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EXTREME RISK PROTECTION ORDER RESEARCH AGENDA

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OVERVIEW

Research on extreme risk protection orders (ERPOs) is in its nascency. Often called "red flag laws," these civil orders that temporarily suspend an individual's firearm rights upon a finding of significant risk to self or others are heralded as being potentially able to prevent multiple types of firearm violence, from suicides to mass shootings. With 19 states and the District of Columbia having ERPO laws in place, and with a strong commitment from the federal government in the Bipartisan Safer Communities Act to fund ERPO implementation activities and related research inquiries, the time has come for a research agenda focused on answering key questions about ERPO statutes and their use.[1]

The purpose of this document is to be of use to federal funding agencies to encourage states to fund ERPO research and to guide states in identifying important research questions regarding ERPOs. It is also intended to be of use to funding agencies as they develop their funding priorities for firearm violence research and ERPOs. Finally, this research agenda can be used by researchers in preparing their own ERPO research proposals and projects.

The logic of ERPOs is that they suspend access to firearms for someone who is in danger of using that firearm violently. There is research evidence of high case-fatality rates of firearm use in violence (see, for example, Conner, Azrael, & Miller, 2019) and an increased risk of suicide and homicide when a firearm is present in a dangerous situation (see, for example, Anglemyer et al., 2014; Campbell et al., 2003). That an individual is high risk for harming themself or others is frequently detectable, and high-risk individuals are often brought to the attention of law enforcement or simply recognized as high risk by family members or others. In these cases, an ERPO petition can be filed against that individual (termed the respondent) which, if granted, will temporarily suspend access to firearms. The hypothesized outcome of ERPOs, therefore, is that by suspending a high-risk individual's access to firearms, the risk of violent firearm use will be reduced.

There are numerous empirical questions that can be answered about ERPO outcomes, equity, implementation, policy provisions, and due process. These questions are answerable with rigorous, thoughtful research. This research agenda is intended to spur rigorous research on ERPOs so that we better understand their use and effectiveness and policymakers and other stakeholders can make evidence-based decisions about the content of these laws and when and how to use ERPOs.

A draft of the research domains and objectives was developed by Dr. April Zeoli and then shared with firearm violence experts and practitioners for their feedback,[2] which was incorporated into the final document. Each domain contains priority areas and a sample of research questions that address these priority areas. First, however, are the goals for the conduct of ERPO research. These goals can and should be considered when conducting research in each of the domains listed below.

GOALS FOR THE CONDUCT OF RESEARCH ON ERPO

1. **The first goal for the conduct of ERPO research is that it is connected to and informed by partnerships with practitioners and the communities in which the research is conducted and ERPOs are used.** Community-engaged research, community participatory research, community advisory boards, and other approaches are valuable in producing research that is important to the community and is informed by, and focused on, community needs. These approaches are particularly useful when conducting research with minoritized groups or vulnerable populations. Research approaches that involve close partnerships with the community are also invaluable to producing research that is both equitable itself and answers questions about equity concerns regarding ERPO statutes and their implementation.
2. **The second goal for the conduct of ERPO research is that the research be designed with equity, particularly racial equity, in mind.** While there is a domain of research objectives specifically on equity in this research agenda, equity must be part of each research domain and question. It is vital to understand whether existing policies and practices improve, make no change to, or exacerbate inequities in society so that appropriate steps can be taken to improve, or further improve, equity among groups. Use of a racial equity impact assessment tool is encouraged (see, for example, the Education Fund to Stop Gun Violence & DC Justice Lab, 2022).
3. **The third goal for the conduct of research on ERPOs is to conduct research that informs policy and practice.** This type of research will assist jurisdictions and states in improving their ERPO statutes and processes. The stakes are high—ERPOs are designed to respond to cases in which there is high risk of firearm violence—and model policies and best practices, taking community needs into account, are needed. Given the number of states with ERPO, and the policy and practice differences between the states, research that involves multiple states is encouraged. Careful attention should be paid to dissemination efforts, which should be funded as part of research grants on ERPOs. Widespread dissemination will ensure that stakeholders who need research evidence to make decisions regarding ERPO statutes and processes will have access to such evidence.
4. **The final goal is that qualitative and mixed methods research designs be used when appropriate.** These research designs provide important insights that often add meaning to, or improve the interpretation of, quantitative data and results. However, they are underutilized in firearm violence prevention research. These approaches are especially useful when investigating reasons why people interact with ERPO the way they do; for example, when researching perceptions about ERPO use, implementation, and effectiveness; reasons why individuals petition for ERPOs when they do; acceptability of ERPOs and ERPO processes in communities; and what can be done to improve ERPO processes.

