

Written Testimony of Joshua Horwitz
Executive Director, Coalition to Stop Gun Violence

Before the Subcommittee on The Constitution of the United States
Senate Committee on The Judiciary

Stop Gun Violence: Extreme Risk Order / “Red Flag” Laws Hearing

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Good afternoon Chairman Blumenthal, Ranking Member Cruz, and distinguished members of the Senate Judiciary Subcommittee on The Constitution. Thank you for giving me the opportunity to testify on the importance of extreme risk laws and their value in preventing gun violence. My name is Josh Horwitz, and I am the Executive Director at the Coalition to Stop Gun Violence (CSGV). CSGV is the nation's oldest gun violence prevention organization, founded in 1974. Along with our affiliate organization, the Educational Fund to Stop Gun Violence, we develop and advocate for evidence-based solutions to reduce gun injury and death in all its forms.

Like so many others, I came to the gun violence prevention movement because of personal loss. Thirty-two years ago, a dear friend of mine took her own life using a newly purchased firearm in a moment of overwhelming hopelessness. Back then, I did not have the knowledge or the tools to intervene effectively. I desperately wish that I could go back in time. I wish an extreme risk law would have been available to help. But I can't go back in time, and I can't bring my friend back. What I can do is what I am doing right now: encouraging policy makers like you to use your power to support these life-saving laws so that no other families or friends have to experience this type of heartbreak.

Gun violence in our country remains persistently high, taking nearly 40,000 lives each year - an average of 106 people every day.¹ This is a serious yet preventable public health crisis. Firearms are the method used in half of all suicides and three-quarters of all homicides.² The high lethality of firearms makes risky situations fatal, as they do not allow for a second chance or a change of mind. Research has identified behavioral risk factors that can serve as warning signs for future violence as well as provide opportunities to intervene, but ultimately, easy access to guns in such high-risk circumstances significantly increases risk of both firearm suicide and homicide.³

The fact is, lives will continue to be needlessly lost without meaningful national leadership. Although no single intervention will serve as a panacea to the epidemic of gun violence, extreme risk laws have the power to save lives and are gaining traction across the country. Enacted in blue and red states alike and endorsed by both the Trump and Biden administrations,^{4,5} this

¹ Educational Fund to Stop Gun Violence and Coalition to Stop Gun Violence. (2021). A Public Health Crisis Decades in the Making: A Review of 2019 CDC Gun Mortality Data. Available: <http://efsgv.org/2019CDCdata>

² Ibid.

³ Anglemyer, A., Horvath, T., & Rutherford, G. (2014). The accessibility of firearms and risk for suicide and homicide victimization among household members: a systematic review and meta-analysis. *Annals of internal medicine*, 160(2), 101-110.

⁴ DeVos, B., Nielsen, K. M., & Azar, A. M. (2018). Final Report of the Federal Commission on School Safety. Presented to the President of the United States. US Department of Education.

⁵ The White House, Office of the Press Secretary. (2021, April 7). *Biden Harris administration announces initial actions to address the gun violence public health epidemic*. [Press release]. Retrieved from

policy provides a clear opportunity to find common ground in stemming this ongoing nationwide tragedy.

Extreme risk laws authorize a targeted and temporary intervention that reaches high risk people in high risk situations. The modern extreme risk order was developed in response to the horrific school shooting at Sandy Hook Elementary School in Newtown, Connecticut. In the months that followed, the national dialogue around preventing gun violence was focused on mental illness. To determine whether this approach would truly be effective, in March of 2013 I convened a group of some of the nation's leading public health, behavioral health, and legal researchers to identify true risk factors for violence and to formulate evidence-based policy recommendations. When reviewing the research evidence, this group, who became known as the Consortium for Risk-Based Firearm Policy, concluded that mental illness alone is related to only a small portion of violence and that firearm prohibitions based only on mental illness are not supported by research evidence and are harmfully stigmatizing.⁶

Still, we knew that evidence-based policies to prevent the harrowing toll of gun violence were greatly needed. This is how the modern Extreme Risk Protection Order policy came to be.

