

EXTREME RISK PROTECTION ORDERS:

AN OPPORTUNITY TO SAVE LIVES IN WASHINGTON

Educational Fund to Stop Gun Violence September 2016

ABOUT US

The Educational Fund to Stop Gun Violence (Ed Fund) was founded in 1978 as a 501(c)(3) organization that makes communities safer by translating research into policy. The Ed Fund achieves this by engaging in:

Policy Development: The Ed Fund is the gun violence prevention movement's premier research intermediary and founder of the Consortium for Risk-Based Firearm Policy, a group of academics and practitioners who collaborate to develop innovative recommendations for policymakers.

Advocacy: The Ed Fund influences the policymaking process by lobbying, educating policymakers, and disseminating our message through media advocacy and outreach.

Community and Stakeholder Engagement: The Ed Fund works with impacted community members to create a voting bloc trained to advocate for policies that reduce gun violence.

Technical Assistance: The Ed Fund supports policymakers and gun violence prevention advocates by drafting and implementing groundbreaking, evidence-based policy.

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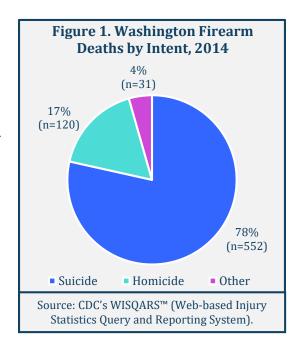
This report relies on findings by the **Consortium for Risk-Based Firearm Policy (Consortium)**. The Consortium seeks to synthesize and translate existing research and the best available scientific evidence to develop gun violence prevention policy recommendations, within constitutional limits, to address access to firearms by persons who are at an elevated risk of committing interpersonal violence or suicide. The Consortium then informs relevant stakeholders of these policy recommendations by developing educational materials, including reports and issue briefs; conducting public forums; and submitting expert testimony. The Ed Fund would especially like to thank Consortium member Dr. Jeffrey Swanson and his research team, particularly Dr. Kelly Alanis-Hirsch, for contributing their knowledge and expertise.

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INTRODUCTION

Firearm violence is a leading cause of death and injury in the United States, taking a tragic toll on American families and communities. In 2014, the United States experienced more than 81,000 nonfatal firearm injuries¹ and 33,500 deaths,² of which nearly two-thirds were suicides (63%).³ In Washington, there are nearly two firearm deaths every day, more than three-quarters of which are suicides (702 total firearm deaths in 2014; 551 were suicides).^{4,5}

Though gun violence is a significant public health problem, research shows that prevention is possible through comprehensive, evidence-based strategies. The Consortium for Risk-Based Firearm Policy (Consortium), a group of the nation's leading experts in public health, mental health, and gun violence prevention, came together in March 2013 to take on the complex issue of the intersection of gun violence and mental illness. The Consortium concluded that, contrary to popular talking points, mental illness is *not* a good predictor of violence; rather, they



found specific behavioral indicators of dangerousness that are far more reliable predictors of future violence. As a result of that convening, the Consortium developed evidence-based gun violence prevention policy recommendations for state and federal policy makers that would reduce access to firearms by people who are at an increased risk of dangerous behavior.⁶

One of the Consortium's groundbreaking policy recommendations was a Gun Violence Restraining Order (GVRO): a mechanism for law enforcement officers, family members, and intimate partners to petition a court to temporarily limit access to firearms by individuals who pose a credible risk of harm to self or others. A common thread in many of the high profile shootings witnessed in this country – as well as in less-publicized family tragedies – is that family members of the shooters are often the first people to see their loved ones engage in dangerous behaviors and grow concerned about their risk of harming themselves or others, even before any violence occurs.^{7,8} Unfortunately, most states lack a legal process to help law enforcement and concerned family members to keep loved ones safe.

