

FEDERAL EXTREME RISK PROTECTION ORDER ACT

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See Something. Say Something. Do Something.

Before the recent horrific tragedy at Marjory Stoneman Douglas High School in Parkland, Florida—as with so many tragedies before—members of the community identified warning signs of the coming carnage. They obeyed the familiar refrain, “See Something, Say Something.” But no one took the critical third step, “Do Something.” Under current law, there was little these community members could do. Even when it is clear that an individual poses a threat to himself or others, federal law allows dangerous individuals like the Parkland shooter to possess and purchase firearms.

Connecticut, Indiana, California, Washington, and Oregon have enacted laws that provide tools to take guns out of dangerous hands. Data from these five states show that the extreme risk protection orders (“ERPOs”) made available by these states’ laws are effective tools in removing guns from dangerous individuals. Connecticut has the oldest ERPO law on the books: since 1999, the state has allowed courts to prohibit individuals who pose an imminent danger from purchasing or possessing firearms. Studies have shown that the Connecticut law has saved lives.

Most Americans believe that Congress should come up with a solution that addresses gun violence and school safety issues while adhering to the due process protections afforded to all. The **Federal Extreme Risk Protection Order Act** would offer these protections to individuals across the country—providing a precisely tailored approach designed to identify dangerous individuals and to keep them and others safe from harm.

Under this law:

- Law enforcement officers and family/household members of a person may file a petition requesting that a federal court issue an ERPO prohibiting an individual from purchasing or possessing firearms.
- The federal court may then issue an ex parte ERPO, lasting no longer than 14 days, if the petitioner shows probable cause to believe that a person poses a risk of imminent injury to him/herself or others and that an ERPO is necessary to eliminate that danger.
- Within 72 hours of issuing an ex parte order, the court must hold a hearing—of which the subject of the order will receive notice, and at which the subject may present his/her case with the assistance of an attorney—and determine whether the petitioner has demonstrated clear and convincing evidence that the individual poses a danger to him/herself or others and that an ERPO is necessary to eliminate that danger. Upon this showing, the court shall issue a long-term ERPO lasting up to 180 days. The court may renew the order after 180 days upon a new showing of evidence.
- In issuing an order, the court must consider factors including, but not limited to, recent threats or acts of violence against people (including him/herself) or animals, and evidence of substance abuse. The court may also consider evidence such as the reckless use or brandishing of firearms; a history of violence; and prior involuntary confinement for mental health.
- Individuals subject to an order must surrender their firearms and ammunition, as well as any permit allowing them to purchase or possess firearms, to a United States Marshal or designated law enforcement officer, who may transfer the firearms to a licensed dealer if the individual agrees.
- Petitioners who knowingly file petitions that are “frivolous, unreasonable, or without foundation” will be penalized by the court.
- Federal courts must notify federal background check databases, relevant state mental health authorities, and relevant state and local law enforcement of the issuance and the duration of an ERPO.
- Individuals subject to a federal ERPO will be prohibited from purchasing or possessing firearms under current federal law.
- When the ERPO lapses or is dissolved and the individual subject to the order is again allowed to lawfully possess firearms and ammunition, the seized firearms, ammunition, and permit will be returned. The court must also notify federal background check databases, relevant state mental health authorities, and relevant state and local law enforcement that the order is no longer in effect.