



# Advisory Report

## Increased Awareness and Training Could Enhance the Effectiveness of Oregon's Extreme Risk Protection Order Law

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# Advisory Report Highlights

Increased Awareness and Training Could Enhance the Effectiveness of Oregon's ERPO Law

## By the Numbers

Extreme risk protection orders (ERPOs) are intended to reduce incidents of gun firearm violence and suicide

**48,830**

deaths from firearms in 2021 nationally, the highest number on record

**13.0 per 100k**

Oregon's firearm death rate is roughly equivalent to the national rate

**10.0 per 100k**

Rate of firearm suicide in Oregon, 42% higher than the national rate

**21**

states and the District of Columbia have an ERPO law

**564**

ERPO petitions filed in Oregon through June 2022

**76%**

of ERPOs approved by a judge were requested by law enforcement

**<1%**

Of the 64,000 protection orders filed in Oregon between 2018-2021 were ERPOs

Source: Image by Freepik

Oregon's extreme risk protection order (ERPO) law, commonly referred to as a "red flag" law, has been in effect since 2018. The law is intended to reduce incidents of gun violence and suicide through a civil court order that helps prevent individuals at risk from hurting themselves or others from having access to deadly weapons. ERPOs can be requested by family or household members or by law enforcement.

Firearm-related deaths are on the rise both nationally and in Oregon, with 2021 seeing the largest number on record nationally. Mass shooting incidents, while difficult to define, are also increasing in frequency. ERPOs are seen as a potentially effective tool for reducing firearm-related deaths and are being adopted by more states. Legislation passed at the federal level in 2022 has led to increased awareness of ERPOs and federal financial support is now available for states to establish ERPO laws or supplement existing laws.

This report is intended to inform the public by answering five key questions about Oregon's ERPO law:

- What is Oregon's ERPO law and how does it work? ([pg. 3](#))
- What state and local entities are involved in the process and what is their role? ([pg. 10](#))
- How is Oregon's ERPO law being used and is it working as intended? ([pg. 14](#))
- How does Oregon's ERPO law compare to best practices and similar laws in other states? ([pg. 22](#))
- What resources are available to law enforcement and the public to learn more about Oregon's ERPO law? ([pg. 29](#))

We chose not to follow our traditional audit process because there is not a single state agency responsible for administering Oregon's ERPO law. However, this report has undergone the regular quality assurance process as audit reports from our office.

## Question 1: What is Oregon’s extreme risk protection order law and how does it work?

**Answer:** Oregon’s law establishing a process for extreme risk protection orders (ERPOs) was passed by the Legislature in 2017.<sup>1</sup> An ERPO is a court order, requested by a family or household member or law enforcement officer, that prevents a person who is at risk of hurting themselves or others from having or getting deadly weapons, especially firearms.<sup>2</sup> These laws are commonly referred to as “red flag laws” because they are used when a person exhibits a “red flag” they may be a risk to themselves or others. ERPOs are one of several types of protective orders in Oregon that can restrict access to firearms.

While rates of firearm-related deaths in Oregon have remained around the national average, firearm-related suicide rates have been consistently higher in Oregon than in other states. There is evidence ERPOs can be an effective tool for reducing incidents of gun violence generally, and firearm-related suicides specifically.

### While Oregon’s rate of firearm violence is close to the national average, its rate of firearm suicide is high compared to other states

Gun violence is a serious and growing problem in the United States and in Oregon. Oregon’s firearm death rate closely mirrors that of the country, but firearm suicides are much more common. While deaths from mass shootings make up only a fraction of these firearm-related deaths, their effects can be devastating to the communities where they occur.

In 2021, there were more than 48,000 firearm-related deaths in the U.S., the most on record, an increase of more than 45% over the previous 10 years. The number of firearm-related suicides and homicides both increased dramatically during this period, with homicides increasing by 78% and suicides by 27%. In 2020, firearm-related deaths overtook auto accidents as the leading cause of death for children and adolescents, increasing by more than 30% between 2019 and 2020. While there is evidence in the research literature that firearm violence increased during the COVID-19 pandemic, the reasons are unclear.