In Washington, the Consortium's recommendation has been developed into a ballot initiative (Initiative 1491) and will be on the state's general election ballots on November 8, 2016 for a voter referendum. The process within Initiative 1491 is called an Extreme Risk Protection Order (ERPO). ERPOs will offer Washington law enforcement, families, and household members a legal avenue for temporarily removing a firearm from loved ones in crisis. The following report provides information on firearm injury data in Washington, the evidence for temporary risk-based firearm removal, and a summary of how ERPO would work in Washington.

Zoe's Story

Zoe's daughter Dana was a successful writer who struggled with depression. As an adult, she overcame her fair share of struggles - including homelessness - to write and work on movies. After living away from home, Dana returned to Seattle to reconnect with her mom. Unfortunately, her depression returned, and Zoe soon discovered that Dana had obtained a gun.

As Dana's crisis deteriorated into threats of suicide, Zoe pleaded with the police to temporarily remove her daughter's gun. Under existing law, however, there was nothing they could do until she attempted to harm herself. Several weeks later, Zoe stopped by her daughter's apartment to check on her after church and found that Dana had died by suicide using her gun.



"This Extreme Risk Protective Order is the most important thing to my life today."

- Zoe Anne Moore

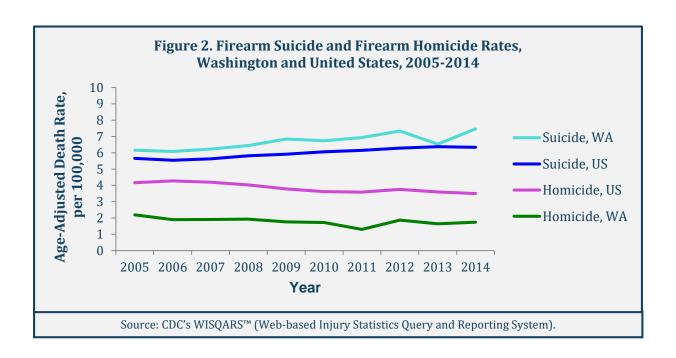
ACCESS TO GUNS WHILE IN CRISIS: A LETHAL COMBINATION

Firearm Suicide in Washington

There are nearly two firearm deaths every day in Washington (702 total deaths in 2014). Though the overall firearm death rate is lower in Washington than nationally, Washington's age-adjusted firearm suicide rate is notably higher (7.64 versus 6.34 deaths per 100,000, respectively), making it the leading cause of violent death in the state. Suicide by any means is the eighth leading cause of death in the state overall and the second leading cause of death among Washingtonians aged 10-34 years.

Though from 2005-2014 Washingtonians as young as 14 years of age have died by firearm suicide, the highest rates are among middle aged and older adults. ¹⁴ The majority of Washington's firearm suicides are by white males who, from 2005-2014, died by firearm suicide at a rate of 13.08 per 100,000. White females account for the next largest number of firearm suicide deaths in the state, but at a lower rate of 1.84 per 100,000. Both of these rates are higher than demographically matched national rates. ¹⁵ While the total number is relatively low due to a smaller population size, American Indian/Alaska Native males are affected by a disproportionately high firearm suicide death rate of 11.18 per 100,000, 1.5 times higher than the national rate. ^{16,17}

^a Age-adjustment (or age standardization) is a technique used in statistics and epidemiology to compare populations with different age distributions.



Risk Factors for Dangerousness

While much of the common narrative about gun violence prevention focuses on mental illness as a risk factor for interpersonal violence, research demonstrates that the vast majority of people with mental illnesses are not violent towards others. Though there are specific times when people with mental illnesses are at increased risk of interpersonal violence (such as the time period surrounding an involuntary hospitalization), overall, people with mental illnesses are not more violent than the general population. Indeed, only 4% of interpersonal violence is attributable to mental illness alone. Rather, the most reliable predictor of future violence towards others is a behavioral record of past violence, such as convictions of domestic violence and violent misdemeanors. As suicide accounts for a majority of firearm deaths in Washington and nationwide, Prevention efforts to keep people safe through suicidal crises are needed.