RESEARCH OBJECTIVES AND QUESTIONS, BY DOMAIN

Research Domain 1: *ERPO Outcomes and Effectiveness*

Ultimately, the goal of ERPO statutes is to reduce the incidence of firearm violence through temporary suspension of a high-risk individual's access to firearms. A small number of studies suggest that ERPO laws and orders may reduce suicide (Kivisto & Phalen, 2018; Swanson et al., 2019; Swanson et al., 2017), and other studies have demonstrated their use in cases of mass shooting or school shooting threats (Wintemute et al., 2019; Zeoli et al., 2021). More high-quality research is needed to determine if these laws are effective in reducing firearm violence outcomes and what factors may mediate or moderate the effectiveness of ERPOs in reducing firearm violence. The term "firearm violence" is used here to describe both self-harm and violence against others; however, despite this umbrella term, these constructs should be analyzed separately due to differing epidemiologies and, likely, exposure to, implementation of, and effectiveness of ERPOs.

In addition to possible changes in firearm violence risk for respondents to ERPO, there also may be unintended consequences (positive or negative) to being subject to an ERPO. Understanding the effectiveness of ERPOs, for whom ERPOs are effective, and what other consequences ERPO respondents experience are among the greatest priorities in ERPO research. They are also some of the most challenging tasks for researchers to accomplish due to the difficulty in developing appropriate comparison groups needed to test for associations and therefore make limited causal inferences. While challenging, researchers can meet these challenges with creativity if provided sufficient resources.

Research Domain 1 Objectives

- **Objective 1.1: Analyze ERPOs' association with changes in firearm violence risk (both self-harm and violence against others).** This line of research should also examine what individual (demographic, risk behaviors and context), community (access to resources, racial segregation), or systemic factors (violence prevention laws, social policies, resource allocation) may mediate or moderate changes in firearm violence risk in response to ERPO; whether there is a substitution effect whereby individuals use other methods to self-harm or commit violence against others; and whether risk of firearm violence returns to pre-ERPO levels after the ERPO is lifted for respondents whose firearm rights are restored.
- **Objective 1.2 Determine what additional consequences ERPO respondents may experience beyond the temporary suspension of firearm rights.** For example, what proportion of ERPO respondents gain access to health, social, or economic services/supports as a result of ERPO and what influences whether a respondent gains access to those resources? Are criminal investigations of respondents initiated based on unrelated evidence uncovered during the ERPO investigation, interactions, or service/firearm dispossession? Do these investigations result in respondents being arrested for nonviolent offenses or bench warrants?

Research Domain 2: *Equity and Respondent Groups*

Firearm violence is rife with inequity and, within the field of firearm violence prevention, there are opportunities to reduce disparities and ensure that communities and individuals are treated equitably, with respect and dignity, and provided the resources needed to reduce firearm violence. Racial disparities in firearm homicide deaths, with young Black males having a rate of firearm homicide deaths that is nearly 11 times higher than their White counterparts (Buggs & Zeoli, 2021), indicate the need to ensure that ERPOs are used and implemented in ways that are acceptable to Black communities and for research that investigates these interventions from a foundation of racial equity. In addition to racial identities, communities characterized by identities or conditions that are stigmatized (such as cognitive impairment or mental illness), sometimes with an unfounded presumption of violent behavior, also must be considered and examined through an equity lens. Behaviors that indicate risk for firearm violence must be the criteria on which ERPOs petitions are filed and granted, not presence of a mental illness.