Between 2018 and 2021, the age-adjusted firearm death rate in Oregon — 13.0 per 100,000 residents — has been roughly in line with the national rate and is the 18<sup>th</sup> lowest rate in the nation.<sup>3</sup> However, the distribution in these deaths between suicide and homicide varies considerably with the national rate. The firearm suicide rate in Oregon, 10.0 per 100,000 residents, is 42% higher than the national rate, whereas the firearm homicide rate of 2.5 is less than half the national rate. Suicide attempts by firearm are much more lethal than other means; because most people who attempt suicide only do so once, reducing suicide attempts by firearm is critically important for reducing incidents of suicide overall.

Over the last four years, Oregon’s firearm suicide rate has been 42% higher than the national rate.

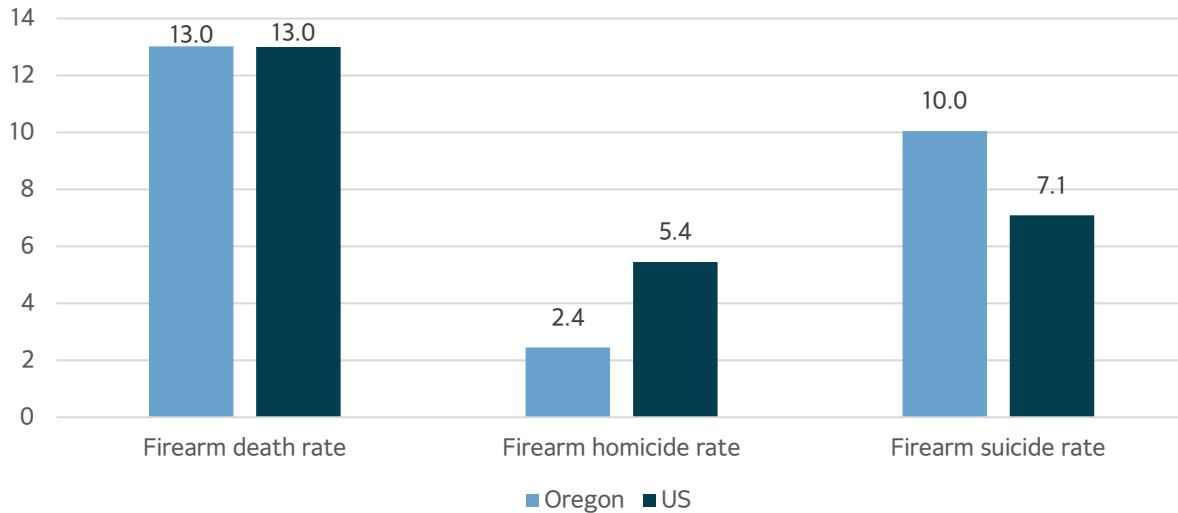
<sup>1</sup> [Senate Bill 719](#)

<sup>2</sup> Statute defines “deadly weapon” as “any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury” in addition to loaded or unloaded firearms.

<sup>3</sup> Age adjusting rates is a way to make fairer comparisons between groups with different age distributions.

In Oregon, older white men are at the highest risk of firearm suicide and young African Americans have the highest risk of death by firearm homicide. Veterans are another group at high risk of firearm suicide. According to data from the Department of Veterans' Affairs, veterans in Oregon died by suicide at nearly twice the rate of the general population, with more than two-thirds using a firearm.

**Figure 1: Oregon's age-adjusted firearm death rate is close to the national average, but the distribution between homicides and suicides varies considerably**



Source: Combined CDC WONDER data from 2018-2021 compiled by Everytown for Gun Safety

Determining the number of mass shootings and the people killed in them is difficult because there is no agreed-upon definition of the term. Definitions vary based on several factors, including the number of victims and the circumstances of the incident. For example, the FBI tracks “active shooter incidents,” defined as “one or more individuals actively engaged in killing or attempting to kill people in a populated area.” Using this definition, 103 people were killed in the U.S. in 2021. Further, the FBI has found an increase in active shooter incidents nationwide, from three in 2000 to 61 in 2021.