Although warning signs of crises are often present well ahead of tragedy and present opportunities for intervention if given appropriate legal remedies, suicidal crises peak relatively quickly for most people. In a survey of people who have survived suicide attempts, 24% reported that less than five minutes passed from when they decided to attempt suicide to when they actually attempted suicide, and another 47% said the time from decision to attempt was an hour or less.³⁴ As a result, a persons' access to lethal means at the peak of crisis is a critical factor in whether they will survive that crisis.

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Firearms Make Crises Lethal

Easy access to firearms makes crises lethal. Multiple research studies have found that easy firearms access itself increases risk of suicide. 35-51 Although most suicide attempts do not involve guns, half of all suicide deaths are by firearm. 52,53 This disparity is caused by the high lethality of firearms: 85% of firearm suicide attempts result in death, making firearms the most lethal suicide attempt method. By comparison, the two most common suicide attempt methods, poisoning/overdose and cut/pierce, result in death in 2% and 1% of attempts, respectively. 54

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Due to the lethality of firearms, if an individual does not have easy access to a firearm in the midst of a suicidal crisis, they are much more likely to survive a suicide attempt using another method. Further, research evidence demonstrates that if a suicidal person's preferred method of suicide is not available to them, few will substitute another method, 55 and 90% of people who survive suicide attempts do not go on to subsequently die of suicide. Taken together, by limiting access to firearms to people who are at high risk of dangerousness, lives can be saved.

SAVILLE BARLELL

Sarah's Story

Sarah's cousin Veronika, a Washington native, was a first year student at the University of California, Santa Barbara. Veronika was one of six people killed in May 2014 when a troubled young man with deep-seated rage against women went on a violent rampage in the streets of Isla Vista.

Three weeks before the shooting, the shooter's parents discovered alarming videos he had posted online and shared their concerns for his well-being and potential dangerousness with one of his therapists. The therapist called a mental health hotline, which led to police conducting a wellness check on the shooter. Although he already had a well-developed plan and supplies to harm others, including multiple firearms and ammunition, he was able to hide his intentions during the wellness check and no search was conducted.

Police determined he did not meet the criteria for an involuntary psychiatric hold, the only legal option available at that time to keep him from accessing firearms.*

"If Extreme Risk Protection Orders had existed, we would have been able to...
prevent [Veronika's shooter] from what he did."

- Sarah Whitford

^{*}On the first working day following the shooting in Isla Vista, California legislators introduced a Gun Violence Restraining Order bill, which the Governor signed into law just four months later.

THE EVIDENCE FOR TEMPORARY RISK-BASED FIREARMS REMOVAL

Law enforcement and concerned family members are in desperate need of tools to temporarily suspend firearms access during periods of crisis. In 1999, Connecticut became the first state in the country to pass a law granting law enforcement the clear legal authority to temporarily remove firearms from individuals when there is probable cause to believe they are at a significant risk of harm to self or others. This process in Connecticut is called a *risk-warrant*. ⁵⁷ Indiana also has a discretionary gun removal law for law enforcement, ⁵⁸ and California became the first state in the country to pass a law providing not only law enforcement but also family members with a similar option, which went into effect in 2016. ⁵⁹

A recent analysis of Connecticut's risk-warrant law by Dr. Jeffrey Swanson of Duke University, with a team of nine other researchers, adds to the growing body of evidence for risk-based firearms removal laws by demonstrating that such policies hold a lot of promise as effective tools in saving lives.⁶⁰

Reaching High-Risk People and Saving Lives

In the first 14 years of Connecticut's risk-warrant law (1999-2013), 762 risk-warrants were issued, with significantly more widespread use following the 2007 mass shooting at Virginia Tech. 61,62 Police found firearms in 99% of cases, removing an average of seven guns per subject. The typical risk-warrant subject was a middle-aged or older married man, the same demographic that in Washington – and nationwide – is most at risk for firearm suicide. 63,64,65 Of those 762 cases, suicidality or self-injury was listed as a concern in at least 61% of cases where such information was available. 66

People subject to riskwarrants are at very high risk for dangerousness: they have an annual suicide rate **40** times higher than the general population. Swanson's research team found that 21 individuals who had been served risk-warrants went on to die by suicide, a rate approximately 40 times higher than the average annualized suicide rate in the adult population in Connecticut during the same period. This staggeringly high rate illustrates that the risk-warrants reached individuals who were at a dangerously elevated risk of suicide. ⁶⁷

Of those 21 suicides, only six were carried out with guns. Using known case fatality rates^b of the various suicide methods used in the study population, the researchers estimated that the 21 deaths likely represent

142 suicide attempts, mostly using less lethal means than a gun. If firearms had been available and used in more of those attempts, more risk-warrant subjects would have died by suicide.