Equity is highlighted as a distinct domain here to promote the importance of combatting inequity around firearm violence and around the interactions of some communities with law enforcement and the courts. However, as previously stated, concerns about equity are woven throughout all other domains in this research agenda. In addition to community and respondent characteristics and the need to examine whether ERPOs are used equitably, there are numerous groups of ERPO respondents that can be characterized by age, profession, community-level risk, or individual risk behaviors (among other factors). Factors unique or common to particular respondent groups may affect the use and effectiveness of ERPO and may inform which ERPO implementation processes are considered acceptable.

Research Domain 2 Objectives

- **Objective 2.1: Investigate trends in individual, community, and systemic factors among ERPO petitioners and respondents and whether there are disparities in ERPO implementation by reason for the ERPO (danger to self, danger to others) that are not explained by individual or community level firearm risk.** For example, are individual, community, or systemic factors associated with whether an ERPO is petitioned for, granted, terminated early, or renewed and does whether the respondent or petitioner have counsel influence case outcomes? Are ERPOs being used proportionately in communities with the highest rates of firearm suicide, nonfatal firearm assault, firearm homicide, or firearm ownership levels? If not, what factors skew the data?
- **Objective 2.2: Understand how ERPOs are perceived by differing communities for use within their communities and how to improve the acceptability and implementation of ERPO within communities.** For example, are ERPOs viewed as a helpful tool to reduce risk of firearm violence? What are the beliefs of respondents and their families regarding firearm rights and how does that influence their decision to seek, or their experience with, an ERPO? How are ERPOs being implemented (including investigated and served) in communities impacted by firearm violence? Are instructions and forms

available in various languages? Does trust in law enforcement or the courts impact perceptions of, willingness to use, and experiences with, ERPOs?

- **Objective 2.3: Assess how ERPOs are used with individuals with cognitive impairment or neurodivergence in cases of danger to self or danger to others.** For example, what factors influence whether ERPO petitions are filed and granted in cases of cognitive impairment or neurodivergence? Is the experience of the ERPO process stigmatizing to these individuals? In cases of deteriorating or permanent cognitive impairment, are ERPOs being renewed? What happens after the ERPO is lifted? Is there a better approach than ERPO for cases of debilitating or increasing cognitive impairment?
- **Objective 2.4: Determine how ERPOs are used with individuals who display symptoms of substance abuse or mental health disorders.** For example, what proportion of ERPO respondents have diagnosable mental health or substance use disorders? What percentage are already receiving treatment? How often are ERPO respondents with mental health disorders concurrently placed on a temporary psychiatric hold? Are ERPOs more likely to be granted in cases in which the respondent displays symptoms of or has a diagnosed mental health disorder than in cases in which there is no indication of a mental illness, regardless of risk behaviors? Is the experience of the process stigmatizing to these individuals?
- **Objective 2.5: Understand how ERPOs are used in cases in which minors are deemed at risk for firearm violence, how that affects third parties who may possess firearms, and whether additional governmental involvement in the child's life occurs.** For example, is the underlying allegation on an ERPO petition concerning a minor that the minor possesses a firearm themselves, that they have access to someone else's firearms, or that they will soon be able to legally purchase a firearm? What proportion of ERPOs concerning minors are for the parents, guardians, or other household members of minors? Are social services engaged with minor respondents? Are ERPO case files for minors later purged or sealed? What is the appropriate approach for these records?
- **Objective 2.6: Investigate the perceptions and use of ERPOs by military communities, including veterans.** For example, are ERPOs used when active duty military members pose a high risk of firearm violence and are stationed in a state that has an ERPO statute? Are they used when veterans pose a high risk of firearm violence? How are ERPOs perceived by military members, including leadership, or veterans for use with military members or veterans? In states that have ERPO statutes, is information on ERPOs distributed or shared by violence prevention integrators, Fleet & Family Support Centers, military commands, or others? Does being an ERPO respondent affect duty billets, limited duty assignments, deployments, and promotions beyond the effects of engaging in behaviors that indicated a high risk of firearm violence?
- **Objective 2.7: Determine the appropriate use and implementation of ERPOs in communities in which there is a high rate of illegal firearm ownership.** For example, in what percentage of contacts from concerned individuals (initiating the ERPO process) does the respondent possess illegal firearms? How do state statutes and jurisdictions handle illegal firearm possession by ERPO respondents? How is the utility of ERPOs viewed by the community and law enforcement in communities in which there is a high rate of illegal firearm ownership? What are the optimal implementation strategies to assure firearm dispossession when the respondent has illegal firearms?
- **Objective 2.8: Assess the use of ERPOs in cases of intimate partner violence.** For example, how are they used compared to, or in addition to, domestic violence restraining orders? Do domestic violence service agencies and victimized partners support the use of ERPOs? How can courts and law enforcement effectively monitor the safety of victimized partners by ERPO respondents? Are ERPOs a more effective tool for prohibiting intimate partner violence perpetrators' access to firearms than domestic violence restraining orders?