The Gun Violence Archive uses a more expansive definition for mass shootings, tracking events in which four or more people are shot in a single event, regardless of if someone died.<sup>4</sup> Based on their records, 706 people were killed in these events in 2021. Everytown for Gun Safety uses a narrower definition for mass shootings, defining them as shooting incidents where four or more people are fatally injured excluding the shooter. Regardless of the definition, fatalities from mass shootings account for a small percentage of overall gun deaths in America. These incidents devastate the communities in which they occur and can result in long-term mental health problems from the psychological trauma they cause.

Oregon has not avoided the devastating impacts of mass shooting events. Based on Everytown for Gun Safety's definition, Oregon has had one incident since 2009: the shooting at Umpqua Community College, in which nine people were killed and another nine were injured. A shooting incident in a Bend grocery store during the summer of 2022 left three people dead, including the shooter. One of the earliest school shootings in the U.S. occurred in 1998 at Thurston High School in Springfield. This

<sup>4</sup> The [Gun Violence Archive](#) is an online archive of gun violence incidents collected daily from over 7,500 law enforcement, media, government, and commercial sources in an effort to provide near-real-time data about the results of gun violence.

incident left four people dead and over two dozen injured and has had lasting effects on the students and community.

### Oregon's ERPO law allows law enforcement, family or household members to request firearm restrictions for people at risk of hurting themselves or others

Oregon's ERPO law outlines the process and individuals involved when requesting an ERPO.<sup>5</sup> The full process for requesting and implementing an ERPO is outlined in Figure 2 below.

One key feature of ERPOs is they are a civil, rather than criminal, order. ERPOs are intended to keep people safe by preventing a tragedy from occurring, not criminalizing an individual's elevated risk of violence or self-harm. Allowing petitioners to seek an intervention without creating a criminal case reduces the risk an ERPO will have a long-term negative effect on a respondent's future opportunities and is intended to reduce the concern about stigmatizing consequences that may prevent petitioners from filing an ERPO against someone they know is a risk.

#### Key ERPO Terms

Petitioner: The individual requesting the court to order an ERPO. Eligible petitioners include family/household members and members of law enforcement.

Respondent: The individual subject to an ERPO.

Ex parte: A legal term referring to motions that can be granted without a response from the other side. An ex parte ERPO is one that has been ordered based solely on evidence provided by the petitioner. These are often referred to as "temporary orders" in the literature.

Service: Refers to the process used for the personal delivery of court orders, such as ERPOs.

While ERPOs are often discussed in the context of individuals with mental illness, the laws typically are not, and should not, be limited to situations related to mental illness. Most people with mental illness do not engage in violence against others. Additionally, individuals with serious mental illnesses, such as schizophrenia and bipolar disorder, are more likely to be victims of violence than perpetrators.<sup>6</sup>

