getting training certified for CLE, CME, etc. so that key stakeholders may receive credit for completing training. When possible, incorporate ERPO information into standard or ongoing statewide trainings for relevant professionals.
- Outreach to best understand the biggest potential barriers to petitioning and methods to overcome them.
- Instructions for all stakeholders on how to obtain an extreme risk order, with copies readily available to provide to potential petitioners.
- Identified champions, experts, and superusers — such as implementation working group representatives — who can serve as resource guides for equitable implementation.
- State funding to support implementation efforts.

Outreach materials should also be tailored for law enforcement officers, court clerks, and judges, as well as social services providers who may be working with potential petitioners. For example, bench cards should be created for judges that outline best practices for ERPO implementation.

3. EVALUATION OF EXTREME RISK LAWS

Data Collection For Equitable Implementation
The only way to understand if ERPOs are being implemented equitably is through robust data collection and analysis. Not only does this improve understanding of how the law is being used, but it can provide a pathway towards improved equity through implementation or policy amendments. Data collection should include demographic information about respondents and petitioners and situational data related to the orders. Interviews or surveys with respondents, petitioners, potential petitioners, and people involved in the implementation process may also add depth and perspective to data and can help to better understand how minority communities experience ERPOs and how they may have unintended consequences.

The Consortium for Risk Based Firearm Policy (Consortium) recommends that states report ERPO case data to a centralized state database, accessible for research and policy purposes; these databases would be restricted for authorized access only. The Consortium-recommended data categories below contain data points that will help researchers, policymakers, and the public better understand the impact of the ERPO.3

Petitioner Information

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• Relationship of petitioner to respondent;
• Petitioner type (category of eligible petitioner according to state law);
• Demographic information of petitioner, including age, gender identity, and racial or ethnic identity; and
• For law enforcement petitioners, the specific department or agency for which the petitioner works or which the petitioner is representing;

**Respondent Information**
• Demographic information of respondent, including age, gender identity, and racial or ethnic identity;
• Whether the respondent is or has been the respondent to another ERPO and/or other protective order; and
• Whether the respondent has a concurrent criminal case.

**Petition and Order Information and Circumstances**
• City, county, and date of petition and, if applicable, temporary and full order issuances;
• Risk profile of respondent:
  o Risk to self only,
  o Risk to others only, or
  o Risk to self and others;
• Brief synopsis of event(s) that precipitated the petition/order;
• Petition for temporary ERPO, if applicable:
  o Whether temporary ERPO was granted or denied;
  o Reasons for temporary ERPO being granted or denied;
  o Whether the respondent contested the petition and/or order; and
  o If a temporary order was issued:
    ▪ Expiration date for temporary order;
    ▪ Whether the order was served, and if yes, the date of service;
    ▪ Whether the respondent was arrested, hospitalized, or referred for services; and
    ▪ Whether a search warrant was issued.
• Petition for full ERPO, if applicable:
  o Whether full ERPO was granted or denied;
  o Reasons for full ERPO being granted or denied;
  o Whether the respondent contested the petition and/or order;
  o Whether the petition is for a renewal to a prior ERPO order; and
  o If a full order was issued:
    ▪ Expiration date for full order;
    ▪ Whether the order was served, and if yes, the date of service;
    ▪ Whether the respondent was arrested, hospitalized, or referred for services; and
    ▪ Whether a search warrant was issued.
Firearms Information
• Number and type of known firearms in respondent’s possession or accessible to respondent;
• Number and type of firearms recovered, seized, and/or transferred;
• Number of firearms unaccounted for; and
• Whether the respondent was compliant with the order to relinquish firearms.

Research
As ERPO laws continue to be passed and implemented in states nationwide, ongoing study is crucial to fully evaluate the laws’ impacts, identify gaps or unintended consequences, and amend the laws so that they evolve with the data and jurisprudence. The Consortium for Risk-Based Firearm Policy encourages researchers to work directly with implementers of extreme risk laws to bolster the evaluation process, to advocate for data reporting and sharing requirements in state law, and for funding for research. The Consortium’s questions for researchers to explore include (but are not limited to) the following:  

ERPO Cases
What are the demographic profiles of respondents and petitioners, and how might that compare to the gun-owning community in general? What circumstances commonly precipitate an ERPO? What are the short- and long-term outcomes of cases in which ERPOs are obtained? What commonalities are there among respondents who go on to attempt or die by suicide or threaten or commit interpersonal violence? Do outcomes vary depending on the relationship between respondent and petitioner or other factors?

Respondent Information
How might race and ethnicity play roles in ERPO petitions, police involvement, court processes, and outcomes? Are certain populations over- or underrepresented among respondents? If so, why? Are there unintended consequences that impact racial and ethnic groups differentially, and if yes, what are they? How might they be mitigated? Are services to address underlying behaviors available across racial and ethnic groups? Are there racial disparities in either seeking charges and/or obtaining convictions for criminal penalties of non-compliant respondents?

Implementation Processes
What implementation processes are being practiced in various cities, counties, and states? How are they funded? What type of resources are needed for each implementation role? Where has innovation emerged? How are implementation processes and outcomes related?

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Evaluations of Stakeholder Training
What are the key points that stakeholders need or would like to be trained on? What is missing? How can training be improved?

Public Awareness and Perception of the Policy
Is the general public aware of the policy? Which awareness-raising efforts are successful? What does public opinion polling find about the policy’s favorability?

RESOURCES

Racial Impact Assessment

Research

Advocacy Resources
- CSGV Medium blog. (2019). It’s time to retire the term “Red Flag Laws.”

Implementation Resources
- Bloomberg American Health Initiative. Implement ERPO. https://americanhealth.jhu.edu/implementERPO
• King County Regional Domestic Violence Firearms Enforcement Unit