

Extreme Risk Protection Orders

Background

Extreme risk protection order laws help ensure that those who might not have a prohibiting legal history of violence but have been deemed to be at an imminent risk of committing harm to themselves or others, is restricted access to firearms until that threat has passed. These laws allow a subject's family members, law enforcement, or a non-law enforcement reporter to petition a court for the temporary removal of firearms for individuals deemed a threat to themselves or others. Research shows that extreme risk protection order laws can reduce the firearm suicide rate by up to 6.4% and the total suicide rate by up to 3.7% in states where they are implemented.

About the Policy

Our extreme risk protection order policy stands out with the sheer number of provisions aimed at protecting due process, helping alleviate a major concern of the gun community about such laws. Furthermore, while our policy focuses on the removal of firearms to those deemed at imminent risk of self-harm or harm to others, it also has provisions aimed at addressing and mitigating the factors underlying the subject's crises through the involvement of independent mental health professionals working alongside police.

Protection of Gun Rights

The policy is based on the philosophy that if a person is at imminent risk of causing harm to themselves or others, there is most likely a mental health issue involved, and it makes no sense to simply take away the person's guns but offer no other services. In this policy, every person served with a temporary extreme risk protection order is offered a free mental health examination with appropriate referral for mental health treatment if deemed appropriate. All such mental health treatment is free of charge as long as the order is in effect. For people thought to be a risk to themselves, a crisis intervention plan is developed in conjunction with a mental health professional working with law enforcement.

There are multiple due process protections for subjects, including the right to appeal for early termination of a final extreme risk protection order if the person can show that they are no longer a risk to themselves or others. There is a penalty for anyone who uses the extreme risk protection order process to harass a gun owner and provides false information in a petition. There is a provision for free storage of guns for any temporary extreme risk protection order subject who is subsequently not found to pose an imminent risk to themselves or others. Finally, the policy requires that an evidentiary hearing be held

within two weeks of a temporary order, that it be held within 2 days if the subject is required to carry firearms for work, that firearms be returned within 2 days following the expiration of an extreme risk protection order, and includes safeguards to ensure that such timelines be enforced. Furthermore, all subjects of an extreme risk protection order will be given resources to contact attorneys and public defenders that have shown an interest in defending such cases.

The policy also addresses the concern that the presence of an extreme risk protection order law may dissuade gun owners from seeking mental health treatment by making it clear that the act of seeking such treatment may not be used as the basis of an extreme risk protection order petition, and by establishing a cultural competency training curriculum for mental health professionals to help them better understand the importance of firearms in the lives of their patients.

Protection of Public Health

This policy includes a comprehensive extreme risk protection order that focuses not only on disarming people who are acutely at risk to themselves or others but offering other help—such as mental health care—to such persons. It would be the first extreme risk protection order law in the nation to provide a free mental health examination and referral for free mental health care treatment for people who are served with temporary extreme risk protection orders. The policy extends the personnel who can request an extreme risk protection order petition be filed to include several categories of non-law-enforcement reporters including health professionals, mental health professionals, and educational staff. The policy includes protections for non-law-enforcement reporters so that they are not in violation of HIPAA laws if they request a petition be filed. A final extreme risk protection order is in effect for one full year, with a provision for its extension if it is shown that a subject remains a threat to themselves or others. Finally, the process for issuing extreme risk protection orders is accelerated with the court having only 24 hours to decide whether to issue a temporary extreme risk protection order after a petition is received and a requirement that all firearms in the possession of the subject be surrendered within 24 hours of receipt of the order.

Consent Tally

This proposal received the consent of 22 of 23 panelists.