

# ***H.R. 1236 & S. 506***

## ***The Extreme Risk Protection Order Act of 2019***



The “Extreme Risk Protection Order Act,” sponsored by Representative Salud Carbajal (D-CA 24) in the House and Senator Dianne Feinstein (D-CA) in the Senate, establishes a program under the Department of Justice to award grants to states to implement extreme risk laws.

### **WHAT IS AN EXTREME RISK LAW?**

Extreme risk laws give family members, law enforcement, and sometimes other individuals like health professionals or school administrators,<sup>1</sup> an avenue to prevent an individual in crisis from harming themselves or others by temporarily removing guns and prohibiting the purchase of firearms.

**14 states<sup>2</sup> and Washington, D.C. have enacted versions of extreme risk laws.**

### **WHAT DOES THE EXTREME RISK PROTECTION ORDER ACT DO? HOW WOULD IT HELP STATES?**

- This law provides for the establishment of a grant program, and provides minimum standards (such as the inclusion of an ex parte process) that states must meet or exceed in order to be eligible for grants. This process allows states to tailor a law to their unique circumstances.
- Funds may be used to: enhance capacity of law enforcement agencies and courts by providing personnel, training, and resources; to train judges, court personnel, and law enforcement to accurately identify individuals at risk of harming themselves or others with a gun; to develop and implement law enforcement and court protocols, forms, and orders to effectively carry out extreme risk laws; and to raise public awareness and understanding of extreme risk laws.
  - At least 25% of the grant received must be used to train law enforcement
- It requires qualifying legislation to have an ex-parte process, by which temporary orders can be issued before a full hearing takes place if there is reasonable cause that a respondent poses a danger to himself or others with a firearm in the near future.

- It allows flexibility for states to provide procedures by which termination and renewal of orders can take place, establish burdens of proof that are higher than what is specified in this bill, and limit the individuals who can submit an application.

## HOW DO “EXTREME RISK” LAWS WORK?

A petitioner (law enforcement, family, other individuals in states that allow it) presents to a judge in a civil court evidence of this individual being a risk to themselves or others. The facts that are typically considered by a judge include:

- Patterns or recent threats and acts of violence;
- dangerous past behavior with guns;
- substance abuse;
- recent firearms or ammunition acquisition.<sup>3</sup>

The at-risk individual is allowed an opportunity to be heard and present evidence before the judge at a hearing. If the judge finds that the evidence warrants temporarily removing guns from the individual, the judge issues an extreme risk order, which prevents the individual in crisis from purchasing a gun, and allows law enforcement to temporarily remove firearms and from their possession. When the order is terminated, law enforcement returns the guns to the individual, as long as they are the legal owner. In many states, there is a process by which the individual can petition during the course of the order to have another hearing for termination.

## WHAT DO EXTREME RISK LAWS **NOT** DO?

- Extreme risk laws are **not** a permanent prohibition on gun or ammunition ownership or purchase;
- Extreme risk laws do **not** create a new avenue for criminality - all proceedings take place in a civil court;
- Extreme risk laws are **not** a substitute for domestic violence restraining, or protection, orders;
- Extreme risk laws are **not** based off an individual’s mental health diagnosis, and are instead created to identify indicators of risk and potential violence;
- Extreme risk laws do **not** remove due process protections - they allow an individual to be notified and present evidence in their defense before a court.

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1. While laws vary state-to-state, all allow law enforcement to bring a court petition. Some allow family or household members, which is typically defined rather broadly. A smaller number of states have extended the category of petitioners further: Maryland allows medical and mental health professional petitioners, Washington, D.C. allows mental health professional petitioners, and New York allows school administrator petitioners.

2. The 14 states are: Connecticut, Indiana, California, Washington, Oregon, Florida, Vermont, Maryland, New Jersey, Delaware, Illinois, Massachusetts, Rhode Island, and New York.

3. Again, these factors vary state by state - some include recent criminal or civil convictions, violation of previous extreme risk or protective orders, history of stalking, past animal abuse, or parole status.