We discovered there are *behavioral* risk factors for violence that are supported by evidence and research, including but not limited to past violent behavior,⁷ threats of violence,⁸ and risky alcohol use.⁹ We knew that in many high-profile shootings and firearm suicides, family members saw their loved ones engage in risky behaviors and grew concerned about their risk of harming themselves or others—even before any violence occurred. Indeed, family members are often the first to know when loved ones are in a suicidal crisis or threatening interpersonal violence. Unfortunately, there were few tools for family members and law enforcement to use to intervene during these periods of crisis.

To address this gap in state laws, the Consortium developed a new legal mechanism to temporarily remove firearms from individuals posing an demonstrable danger to themselves or others. This concept, now known as an Extreme Risk Protection Order, was based on the long-

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-gun-violence-public-health-epidemic/>

⁶ Ibid.

⁷ Cook, P. J., Ludwig, J., & Braga, A. A. (2005). Criminal records of homicide offenders. *JAMA*, 294(5), 598-601.

⁸ Chaiken, J., Chaiken, M., & Rhodes, W. (1994). Predicting violent behavior and classifying violent offenders. *Understanding and preventing violence*, 4, 217-295.

⁹ Elbogen, E. B., & Johnson, S. C. (2009). The intricate link between violence and mental disorder: results from the National Epidemiologic Survey on Alcohol and Related Conditions. *Archives of general Psychiatry*, 66(2), 152-161.

standing domestic violence restraining orders found in every state as well as the established risk-based firearm removal laws in Connecticut and Indiana.¹⁰

Since the Consortium's initial convening eight years ago, seventeen additional states and the District of Columbia have enacted these extreme risk protection order laws so that today, a total of nineteen states and D.C. have extreme risk laws on the books.¹¹

Extreme risk laws are a precise, evidence-based legal tool to help prevent acts of lethal violence *before* they occur. The process may look somewhat different across states, but it most often involves civil court orders issued by a judge upon consideration of the evidence presented by a family member or law enforcement officer and a judicial finding that the respondent poses a danger to themselves or others. The order temporarily prohibits them from possessing or purchasing firearms and provides a process for the removal of firearms already in their possession.

There are usually two types of extreme risk protection orders: Temporary ex parte orders and final orders. Judges will typically issue a temporary ex parte order when the petitioner proves that the respondent poses an imminent risk of harming themselves or someone else by having access to a firearm. The duration of an temporary order and standard of proof that petitioners must meet varies from state to state, though they generally last up to 14 days and require at least probable cause or a preponderance of the evidence. Due to their emergency nature, temporary ex parte orders can be issued by a court without notice to the respondent or an opportunity to be heard at the first hearing.

In contrast, a final order may be issued *only* after a noticed hearing at which the respondent has the opportunity to appear and be heard. Final orders are typically issued only when the petitioner proves by clear and convincing evidence or preponderance of the evidence (depending on the state statute) that the respondent poses a risk of harming themselves or someone else by having access to a firearm. In a majority of states, these final orders last up to one year. Importantly, both temporary ex parte and final orders are *civil, not criminal*, orders.¹²

In addition to potentially preventing an act of gun violence by removing firearms from the high-risk situation, extreme risk orders also create safer circumstances for the at-risk individual to seek resources and services to address the underlying causes of their dangerous behaviors.

¹⁰ The Consortium for Risk-Based Firearm Policy. *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy*. December 2013.

¹¹ See: Consortium for Risk-Based Firearm Policy. (2020). *Extreme Risk Protection Orders: New Recommendations for Policy and Implementation*. Available: www.efsgv.org/ERPO2020

¹² *Ibid.* Appendix 2.

Importantly, these orders accomplish this while also ensuring critical due process protections for respondents. Because temporary orders are addressing imminent risk of harm, hearings are often held ex parte without notice to respondents but respondents have a timely opportunity to participate in a hearing after having their firearms removed by law enforcement through the final order process. Known as post-deprivation due process, this approach is modeled after well-established domestic violence restraining orders as a measure to both ensure immediate safety when the evidence indicates imminent risk and provide an opportunity to be heard shortly thereafter. Further, extreme risk orders are time-limited and ensure processes are in place for returning the respondent's firearms at the conclusion of the orders.