Research Domain 3: *ERPO Implementation and Process*

There are basic questions about how ERPOs are used and the process by which they are implemented that have yet to be answered. Implementation refers to how each step of the legal process related to ERPOs is conducted. Much of the existing literature provides descriptive data on the content of ERPO cases, including the reported risk behaviors of the respondent; the context in which that risk occurs, such as whether the respondent is reported to abuse substances; types of petitioners in states that allow civilians to petition; and court outcomes for the cases (Barnard et al., 2021; Frattaroli et al., 2020; Pallin et al., 2020; Rowhani-Rahbar et al.,

2020; Zeoli et al., 2021). There are multiple states for which we do not yet have empirical data, including basic information such as how many ERPO petitions are filed and how many are granted. Thus far, researchers have focused on ERPO use in individual states, with one project involving multiple states (Zeoli et al., 2020); however more multi-state projects are needed to rigorously investigate the ERPO implementation process and its implications.

The list of questions currently lacking the amount and quality of evidence needed to draw scientific conclusions about ERPO law implementation is great. Questions about the protocols, or processes, that are used by jurisdictions to implement ERPO can inform whether ERPO petitions are filed, who files them, whether they are granted, how ERPOs are served and how firearms are removed from respondents in ways that are effective, efficient, and acceptable to the community. By understanding how ERPOs are being used and implemented, we will be able to refine jurisdictional- and state-level protocols and amend or enact ERPO legislation that works as intended and is equitable and acceptable.

