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Extreme Risk Protection Orders

Are they Needed / Are they Constitutional?

Support the Bill of Rights and the 2nd Amendment

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Right now, Extreme Risk Protection Orders are one of the largest LEGISLATIVE and Constitutional threats to the 2nd Amendment and Article 1, Section 21 spreading through the country.

These Gun Confiscation Orders would allow police or angry relatives to convene a secret star-chamber proceeding, otherwise known as an 'Ex Parte' hearing, and get permission to ransack your house and seize your guns without any due process whatsoever or, in some cases, even without a search warrant. You DON'T get a chance to have a hearing for 10 days until AFTER the firearms were seized, if then! You WILL lose your License to Carry Firearms! These orders allow UNLIMITED extensions. There are 'no' protections for your property (firearms) once seized!

And if you resist, they are authorized to arrest, or even shoot you. A gun owner in Maryland found this out the hard way and paid with his life because a family member misused this very system. ([SOURCE](#))ⁱ

These are technically known as Extreme Risk Protection Orders 'or' Gun Violence Restraining Orders 'or' Red Flag laws, but the most accurate description is Gun Confiscation Orders. Anti-Constitution groups are trying to disguise their insidious intent by sugar-coating them as "red-flag laws" or "extreme violence protective orders." Just as "assault weapon" was a fraudulent term intended to polarize public opinion, we must call this anti-gun legislation for what it is: GUN CONFISCATION ORDERS.

Gun Confiscation Orders will occur with virtually no Due Process. Although various legislative proposals differ in detail, these bills all follow a pattern. Police or a disaffected or angry family member 'or' former partner can convene an Orwellian SECRET hearing (otherwise known as an 'Ex Parte' proceeding) to secure an order to confiscate your guns. Pennsylvania's proposal only requires a "preponderance of the evidence" standard, for the initial order, and that you are a 'danger to yourself or others', etc.

With this low evidentiary standard, "preponderance of the evidence", what this means is YOU won't get a trial by jury before your guns are taken -- or a trial of any sort, for that matter. Everything is done 'Ex Parte' which means that the order is issued in your absence without your knowledge to defend yourself. You won't even know to get your attorney before the judge until 'AFTER' your property is taken and you are left with your head spinning as to why.

The accuser will be the ONLY ONE in the room. And so, the court is almost always going to issue the confiscation order. Anyone who doubts this need only turn their eyes to the current Pennsylvania Protection from Abuse Orders or ask their local police how often those are abused. Or examine the King County, Washington, reports that stated of 75 petitions filed

from 2017 to 2018, ALL 75 were granted resulting in a loss of rights for one year. ([SOURCE](#))ⁱⁱ And in Massachusetts, a liberal state representative, Barbara Gray, said of much-less-intrusive protective orders: "I think judges grant the restraining orders without asking too many questions." The burden of proof will be on you to sue and get your guns back.

Police aren't thrilled with this concept either. The police will be the ones serving confiscation orders on unaware citizens who haven't even had contact with police in many cases let alone been made aware of court proceedings to strip them of the natural rights to self-defense. This will put police at risk every single order, and in most cases unnecessarily. Add that to the requirement to store the seized firearms for potentially a year or more, and this creates a huge burden on law enforcement across the Commonwealth. Some will need to expand buildings or buy new ones just for weapons storage. Many local police I've spoken with have stated they wouldn't enforce such orders, and the Pennsylvania Sheriffs Association has advised me they are opposed to these initiatives as well. There are also grumblings within the Pennsylvania State Police about such unlawful seizures and the risks involved, but no official statement has been released as they strive to stay out of the politics of it.

So, here's what happens when a Gun Confiscation Order is issued in your name: the police or SWAT team arrives at your door to ransack your home and, if you resist, to arrest or even shoot you and your family. Bear in mind the police require probable cause to attain a warrant for search and seizure in Pennsylvania until now. And, if you think they're going to take your word on the number of guns you have, you'd better think again. Then ten days after your constitutional rights are suspended without due process, you will theoretically have the "right" to spend \$10,000 to try to convince a court it made a mistake. This is a fool's errand. As always, anti-gun politicians will assure us that they will implement their new powers "responsibly." Anti-Constitution leftists see an opportunity to finally "move the needle" on gun control, and they are not going let this opportunity slip away. Even ACLU branches, in Pennsylvania and Rhode Island, have issued memos in opposition and the ACLU branch in Pennsylvania wrote a letter to urge the House to vote NO to the bill proposed as recently as 2017-2018. ([SOURCE](#))ⁱⁱⁱ They noted the orders "do not require that the threats posed by a person be either imminent or present", that "an alarmingly wide range of people" have standing to file orders, that courts use "overly broad criteria" to issue orders, that orders do not require individuals to engage "in any recent actual, attempted, or threats of violence", that seizure is authorized before or without hearings on the petition, and other concerns.

