

# Extreme Risk Protective Order in Massachusetts



## Empowering Families and Law Enforcement to Prevent Gun Tragedies

House Bill 3610 Introduced by Representative Marjorie Decker

**An Extreme Risk Protective Order (ERPO) is a court-issued civil order that would empower Massachusetts families and law enforcement to prevent gun tragedies by reducing access to guns for individuals at an elevated risk of endangering themselves or others.<sup>1</sup>**

**An ERPO fills a gap in Massachusetts laws by allowing family members recognizing loved ones in crisis to initiate a process through the judicial system to reduce access to firearms.**

**An ERPO is issued by a judge, after consideration of the evidence, that temporarily prohibits the purchase and possession of firearms and requires the removal of any firearms currently possessed while the order is in effect.**

### Does Massachusetts have other similar legislation?

All 50 states have long-established similar infrastructures and procedures for domestic violence protective orders. The court and notification procedures in H 3610 are similar to MA's domestic violence statute 209A. California, Oregon, Washington, Connecticut, Indiana, Rhode Island, and Florida have new procedures for removal of guns for potential harm to self or others. ERPO bills are now pending in 30 states, with versions passed in both houses in Vermont and a governor "eager" to sign.

### How does an ERPO work?

A petitioner – family or household member or law enforcement or agency - initiates the process with a written application to the civil court in their jurisdiction on a form provided by the judicial system. This does not involve a criminal complaint. No fees are charged to the petitioner for initiating this process.

A judge – within court day- considers the information in the written petition and determines whether there is reasonable cause to believe the person "poses a significant danger of causing imminent personal injury to self or others" by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition. The individual (respondent) may or may not receive notice about the initial hearing beforehand. If issued, an *ex parte* ERPO will be in effect up to the subsequent full ERPO hearing which must be within 14 days. If the respondent does not own or possess firearms, he or she is temporarily prohibited from purchasing or otherwise acquiring a firearm. If the respondent does own firearms, he or she must surrender his or her guns for the 14 day maximum of the *ex parte* order.

**2499**

people from Massachusetts were killed by gunfire in the last decade.<sup>2</sup>

**58%**

of Massachusetts gun deaths in 2016 were suicides.<sup>3</sup>

**85%**

of suicide attempts with a firearm are fatal, making firearms the most lethal suicide attempt method that is currently available. Temporarily reducing access to guns significantly increases the likelihood of surviving a suicidal crisis.<sup>4</sup>

**90%**

of people who survive a suicide attempt do not ultimately die by suicide.<sup>5</sup>

At the full hearing in a court of law, ERPO petitioner will be required to testify and present credible evidence. Respondent will also have an opportunity to present evidence to show that he or she is not a danger to himself or others and an ERPO is not necessary.

*In determining grounds, the court may consider relevant evidence including, but not limited to, recent acts or threats of violence, patterns of acts or threats within past year, dangerous mental health issues, violations of past 209A domestic abuse orders, previous ERPOs, conviction of crimes for domestic violence, ownership and access to firearms, unlawful or reckless use of firearms, history of acts of physical force or threatened use of physical force, stalking, prior arrest for a felony offense or violent crime, corroborated evidence of abuse of controlled substances or alcohol, and recent acquisition of firearms.*

If the Court finds by a “preponderance of the evidence” that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm, the court shall issue an ERPO to be effective for a period of 1 year and respondent will have to surrender firearms to law enforcement.

On the same day that the ERPO is issued, local and federal criminal justice system are notified of the order; information forwarded to NICS.

Renewal of the 1 year ERPO is possible, but requires new petition to the court and new hearing.

### **Is there due process protection for the respondent?**

Petitioner must file written petition. An ex parte (temporary) ERPO may only last up to 14 days maximum. Respondent demonstrating need for firearms at place of employment may ask for expedited ERPO hearing within 2 business days.

Full ERPO hearing requires written notice personally served by law enforcement (or alternate legal service) and certified mail to the respondent at least 7 days before the hearing. The hearing provides opportunity for respondent to bring evidence and witnesses. Order for removal of weapons is temporary, expires at end of one year, a date which must be specifically stated in the order. Respondent has an opportunity to request a termination hearing before the year is completed to attempt to show that he or she is no longer dangerous to self or others. If petitioners believe the danger is continuing beyond the year, they must bring evidence of continued need to a new court hearing before expiration of order. Firearms are returned after expiration of order after a background check to determine person’s continued eligibility. NICS and local criminal justice system must be notified timely of expiration of order. There is a substantial fine and potential prison punishment levied against anyone using ERPO procedure for harassment or knowingly using false information.

### **Are there efforts to help underlying causes of crisis issues?**

Resources for crisis intervention may be gathered by court clerks and shared during the process. Law enforcement petitioners must demonstrate they have provided such information. The court shall consider whether a mental health evaluation or substance use evaluation is appropriate, and may order such evaluation if appropriate.

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1-Includes material from documents distributed by Americans for Responsible Solutions, Educational Fund to Stop Gun Violence, and Law Center to Prevent Gun Violence

2-National Center for Injury Prevention and Control, CDC. Massachusetts Firearm Deaths and Rates per 100,000. Fatal Injury Reports 1999-2016, for National, Regional and States (RESTRICTED). Retrieved March 1, 2018 from [http://www.cdc.gov/injury/wisqars/fatal\\_injury\\_reports.html](http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html).

3-Ibid.

4-Miller, M., Azrael, D., & Barber, C. (2012). Suicide Mortality in the United States: The importance of attending to method in understanding population-level disparities in the burden of suicide. *Annual Review of Public Health, 33*,393-408.

5-Owens, D., Horrocks, J., & House, A. (2002). Fatal and non-fatal repetition of self-harm. Systematic Review. *British Journal of Psychiatry, 181*(3), 192-199.