Research Domain 3 Objectives

- **Objective 3.1: Determine what is needed for eligible petitioners to be knowledgeable about ERPOs, understand the circumstances under which ERPO is appropriate, and present relevant information on the ERPO petition.** For example, to what extent are alternative risk reduction strategies pursued before or instead of pursuing an ERPO? What cultural/ideologic barriers and facilitators exist for eligible civilian petitioners and law enforcement to be willing to utilize ERPOs? What steps can be taken to reduce barriers and improve facilitators? In what ways does the information in petitions filed by civilians differ from those filed by law enforcement? Are ERPO petitions filed by civilians more likely to be dismissed or, separately, denied than those filed by law enforcement? What messages and messengers are needed for law enforcement and other ERPO implementers to understand the benefits of and use ERPOs?
- **Objective 3.2: Assess what risk behaviors and other individual, community, and systemic factors influence whether and when law enforcement or civilians file an ERPO petition.** For example, what is the length of time the behavior or risk has been ongoing before an ERPO petition is filed? For what proportion of ERPOs is the underlying conduct that resulted in the ERPO petition investigated as a crime, was a crisis call, or was some other non-criminal incident? What factors influence the decision by law enforcement to not petition for an ERPO when risk is present?
- **Objective 3.3: Analyze what factors influence whether ERPOs are granted at the emergency stage (for states that have emergency ERPOs), the temporary stage, and the final stage.** Do individual, community, and systemic factors influence whether ERPOs are granted? What proportion of the ERPOs granted at the temporary but not the final stage are due to different standards of evidence at each stage, different evidence at the final stage, the crisis being successfully averted, or other reasons? What factors influence whether the respondent stipulates to an ERPO?
- **Objective 3.4: Characterize the process of firearm dispossession associated with ERPOs, whether and how dispossession occurs, and what processes are most effective in preventing ERPO respondents from purchasing or continuing to possess firearms.** For example, how can procedures be improved to guarantee service of ERPOs to respondents? Are co-service models in which law enforcement and non-law enforcement crisis interventionists implement dispossession of firearms more acceptable than models in which only law enforcement conduct dispossession? What dispossession processes may be the most efficient or effective at reducing firearm violence risk? Do dispossession processes vary based on individual characteristics of the respondent or the community in which they dwell? How common are adverse events during firearm dispossession?
- **Objective 3.5: Determine the intersection of ERPO respondents with other systems, including criminal justice system involvement for ERPO violations.** For example, how frequently are individuals who violate their ERPO prosecuted, and what factors influence whether they are prosecuted? How frequently are ERPO respondents also investigated for criminal activity not related to the ERPO? What factors influence whether an ERPO respondent is ordered to undergo a mental health or substance abuse evaluation, what are the barriers to these evaluations, and can they be removed? Do ERPO respondents have a need for social service assistance and are those needs met?

Research Domain 4: *Policy Provisions*

There are differences in ERPO legislation across states that could impact their effectiveness, acceptability, sensitivity, and outcomes. Some of these differences include who may petition for an ERPO; evidentiary standards for an ERPO; factors for judges to consider in determining whether to grant an ERPO; the process by which a final ERPO is ordered; and the allowable duration of a final ERPO. Any of these legislative differences could be partially responsible for differences in ERPO use and effectiveness between states. Multi-state research should be prioritized to adequately test differences and, as ERPO policies are amended and implementation improved, changes in outcomes over time. With sufficient rigorous research in this area, policymakers and other stakeholders will have the evidence they need to inform how they craft or amend their ERPO bills and laws.

Research Domain 4 Objectives

- **Objective 4.1: Analyze whether differences in ERPO laws between states impact their use and effectiveness.** For example, what is the optimal duration of an ERPO and does it differ by respondent risk behaviors and context? Does limiting petitioners to law enforcement result in "missed" cases in which ERPOs would be appropriate? Do states with higher burdens of proof deny orders in cases in which a respondent would have benefitted from an ERPO? Do states miss cases of high firearm risk because the enumerated factors in the statute are limited? What features of ERPO laws are associated with increased effectiveness at preventing firearm violence? How does the frequency of renewal of ERPOs compare between states based on different standards for renewal?
- **Objective 4.2: Investigate what policy approaches (within ERPO or other statutes) might improve ERPO implementation.** For example, what policy provisions might facilitate full and uniform implementation in states with ERPO statutes? Is an existing ERPO recognized as valid in a state that lacks an ERPO statute or in another state that has an ERPO statute? What might a federal ERPO statute look like, how would it be implemented, and would there be a benefit from it? Does the presence of an emergency ERPO mechanism, with immediate firearm removal authority, convey greater safety than allowing the respondent to the petition to keep their firearms until a temporary order can be granted? Do ERPO statutes require reporting to NICS? What systems can states use to make respondents' ERPO status known and accessible to law enforcement agencies, courts, cities, counties, and states?