To reach this conclusion, the researchers used national data to estimate the likelihood that people in a demographically matched population of gun owners would have chosen a gun in attempting suicide. They then used this likelihood to develop a model for calculating how many more of those estimated 142 suicide attempts would have been fatal had the risk-warrant subjects still been in possession of firearms in the

^b Case fatality rates (or case fatality ratios) represent the percent of people who die in a suicide attempt, in this case by specific methods.

absence of the risk-warrant. Since attempted suicide with a firearm has such a high case fatality rate, reducing the percentage of suicide attempts with a firearm saves lives. The resulting model considers various levels of risk, resulting in the range that for every 10 to 20 risk-warrants, one life is saved. 68 Given that 762 risk-warrants were issued through 2013, this means that an estimated 38 to 76 more people are alive today as a result of risk-warrants in Connecticut.

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Despite the elevated risk of self-harm, most risk-warrant subjects (88%) were not known to Connecticut's public behavioral health system at the time the risk-warrants were served. However, in the year *following* gun seizure, nearly one-third (29%°) of risk-warrant subjects received treatment in the state system, an indication that the risk-warrant provided a portal to critically needed mental health and substance use related services.⁶⁹

This analysis by Swanson and colleagues shows that risk-warrants prevented additional suicide deaths by intervening in crises, providing safe periods for subjects to obtain critical behavioral health services, and shifting suicide attempt methods from firearms to less lethal means.

Risk-Based Gun Removal Can Save Lives in Washington

There is clear evidence that Connecticut's risk-warrant reaches people at high risk of suicide and prevents additional deaths from occurring. As in Connecticut, a preemptive, risk-based gun removal law has the potential to save lives in Washington. By comparison, firearms ownership is over 1.5 times higher in Washington than in Connecticut,^d and the rate of firearm suicide is also almost twice as high.^{70,71,72} Since these factors indicate higher risk, it is likely that a similar risk-based gun removal law, if well-implemented, would save even more lives in Washington than the risk-warrant has in Connecticut.

Approximately *1 in 3* risk-warrant subjects received critical mental health and substance abuse treatment as the result of the risk-warrant.

^c 29% is a conservative estimate; it is likely that additional risk warrant subjects sought private mental health and substance use treatment services that are not included in this figure.

^d Researchers estimate that from 1981-2013, an average of 34% of Washington homes owned firearms, as compared to 21.4% of homes in Connecticut.

In Her Own Words: Marilyn's Story

June 7, 2015 was the worst day of my life. My son James shot and killed himself and his stepsister Brianna. I should have been able to prevent it.

Brianna was a bright and bubbly, 21-year old young woman. She was popular, quick to smile, generous to a fault. She could strike up a conversation with anyone on the street just like they were old friends.

My son James was different. He was smart and independent and wanted to be a nurse anesthetist. He was diagnosed with Autism Spectrum Disorder when he was seven. We saw every doctor we could find, tried every treatment. It's heartbreaking to watch your son struggle knowing there's little you can do to help. He experienced periods of depression. Though not typical for everyone with his diagnoses, in the last years of his life he became violent, verbally abusive, and experienced suicidal ideation.

While James was a child, I could make sure he went to therapy, practiced recognizing social cues, and monitored how medications affected him. I could help him with school projects. I could ease his path. As an adult, it was difficult. I researched doctors and therapists but I could not make his appointments.