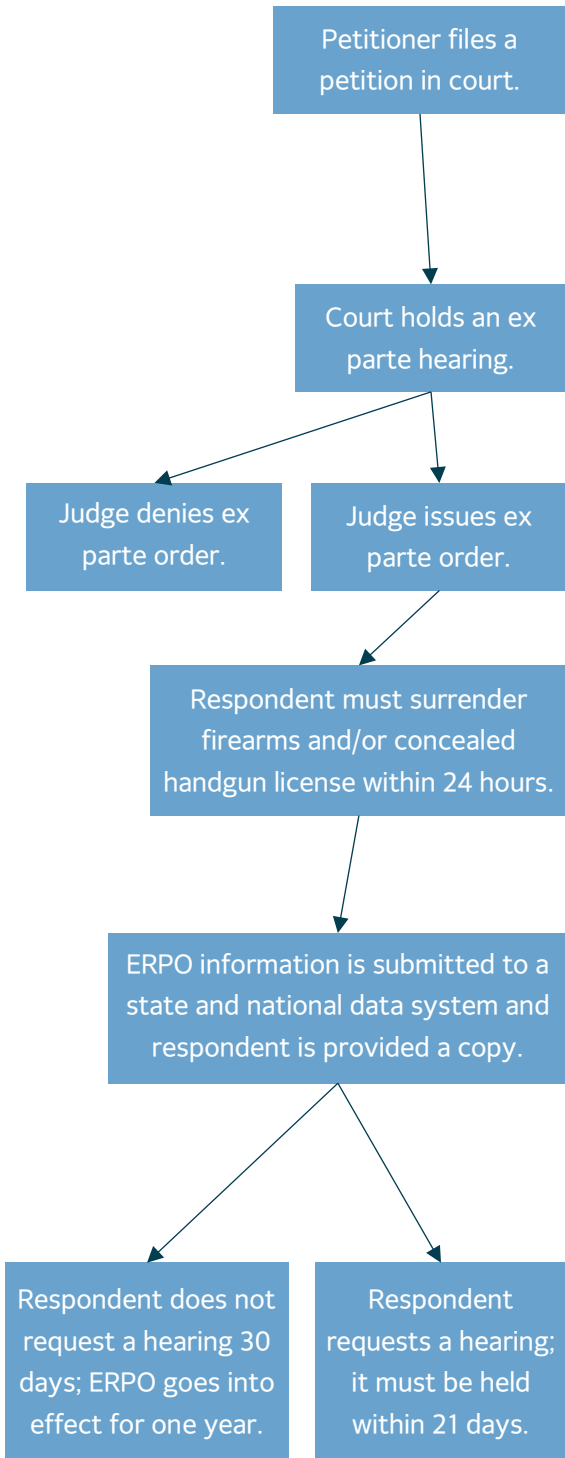
Targeting gun violence prevention policies could further stigmatize those with mental illness and create barriers to mental health treatment seeking. Instead, interventions like ERPOs should focus on individuals exhibiting dangerous behaviors. Oregon's ERPO law specifically bars the court from including in its findings "any mental health diagnosis or any connection between the risks presented by the respondent and mental illness." Based on our discussions with key stakeholders, this means risks should be based on the individual's behaviors, not their mental health status or diagnosis.

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<sup>5</sup> ORS 166.525-166.543

<sup>6</sup> Consortium for Risk-Based Firearm Policy, "Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy. (2013).

**Figure 2: The ERPO process begins with a petition filed in court**



- The **petitioner** is a household member, family member, or law enforcement officer who has identified an individual as being at risk of hurting themselves or others.
- The petition request form includes information about the petitioner and the subject of the ERPO, referred to as the **respondent**; information about the risks identified; and additional information the judge can use.
- The hearing must be held either the same day or next available business day from when the petition is filed with the court.
- Petitioner must appear.
- A judge will determine whether there is “clear and convincing” evidence the respondent presents a risk in the near future of injuring themselves or another.
- If an ERPO is issued the order is served on the respondent by the local county sheriff’s office (for free), a private process server, or any other competent adult.
- The respondent must turn over firearms to law enforcement, a licensed gun dealer, or a third party such as a family member, or friend who can lawfully purchase firearms within 24 hours of being served. Respondent is also barred from purchasing firearms for the period covered by the order.
- The state system is Oregon’s Law Enforcement Data System (LEDS). The national system is the National Crime Information Center systems. These systems notify members of law enforcement that the ERPO is in effect.
- Respondent is informed of their right to request a hearing to challenge the order within 30 days of being served.
- If the petitioner fails to appear, the ERPO may be dismissed.
- If the respondent fails to appear, the ERPO may be continued for a full year.
- Both the petitioner and the respondent can request the order be dismissed one time within the year.
- Any eligible petitioner can request the ERPO be extended for an additional year with evidence of a continued danger by filing a petition within 90 days of the order’s expiration.

It is a Class A misdemeanor, punishable by up to one year in jail and a \$6,250 fine, to violate the terms of an ERPO. Additionally, a respondent who violates an ERPO will be prohibited from possessing a firearm for a period of five years. It is also a Class A misdemeanor, with the same potential penalties, if a petitioner is found to have filed an ERPO petition with the intent to harass the respondent or if they knowingly provided false information in their petition.