The Florida shooting has become the rallying cry for Gun Confiscation Orders but what about Nikolas Cruz, the shooter in Parkland, Florida? Wouldn't Gun Confiscation Orders have stopped him? No. School disciplinary officials and police encountered him almost a hundred times. Dozens of times, they could have charged him with a felony and taken away his guns under 18 U.S.C. 922(d). They didn't because of an Obama-era policy coddling young felons. Every time, officials found him a "low risk," which would have meant no Gun Confiscation Order.

Or take the YouTube shooter. California has Gun Confiscation Orders. Yet, when police encountered her, they found her no risk. Bottom line: Bad guys who want to inflict harm will still get around laws imposing Gun Confiscation Orders. We should not be throwing out our core protections for the accused, Presumption of Innocence, and Due Process, by empowering others to use what is essentially a government authorized form of swatting to abuse the rights of others! But law-abiding gun owners like you will now have to sue in court -- spending thousands upon thousands of dollars -- to get your guns back because they've been confiscated without Due Process.

This is what is called "predictive policing". An effort to predict the future using words being said (1st Amendment) to then deprive the citizen of their right to bear arms (2nd Amendment). Proponents are hoping to avert a catastrophe by destroying one of the tenants of our society, the presumption of innocence. The 4th

Amendment requirement of Probable Cause is ignored. The required reasonable suspicion is little more than a guess based upon a mild hint of a problem. And for what?

Every state in this nation has a current method of seizing firearms from potentially dangerous citizens that have a much more formal due process in place and work harder to secure the rights of the citizen while also protecting the safety of the community. These systems typically manage to take guns away from the ill without violating due process rights and do so by following protections afforded every citizen by the Constitution. At least this way the accused has a hearing and faces their accuser (BEFORE lawfully possessed firearms are seized!) before a judge. And if the citizen somehow acted in a manner displaying a threat to themselves or others, they were taken for mental health care and seen by professionals immediately.

Adding the research of Dr. John Lott, in which he demonstrates that red flag laws / extreme risk protection orders have had no significant effect on either homicide or suicide in decades worth of statistics should convince every reasonable citizen and legislator that the infringements of these bills are in no way justified by the results of their history. ([SOURCE](#))^{iv}

If the goal of Extreme Risk Protection Orders is to truly address mental health and violence, the money being spent on these bills and fighting over gun control and the elimination of Constitutionally protected values needs to be refocused on the mental health programs and access within this Commonwealth. Options for citizens to avoid the stigma that seems to follow mental health care and facilities with adequate resources and professionals on hand to treat those in need effectively. Furthering the systems already in place that support due process, facing the accuser, and evaluations/decisions made by experts, not some estranged significant other whose feelings were hurt by harsh words or is trying to leverage more alimony out of the relationship.

Once again, the anti-Constitution movement is trying to cure an illness by addressing the type of bandages we use. Seizing the tool of the crime or self-harm is in no way addressing the cause, and without properly addressing the cause, we will never see any reduction in mass murders or suicides.

In summary, the opposition to Extreme Risk Protection Orders is based upon:

- Violation of the 2nd Amendment / Article I, Section 21.
- Violation of the 4th Amendment / Article I, Section 8.
- Violation of the 14th Amendment / Article I, Section 1.
- Clear violation of due process in almost all proceedings.
- The subject of the orders is unaware which adds extreme risk to their welfare.
- Extreme risk to police officers seizing weapons from people who have often had zero contact and are completely unaware any court process could have occurred ordering search or seizure.
- Burden on police departments to now store firearms for potentially a year or more.
- Extremely low evidentiary standard, no probable cause to search and seize.
- Judges will grant them for fear of NOT granting them.
- Burden of proof shifts to the subject of the order rather than the accuser, presumption of innocence is lost.
- Costs of recovery now fall on the subject of the order who still has not committed any crime.
- “Predictive policing”
- Current systems are already in place that remove firearms from those in need of care.
- Current states’ histories show no impact of the laws on murders or suicide rates.

- Proposed law does nothing to address the shortage in mental health care and will only worsen it tying up resources on people accused of being in need by amateurs, not experts.

For the reasons above and more, Extreme Risk Protection Orders are an overwhelming violation of several Sections of the Constitution of the Commonwealth of Pennsylvania. This proposed law is an unnecessary infringement of the rights of the citizens of this land, particularly because we already have a system in place that abides by Constitutional requirements and still results in the protection of the citizens from those who would do them harm, when possible.

“The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.”

If you should have any further questions or need clarification on the legality of the issues raised in this ILLEA White Paper, please feel free to e-mail us at info@foac-illea.org. Portions of this paper were authored by former FOAC-ILLEA President Kim Stolfer. Adapted for use and expounded upon by current President Jim Stoker.

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Respectfully,



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Endnotes

ⁱ <https://www.cbsnews.com/baltimore/news/fatal-officer-involved-shooting-in-anne-arundel-county/>

ⁱⁱ <https://injepijournal.biomedcentral.com/articles/10.1186/s40621-020-00270-1>

ⁱⁱⁱ https://www.aclupa.org/sites/default/files/ACLU-PA_Memo_HB_2227_House_Judiciary_2018-06-19.pdf

^{iv} https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3492120