The situation came to a head the summer before he died. We got into an argument. I thought we could talk in the morning when everyone was calm, so I went to get ready for bed and asked James to do the same. Instead, he followed me up, pounding on the door and begging me for permission to end his life.

That night was a turning point. We called 911, but by the time police arrived, James had calmed down. I asked the officers how could I keep him away from dangerous weapons, or whether there were programs that could help? "No," I was told. I had two options: secure a restraining order, which would cut all contact between us, or wait until he committed a felony crime. Either would destroy his life. I was his only advocate and link to love and family. I couldn't imagine what would happen if I cut off contact.



I never imagined James would hurt anyone in our family, but I worried he was capable of violence. After the shooting at Isla Vista, I thought, "that could have been my son." I went back to the police, but again was told there was nothing I could do. We were terrified. Our psychiatrist and therapist recommended separating our households for protection, so Matt (my partner and Brianna's father) and I moved out. James stayed; we wanted him to have stability. We met often, but we never told James our new address.

June 7 was supposed to be a nice day. I would have lunch with James and golf with Matt, but James never arrived at the restaurant. Somehow, he found our address. He shot Brianna in her bed and then shot himself twenty minutes later. To this day I'm not sure what went through his mind in that time, or whether James fully understood that Brianna wouldn't somehow wake up - until, of course, she didn't.

No mother should ever again feel powerless when she sees warning signs of violence in her own home. No father should be left defenseless in the face of looming gun violence. No family should ever have to experience what mine has

"If Extreme Risk Protection Orders had been law one year ago I believe my son and step-daughter would be alive, and I would have more time to get my son the help he needed."

- Marilyn Balcerak

EXTREME RISK PROTECTION ORDERS: LIFE-SAVING POLICY

Following in the footsteps of Connecticut, Indiana, and California, about a dozen states will be considering risk-based firearms removal laws in their upcoming legislative sessions. ⁷³ In Washington, residents now have a similar opportunity to save lives when they step into voting booths this November. A ballot initiative, Initiative 1491, proposes a tool called *Extreme Risk Protection Orders (ERPOs)* to help keep at-risk Washingtonians safe. ⁷⁴

What are Extreme Risk Protection Orders (ERPOs)? How do they work?

ERPOs, also known as Gun Violence Restraining Orders (GVROs), are a form of civil court order, signed by a judge, that helps law enforcement, family, and household members to protect someone who is in crisis from hurting themselves or others by temporarily prohibiting them (the "respondent") from possessing or purchasing any firearms. ERPOs are modeled after the long-standing infrastructure and procedure of Domestic Violence Restraining Order policies found nationwide and involve a court hearing and clearly defined due process protections.

By intervening to temporarily remove guns already possessed and prohibit new gun purchases, ERPOs create safer circumstances for at-risk individuals to seek treatment (e.g. for substance abuse or mental illness) or engage other resources to address the underlying causes of the dangerous behaviors.

What Types of Orders Are There?

ERPO

When an individual is in crisis and is thought to be at risk, a petitioner may initiate the ERPO process by submitting a petition for an ERPO to their local court. Upon receipt of the petition, the court will schedule a hearing to be held within 14 days and issue a notice of the hearing to the respondent.^e

At the hearing, if the court finds by a *preponderance of the evidence*^f that the respondent poses a significant danger of causing personal injury to self or others by having a firearm, the court will issue an ERPO that lasts for one year.

The ERPO will order the respondent to surrender all firearms in the respondent's custody, control, or possession and any concealed pistol license (CPL) issued to the respondent to the local law enforcement agency. A law enforcement officer or private process server may serve the order. The respondent will either be required to surrender all firearms immediately or will be given 48 hours to willingly surrender all firearms to their local law enforcement.

^e See the following sub-section, *Ex Parte ERPO*, for a description of the process to request firearms removal prior to the scheduled ERPO hearing in more urgent situations.

^f See the following section, *What do courts consider when deciding whether to grant an ERPO?*, for more information on what evidence courts consider in making ERPO decisions.