Research Domain 5: *Due Process*

There is concern by some that ERPOs violate the due process clause in the Constitution. While ERPO statutes have not been found unconstitutional by courts, the question of whether due process is met in ERPO cases is one that can be investigated empirically through examination of the implications of ERPO on relevant factors. In *Mathews v. Eldridge,* the Supreme Court announced three factors courts must consider to determine what process is due and when:

1. The private interest that will be affected by the official action;
2. The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
3. The Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Research questions that would provide evidence to better understand ERPOs in the context of due process are presented below. Note, however, that there are other questions throughout the research agenda that may also answer due process questions. Particularly, research questions regarding the government's interest in keeping American citizens safe (item 3) are located in Research Domain 1: ERPO Outcomes and Effectiveness and, to avoid repetition, not in this research domain.

Research Domain 5 Objectives

- **Objective 5.1: Understand the impact of ERPOs on the private interest in the right to keep and bear arms.** For example, what due process protections exist in each state and how do they work? What proportion of ERPO respondents are victims of violent crime while the ERPO is in effect? What proportion of ERPO respondents who had firearms removed, and are legally able to possess firearms after the ERPO is lifted, initiate the process to have their firearms returned? What are the processes (across states and jurisdictions) to return firearms to individuals after the ERPO is terminated and how long do they take? What challenges or obstacles do respondents face to have their firearms returned?
- **Objective 5.2: Assess the extent to which ERPO petitions are filed in bad faith and result in erroneous deprivations**. For example, what are valid operationalizations of the constructs of "bad faith," "erroneous deprivation," and "malicious or harassing intent." What due process protections exist to prevent erroneous deprivations? What proportion of ERPO petitioners act with clear malicious or harassing intent? What are the penalties for acting with clear malicious or harassing intent and to what extent have those penalties been implemented? Do states with higher burdens of proof have fewer, or detect more, cases in which the court finds that the petition was brought in bad faith?

Research Domain 6: *Data*

To begin to address the above questions, researchers require access to high quality data. Efforts to assure data access by researchers need to be supported by federal, state, and local governments. Too often, data on official actions is unavailable to researchers or simply does not exist in an accessible form. ERPO data is currently not accessible to researchers in some states with ERPO statutes, hampering our ability to fully understand ERPO use, implementation, and outcomes.

Interpersonal violence and suicide outcomes are additionally challenging to study. Firearm assaults, firearm homicides, firearm suicide attempts, and firearm suicides are all statistically rare events. To prevent these events, ERPOs must both be petitioned against those at high risk and cover many individuals who are high risk. For researchers to study the effectiveness of ERPOs at the individual level, they need access to data from numerous sources, including vital statistics, law enforcement, and hospital data, on a large number of ERPO respondents while they are subject to the ERPO and for some time after to determine if risk changes upon the removal of the intervention. Additional to the data elements below,[3] it must be determined whether ERPOs are removed from the record after they are lifted; whether they are subject to sealing statutes; and what is the appropriate approach to ERPO records for individuals and for research purposes.

Research Domain 6 Objectives

- **Objective 6.1: Make standardized data on petitioners and respondents available.** For example, demographic information; relationship of the petitioner to the respondent for civilian petitioners; the specific department/agency the petitioner works in for law enforcement petitioners; ERPO or protective order history of the respondent; data on any concurrent criminal cases for the respondent.
- **Objective 6.2: Make standardized data on the risk circumstances, petition, and order available.** For example, location and date of the petition and of any resulting order; risk behaviors and context for the respondent; information on the incident that resulted in the ERPO petition being filed; petition outcomes and reasons for those outcomes at all stages (emergency, temporary, full order); data on service of the order; issuance of a search warrant; and any concurrent arrest or hospitalization of the respondent or referral for services.
- **Objective 6.3: Make standardized data on firearms available.** For example, whether the respondent has possession of or access to firearms, how many, and what types (including homemade or ghost guns); how many and what types of firearms were removed, relinquished, or transferred; whether the respondent complied with the relinquishment order; whether the respondent violated the order; whether the respondent was denied purchase of a firearm; whether the respondent initiated the process to have firearms returned after the ERPO was lifted.

ENDNOTES

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3. For a fuller list of data elements needed, please see the Consortium for Risk-Based Firearm Policy's report on recommendations for ERPO policy (2020).

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