



Extreme Risk Protective Orders



Group Members

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Background

- Extreme Risk Protective Orders (ERPOs) have received significant attention since the tragic shooting in Parkland, Florida
- ERPOs create a legal mechanism for law enforcement and the courts to temporarily separate a person from their firearms if they pose a risk to themselves or others
- These laws also prohibit individuals subject to the ERPO from purchasing, possessing, or transporting firearms for the duration of the order
- Currently in Virginia, law enforcement officers have no legal mechanism to remove firearms from a person who is posing a danger to themselves or others
- Enacting a law in Virginia will keep guns out of the hands of individuals in crisis, or who are exhibiting dangerous behaviors



Background

- Currently, 15 states have enacted some version of these laws, 7 of which have Republican Governors
- Connecticut adopted the first law in 1999, and their law has been upheld by the courts
- Multiple states have since enacted similar laws, Indiana in 2005, California in 2014, Washington in 2016, Oregon in 2017, eight states followed in 2018 (DE, FL, IL, MD, MA, NJ, RI and VT) NY and CO in 2019
- President Trump's School Safety Commission endorsed Extreme Risk Protective Orders in their final report
- In March of 2018, the NRA suggested it might support such laws, but conditioned any openness to such laws on an extensive list of conditions. The NRA has since mobilized efforts to defeat specific state ERPO legislation (e.g. summer of 2018 in PA, objected to allowing initial hearings *ex parte*)



Background

- The American Journal of Public Health reports that the presence of a firearm in domestic violence situations increases the risk of homicide for women by 500 percent
- The Office of the Chief Medical Examiner reports that in 2016, Virginia experienced 158 family and intimate partner homicides, 98 of which occurred with a firearm
- Suicide and homicide deaths by firearms in Virginia have been steadily increasing since 2012
- In 2017, Virginia experienced a total of 1,028 gun deaths, 664 of which were suicides
- Additionally, the Virginia Department of Health reports that Virginia experiences an average of 916 suicides per year, of which 56% involve firearms
- The CDC reported over 44,000 suicide deaths in the US in 2015, and nearly 50% occurred with firearms



Virginia Legislation

- Members of the Virginia legislature have introduced various versions of the ERPO bill since 2015
- During the 2019 legislative session, Governor Northam included this legislation in his gun violence prevention package
- HB1763 was sponsored by Delegate Sullivan and SB1458 was sponsored by Senator Barker
- Governor Northam included \$471,489 for the Virginia State Police in his budget to support its implementation



Virginia Legislation

- These bills would:
 - Enable law enforcement officers or Commonwealth's Attorneys to seek an emergency ERPO from any judicial officer, which would be valid for 14 days
 - This order would prohibit an individual from purchasing, possessing or transporting firearms
 - If there is probable cause to believe the individual has firearms in their possession, law enforcement may seek a search warrant to seize the firearms
 - Within 14 days, there must be a hearing by a Circuit Court judge, who may dismiss the order or issue a final ERPO that is effective for up to 180 days
 - The ERPO may be extended by the judge if the person continues to pose a risk to themselves or others after the initial 180 days
 - This bill creates a penalty for any person who makes a materially false statement to law enforcement for the purposes of obtaining an ERPO
 - Any person who continues to possess firearms while the ERPO is in effect would face criminal penalties



Challenges

- Second Amendment considerations
- Potential inconsistencies in implementation and application
- Potential storage issues
- Officer safety



Challenges

- Perceived infringement of Second Amendment
 - Does not arbitrarily remove firearms from individuals
 - Can only be sought by law enforcement or Commonwealth's Attorneys
 - Due process – only judicial officer can grant an ERPO after a hearing
- Inconsistencies in implementation and application
 - 367 law enforcement agencies across the commonwealth
 - Funding needs across such a wide disparity of LE agencies
 - Training for law enforcement, Commonwealth's Attorneys, judicial officers, etc.
- Storage issues
 - Surrendered or seized firearms may be stored by law enforcement while ERPO is in effect
- Officer safety
 - ERPOs address volatile situations



Solutions and Recommendations

- Create a Workgroup of Stakeholders
 - The Secretary of Public Safety and Homeland Security should convene a workgroup including Commonwealth's Attorneys, members of law enforcement, judicial officers, behavioral health representatives and others as necessary to develop implementation plans
- Storage Issues
 - The Department of Criminal Justice Services may consider making grants available to law enforcement agencies for storage of firearms



Solutions and Recommendations

- Model Policy
 - DCJS may consider creating a model policy to aid local law enforcement agencies and promote consistency
- Training
 - Training should be made available to law enforcement, Commonwealth's Attorneys, judicial officers and others on:
 - Purpose/Objective of the ERPO
 - Intervention Techniques
 - ERPO Procedures