## **ERPOs are one of several types of civil protective orders available in Oregon**

Including ERPOs, there are five types of civil protective orders in Oregon, each tailored for a specific set of circumstances, that follow a similar process.<sup>7</sup> However, there are some key distinctions between ERPOs and these other orders that are important to understand.

**Family Abuse Prevention Act Restraining Orders:** These orders give survivors of domestic violence a mechanism to protect themselves and their dependents from further abuse. They are available to family or household members who are at risk of bodily injury, including sexual relations by force or threat of force, from the respondent. The abuse must have occurred within the last 180 days and the petitioner must be in imminent danger of further abuse.

**Elderly Persons and Person with Disabilities Abuse Prevention Act:** These orders can be filed to protect a person who is elderly or disabled and is being abused. They can be filed by either the victim or by a guardian. Several types of abuse, including physical abuse, abandonment, neglect, harassment, theft of property, and sexual abuse, among others, are identified in the statute and the victim must be in immediate and present danger of further abuse.<sup>8</sup> The abuse must have occurred within the last 180 days.

**Sexual Abuse Protection Orders:** These orders provide protection to a victim of sexual assault from someone who is not a member of their family or household. For these orders, sexual assault is defined as “sexual contact” with a person who either does not consent or is incapable of consent because the victim is under 18, “incapable of appraising the nature” of the person’s conduct, mentally incapacitated or physically helpless. There is no time limit on when the abuse occurred. The victim must have reasonable fear for their physical safety and there must not be any other restraining order preventing contact between them and the petitioner. If the victim is under 12, the order must be filed by their parent or guardian.

**Stalking Protection Order:** These orders provide protection for a victim who is experiencing repeated and unwanted contact from another person that causes them or their family or household alarm or is being coerced due to force or threats. These fears must be reasonable and based on repeated, unwanted contact with the person. These repeated (defined as two or more) events must have taken place within the last two years. These orders can either be requested through a civil process, like the other protection orders, or can be instituted due to a law enforcement filed stalking citation. The order must be filed by a parent or guardian if the victim is under 18.

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<sup>7</sup> Emergency Protection Orders are another type of order available in Oregon, but we did not include them because they differ from the others in that they are only available short-term in response to domestic violence incidents and can only be filed by law enforcement.

<sup>8</sup> ORS 124.005

These orders all have several key common characteristics with ERPOs, as well as important distinctions:

Commonalities between these orders and ERPOs	Key distinctions between these orders and ERPOs
Process has both an ex parte and optional contested hearing component	All orders but ERPOs have lower burdens of proof for both ex parte and final orders (“preponderance of evidence” as opposed to “clear and convincing evidence” required of ERPOs)
Contested hearing requires the presence of the petitioner, should respondent request one. Court may continue or dismiss the order following the hearing.	ERPOs and Stalking Protection Orders allow law enforcement to petition for an order on their own; other order types require the victim or other party to petition
All but the Stalking Protection Order require this hearing be held within 21 days	ERPOs are based on the risk of some future harm based on the behavior of the respondent; other orders require that action or abuse has already occurred against the petitioner in addition to a risk or fear of future harm.
Go into effect if the respondent fails to request a hearing	Definition of family or household member is more expansive for other protective order types; ERPO statute does not include former spouses and intimate partners
Are a civil matter	
Both respondents and petitioners may have legal representation, but not provided at state expense	
Administrative process for requesting an order, holding hearings, service, and data entry are similar across these protective order types	

Particularly important in the context of ERPOs, the other orders have a more robust process for documenting firearm surrenders in statute than is present for ERPOs. The ERPO statute requires respondents turn over their firearms to law enforcement, a third party such as a family member or friend, or firearm dealer within 24 hours. Respondents are also required to turn over any concealed handgun license to their local sheriff’s office.