Multiple studies of extreme risk laws have found that they are especially effective in preventing suicides, and new research suggests that they may help prevent mass violence as well, including school violence. Analyses of Connecticut and Indiana's laws found that for every 10-20 orders issued, one suicide was prevented.^{13,14} Research on California's law found 21 cases between 2016 and 2018 wherein law enforcement used an extreme risk protection order in response to objective evidence indicating that individuals were planning or threatening a mass shooting.¹⁵ We continue to hear of cases in which extreme risk laws have been used to intervene in cases of hate crimes,¹⁶ domestic violence,¹⁷ workplace violence,¹⁸ school shootings,¹⁹ situations involving dementia,²⁰ and suicides.²¹ Additionally, we are learning that in certain cases the duration of the temporary order is enough time to mitigate risk and it is not necessary in every instance to go to a final order. As most extreme risk laws are relatively recent, continued study is essential to further elucidate their impacts and outcomes. We are committed to helping researchers and

¹³ Swanson, J. W., Norko, M. A., Lin, H. J., Alanis-Hirsch, K., Frisman, L. K., Baranoski, M. V., ... & Bonnie, R. J. (2017). Implementation and effectiveness of Connecticut's risk-based gun removal law: does it prevent suicides. *Law & Contemp. Probs.*, 80, 179.

¹⁴ Swanson, J. W., Easter, M. M., Alanis-Hirsch, K., Belden, C. M., Norko, M. A., Robertson, A. G., ... & Parker, G. F. (2019). Criminal justice and suicide outcomes with Indiana's risk-based gun seizure law.

¹⁵ Wintemute, G. J., Pear, V. A., Schleimer, J. P., Pallin, R., Sohl, S., Kravitz-Wirtz, N., & Tomsich, E. A. (2019). Extreme risk protection orders intended to prevent mass shootings: a case series. *Annals of internal medicine*, 171(9), 655-658.

¹⁶ See: Foley, R. J., & Mattise, J. (2019, August 24). *'Red flag laws' offer tool for preventing some gun violence*. PBS News. <https://www.pbs.org/newshour/nation/red-flag-laws-offer-tool-for-preventing-some-gun-violence>

¹⁷ See: Boone, M. & Saunders, M. (2018, February 16). *San Diego city attorney issues restraining orders against 10 gun owners*. ABC 10 News.

¹⁸ See: Wintemute, G. J., Pear, V. A., Schleimer, J. P., Pallin, R., Sohl, S., Kravitz-Wirtz, N., & Tomsich, E. A. (2019). Extreme risk protection orders intended to prevent mass shootings: a case series. *Annals of internal medicine*, 171(9), 655-658.

¹⁹ See: Ferraro N. (2018, December 18). *Student helps police foil alleged Middlebury school shooting plot*. WCAX-TV.

²⁰ See: San Diego City Attorney Mara W. Elliott. (2018, February 16). *San Diego police working to protect the public from gun violence*. [Press release]. Retrieved from <https://www.sandiego.gov/sites/default/files/nr180216a.pdf>.

²¹ See: Shedlock J. (2019, April 9). *Gun seizures in Clark County surge in law's 2nd year*. The Columbian.

policy makers gain access to de-identified data so that these new laws can be assessed and to ensure that they are being designed and implemented in an equitable and fair manner.²²

While researchers continue to study their outcomes, we already know that extreme risk laws can reach their full potential only if they are implemented vigorously and fairly. Since the Consortium introduced the modern extreme risk order concept in 2013, I have met with people around the country, hosting forums about extreme risk laws and hearing from stakeholders about their experiences implementing them. Implementation and use of these laws vary not only between states, but between cities and counties within states. These variations in implementation are typically a function of training and resources.

