

Good afternoon everyone. My name is Jeffrey Swanson, PhD, and I am a professor in the Department of Psychiatry and Behavioral Sciences at Duke University School of Medicine. I am also a Faculty Affiliate of the Wilson Center for Science and Justice and the Center for Firearms Law at Duke Law School. Thank you for the opportunity to speak to you today about Extreme Risk Protection Orders, an important piece in the policy puzzle of firearm injury prevention.

It is sobering to be talking about gun violence prevention on another day when we are reeling from the news of yet another mass shooting in a public place, an almost uniquely American recurring nightmare. These incidents are so disturbing, terrifying, and irrational; they're everything we don't want ordinary life to be. But we should remember that on the day of any mass shooting – and the day before, and the day after – an average 130 other people die as a result of a gunshot, all around the United States. More than half these deaths are suicides.

There is no one solution to gun violence in America or in the state of Vermont, and some solutions are off the table. We cannot broadly limit legal access to guns, as many countries do. We live in a country with a deeply entrenched gun culture and a constitutionally protected individual right to bear arms. But gun violence is a public health problem; it doesn't have to be a political issue. The new federal Bipartisan Safer Communities Act provides funding for states to implement an ensemble of reforms, including Extreme Risk Protection Orders (ERPOs), or red flag laws. The enactment of this bill shows that Americans across the political spectrum can work together to start solving a problem as big and complicated as gun violence.

I'd like say a few things about the logic and rationale legal design of Extreme Risk Protection Orders (and I'll use the acronym ERPO); how they work, and how they might work better, and the need to broadly implement ERPOs in states like Vermont that have enacted this law.

It often the case that, prior to a gun violence tragedy, someone – most often a family or household member – was alert to an escalation of threatening or

suicidal behavior on the part of someone with access to firearms, or who could legally obtain a firearm. ERPOs provide a versatile legal tool to act on that information about risk, to act ahead of time, to prevent harm. ERPO is a civil restraining order that's time limited and not criminalizing; it provides legal way to temporarily separate firearms from a person who poses a high risk of harming others or themselves. These orders offer due process protections and respect the Second Amendment. They are supported by majorities of Americans, including majorities of gun owners. And they can save lives.

My colleagues and I conducted the earliest research on these types of laws in Connecticut and Indiana. Our studies estimated that for every 10-20 risk-based gun removal actions, one life was saved by averting a suicide. New research from six states, California, Washington, Colorado, Connecticut, Maryland, and Florida, finds that 1 in 10 extreme risk protection orders involved a person who threatened a multiple victim shooting.

Whenever we hear of violent firearm-related death, everyone ask, "Why did they do it?" The current state of science tends to come up short on this "why" question. But to stop so many people from dying, perhaps the more relevant and practical question is "What can we do to ensure that people inclined to harm others or themselves do not have access to a firearm at that time?"

In a country with more guns than people and a constitutional right to bear arms, there are basically two ways that the government can limit access to gun by high-risk people, and the first one isn't working very well. That's to enact and enforce laws that prohibit certain categories of putatively dangerous or lawbreaking people from purchasing or possessing firearms. But that's not enough, because the prohibiting criteria are too broad and too narrow at the same time. They do not correlate enough with real-time risk. We do not have universal background checks, and the records in the check database are often incomplete. Many gun-prohibited people manage to get guns anyway.

The second approach is the ERPO approach, what I like to call the Swiss army knife of gun violence prevention. It is a versatile legal tool to remove firearms and

prevent their acquisition for a while, from a person who is behaving dangerously -
- no matter who or why.

Do ERPOs work? In 2017, our research group at Duke partnered with colleagues in Connecticut to conduct the first evaluation of the first ERPO-like statute, often referred to in Connecticut as the “risk warrant” law. The law had been on the books since 1999, but was hardly used at all for the first five years of its existence -- there’s a lesson there. Then it gradually came into use and by 2013 there were 762 cases to study. We found that about two thirds of the cases involved a suicide concern. In about half the cases, a call to police from a concerned family member or acquaintance had initiated the risk warrant petition. Nearly half had a record in the public behavioral health system, often for a substance abuse problem. In more than half the cases, the individual was found to be in a crisis and the police didn’t just leave them there, but took them to hospital emergency department for evaluation and treatment; the proportion of these respondents who were in outpatient mental health treatment doubled from the year before to the year after the gun removal action.

Ninety-two percent of the subjects were men, median age 47, and they were men with lots of guns: on average police removed 7 guns per person in these cases.

Then we matched these cases to death records, and were surprised to find that their annual rate of suicide was 40 times higher than in the general population of Connecticut at the time. As used, this legal tool had identified a relatively small group of people with highly concentrated risk of suicide. When we looked at the methods of suicide, we found that only a small fraction of them had used a firearm -- the most lethal method of suicide, by far --and none had used a firearm during the period while their guns had been removed. We used a statistical model to calculate how many more people would have died if the guns had not been removed. The answer: for every 10 to 20 gun-removal actions, 1 life was saved.

Two years later, our group published a second evaluation of the second ERPO-like law, enacted in Indiana 2006, with essentially similar results, adding descriptive data on violent crime outcomes, which turned out to be very rare.

The Consortium for Risk-Based firearm policy in 2013 created the template for the current ERPO laws that allow family members and sometimes others to petition for an ERPO following the model of a domestic violence order of protection. With the emergence of promising research findings, advocacy in key stakeholder groups including law enforcement, and a groundswell of public interest and demand after the 2018 Parkland shooting, ERPOs were quickly passed in a number of states now totaling 19 and DC.

What must happen now is *broad implementation*. ERPOs must be scaled up and widely used, if their promise is to be realized. People need to know about them. Courts and law enforcement departments need to be educated about ERPOs and have routines, protocols, and infrastructure to process and enforce ERPO orders efficiently, including storage and timely return of firearms to eligible respondents no longer at risk. Federal legislation to support states in their efforts to implement ERPOs could help, just as the NICS Improvement ACT help states to dramatically increase their reporting of records to the National Instant Check System.

ERPOs enjoy wide public support across the ideological spectrum, including majorities of gun owners. They can work, but they are no panacea by themselves -- they're an important piece in the puzzle of gun violence prevention. They would work better if we had comprehensive background checks and a better handle on the robust secondary gun market in this country, especially in some regions. But ERPOs are a place to start, maybe the one square inch of common ground between the earnest advocates of gun rights and gun regulation.

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