If the respondent does not surrender firearms as required, the court will issue a search warrant for law enforcement to search for and remove the respondent's firearms. In all removals, the respondent will be given a receipt of transfer and copies will be filed in official records.

At the end of the year-long ERPO, another hearing may be requested by the petitioner. If at that hearing the court determines the respondent still poses a significant danger of causing personal injury to self or others by having a firearm, the ERPO may be renewed.

Ex Parte ERPO

If the petitioner is concerned about the respondent's safety or potential for dangerousness prior to the ERPO hearing, they may request that an ex parte ERPO be issued. To do so, the petitioner must include in the ERPO petition detailed allegations, based on personal knowledge, that the respondent poses a significant danger of causing personal injury to self or others *in the near future* by having a firearm.

The court will hold a hearing on the ex parte ERPO on the day the petition is filed or on the next judicial business day. If the court finds *reasonable cause* to believe the petitioner's claims, the court will issue an ex parte ERPO, which provides for removal of firearms in the period prior to the ERPO hearing. Service of the order and the subsequent firearms removal process will proceed as described in the section above. The hearing for the ERPO will be held as scheduled.

What do courts consider when deciding whether to grant an ERPO?

In determining whether to grant either an ERPO or an ex parte ERPO, the court may consider any relevant evidence. Examples of relevant evidence include recent acts or threats of violence against self or others, patterns of violence in the past year, convictions of domestic violence, prior unlawful or reckless use of firearms, and violations of protection orders or nocontact orders.

How are firearms returned to respondents?

If an ERPO is terminated or expires without renewal, the law enforcement agency storing surrendered firearms will return the firearms upon request of the respondent after confirming, through a background check, that the respondent is not prohibited from owning or possessing firearms under state or federal law and confirming the termination or expiration of the ERPO. If requested, the law enforcement agency must notify the ERPO petitioner of the return of firearms to the respondent. Any unclaimed firearms will be disposed of by the law enforcement agency according to their policies and procedures.

WHO MAY PETITION FOR AN ERPO?

A law enforcement officer or agency, or a family or household member may petition for an ERPO. Family or household member includes:

- A person related by blood, marriage, or adoption to respondent;
- Dating partners of respondent;
- A person who has a child in common with respondent (regardless of whether the person has been married or lived with respondent);
- A person who resides or has resided with respondent within the past year;
- A domestic partner of respondent;
- A person who has a biological or legal parent-child relationship with respondent, including stepparents and stepchildren and grandparents and grandchildren;
- A person who is acting as respondent's legal guardian.

CONCLUSION

In Washington, nearly two people die every day as a result of gun violence, more than three-quarters of which are by suicide. ^{75,76} Mental illness is a strong risk factor for suicide, especially depression. ^{77,78,79} Behavioral factors related to a history of violence are reliable predictors of future interpersonal violence. ^{80,81,82-84} When people who are at in increased risk for dangerousness have easy access to guns, crises become lethal. ^{85-101,102}

Evidence-based policies that focus on people most at risk of dangerous behavior, such as temporarily suspending firearms access during periods of crisis, are needed to protect the lives of Washingtonians and all Americans by preventing tragic firearms deaths from occurring. This November, citizens in Washington State will have the opportunity to vote on Extreme Risk Protection Orders, which will appear on general election ballots as Initiative 1491.

"Extreme Risk Protection Orders can keep Washingtonians safe by separating those most at risk of dangerous behavior from deadly weapons."

Josh Horwitz
Executive Director
Educational Fund to Stop Gun Violence

ADDITIONAL RESOURCES

Educational Fund to Stop Gun Violence Report

Risk-Based Firearm Policy Recommendations for Washington

http://efsgv.wpengine.com/wp-content/uploads/2015/03/Final_Washington-Report-3-18-15.pdf

Consortium for Risk-Based Firearm Policy State Report

Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Firearm Policy

http://www.efsgv.org/wp-content/uploads/2014/10/Final-State-Report.pdf

Alliance for Gun Responsibility

Solution: Extreme Risk Protection Orders

http://gunresponsibility.org/solution/extreme-risk-protection-orders/

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