In speaking with stakeholders across the country, we have found that extreme risk law implementation has been most effective when collaborative, multi-agency teams are in place. For example, in King County, Washington, the unit dedicated to extreme risk protection orders includes law enforcement officers, prosecutors, a court advocate, a problem-solver, a court coordinator, a paralegal, a data technician, and a program manager. These multidisciplinary teams work together to ensure the entire extreme risk order process is effective, timely, and just. The whole country deserves access to effective implementation systems like these.

Unfortunately, many jurisdictions have struggled with limited funding for extreme risk law implementation, resulting in uneven implementation and limited data about their use. It is especially critical that less populous, more rural counties are able to implement them given the evidence supporting extreme risk laws for suicide prevention. In 2019, the most rural counties had the highest rate of firearm suicide, nearly twice as high as the national average.²³ Resources and training can help. For example, in Maryland, state-wide law enforcement training took place prior to the law taking effect and as a result, petitions have been filed in nearly every part of the state, including its most rural counties. Resources for extreme risk law implementation need to be accessible throughout the country, in cities and rural communities alike.

Although extreme risk laws are a state-level policy, the federal government can play an important role in helping states and localities implement these life-saving laws. Federal funding would advance implementation efforts and create an incentive for additional states to enact these laws.²⁴

²² For more on racial equity and extreme risk laws, see: Educational Fund to Stop Gun Violence. (2021). A Working Guide Towards More Racially Equitable Extreme Risk Laws. Available at: <https://www.csgv.org/wp-content/uploads/2021/04/Working-Guide-Towards-More-Racially-Equitable-Extreme-Risk-laws.pdf>

²³ Educational Fund to Stop Gun Violence and Coalition to Stop Gun Violence. (2021). A Public Health Crisis Decades in the Making: A Review of 2019 CDC Gun Mortality Data. Available: <http://efsgv.org/2019CDCdata>

²⁴ Consortium for Risk-Based Firearm Policy. (2020). Extreme Risk Protection Orders: New Recommendations for Policy and Implementation. Available: www.efsgv.org/ERPO2020

Federal funding would also help local jurisdictions train law enforcement officers, judges, and court clerks to assure safe and equitable application of extreme risk laws and proper reporting of records to the National Instant Criminal Background Check System (NICS). In all jurisdictions, to mitigate potentially harmful outcomes, we encourage implementers to invest in crisis intervention and de-escalation training for law enforcement.

Extreme risk laws cannot be effective if they are not utilized. Raising awareness of these laws should be a major priority, especially when family members are authorized to file petitions. Healthcare providers, community leaders, domestic violence and suicide prevention advocates, and social services providers who may be working with potential petitioners and respondents should be provided tailored guidance and resources.

Unfortunately, this month's mass shooting at the Indianapolis FedEx warehouse highlights the devastating effect of a failure to implement an extreme risk statute. When the eventual shooter was identified by law enforcement as behaving dangerously in March 2020, Indiana's extreme risk law was an available resource that I believe could have prevented this tragedy. Instead, prosecutors in the case declined to pursue an extreme risk order, relying instead on the removal of the shotgun the shooter then possessed. If the police had successfully filed for an extreme risk order, the shooter could have been prohibited from purchasing the rifles he used in the shooting. Had an extreme risk order been obtained, eight families likely wouldn't be grieving right now. We cannot allow these cases to fall through the cracks for lack of resources and training. Too many lives are on the line.

In 2019, 109 Americans died from gun violence every day.²⁵ But it doesn't have to be this way. Gun violence is preventable. And while I am sure that every member of this Committee does not agree with every nuance of every extreme risk law, I hope that we can agree that temporarily removing firearms from a person at high risk of violence is the right thing to do, and that we can do it in a way that enhances community safety while respecting constitutional rights.

Thank you for this opportunity to testify. I look forward to your questions.

²⁵ Educational Fund to Stop Gun Violence and Coalition to Stop Gun Violence. (2021). A Public Health Crisis Decades in the Making: A Review of 2019 CDC Gun Mortality Data. Available: <http://efsgv.org/2019CDCdata>