Individuals subject to firearm restrictions from other protective order types must additionally provide the court with a firearm declaration informing where the firearms were surrendered, as outlined in ORS 166.256. A respondent can also choose to exercise their right against self-incrimination and decline to make any statement about their possession of firearms. This document is shared with the local district attorney and the respondent risks being cited for contempt if they fail to comply. While some local courts may enforce a firearm surrender process for ERPOs like the other orders, there is not a statewide requirement for this additional verification in statute.<sup>9</sup>

<sup>9</sup> For all protective orders with firearm restrictions but ERPOs, the respondent must surrender their firearms within 30 days after they are served notice of the protective order. If the respondent requests a hearing and the order is not dismissed, or they fail to appear, the firearm restrictions take effect immediately. The judge can request an expedited firearm surrender if they deem it necessary.



## Research into the use and effectiveness of ERPOs is limited, but there are indications ERPOs can be a useful tool for reducing gun violence and suicides

Because ERPOs are a relatively new public policy tool, research into their effectiveness at reducing incidents of gun violence is limited, but there have been some encouraging findings documented in the literature. Studies examining similar laws in Connecticut and Indiana found ERPOs reduced suicides by one for every 10 to 20 orders issued.<sup>10</sup> Although these findings are encouraging, suicide prevention advocates we spoke with told us these orders are not foolproof. According to the advocates, ERPOs can be a helpful tool for creating time, space, and distance between someone in crisis and a firearm, but the process may not move fast enough to be effective in all firearm suicide crisis situations.

There have also been several studies examining the relationship between ERPOs and mass shooting events. For example, a study focused on California's ERPO law found 21 cases where an ERPO was filed to prevent a threatened mass shooting incident; a similar study found five cases of threatened mass shootings in King County, Washington, that resulted in an ERPO.<sup>11</sup> A 2022 study of six states with ERPO laws found 662 ERPOs, 10% of all cases, were filed in response to a threat of killing at least three people.<sup>12</sup> It is impossible to know what share of these events would have resulted in an event without an ERPO, but these findings indicate ERPOs are at least being used in response to threats of mass gun violence in states that have them.

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<sup>10</sup> Swanson, Jeffrey W., et al. "[Implementation and effectiveness of Connecticut's risk-based gun removal law: does it prevent suicides.](#)" *Law & Contemp. Probs.* 80 (2017): 179. and Swanson, Jeffrey W., et al. "[Criminal Justice and Suicide Outcomes with Indiana's Risk-Based Gun Seizure Law.](#)" *The journal of the American Academy of Psychiatry and the Law* 47.2 (2019): 188-197.

<sup>11</sup> Wintemute, Garen J., et al. "Extreme risk protection orders intended to prevent mass shootings: a case series." *Annals of internal medicine* (2019). and Frattaroli, Shannon, et al. "[Extreme risk protection orders in King County, Washington: the epidemiology of dangerous behaviors and an intervention response.](#)" *Injury epidemiology* 7.1 (2020): 1-9.

<sup>12</sup> Zeoli, April M., et al. "[Extreme risk protection orders in response to threats of multiple victim/mass shooting in six US states: A descriptive study.](#)" *Preventive medicine* 165 (2022): 107304.

## Question 2: What state and local entities are involved in the process and what is their role?

**Answer:** While the ERPO law is effective statewide, the actual process is primarily undertaken by local law enforcement and Oregon's 36 circuit courts. This structure is common among states with ERPO laws. The Oregon Judicial Department plays a key role by developing and providing common forms and guidance for the court process. The Oregon State Police (OSP) also play a role, primarily related to administration of the Law Enforcement Data System (LEDS) used to inform law enforcement of the presence of an ERPO. OSP is also responsible for providing background checks for firearm transfers and purchases.

### Oregon's 36 circuit courts and local law enforcement play the primary roles in administering Oregon's ERPO law

Each of Oregon's 36 counties has a circuit court with locally elected judges with general jurisdiction over all types of cases, including civil matters such as ERPOs. It is these circuit court judges who decide if there is clear and convincing evidence the respondent in an ERPO case is at risk of suicide or of causing physical injury to another person using both the evidence provided by the petitioner and respondent and the risk factors outlined in the statute. Oregon's circuit courts are organized into 27 judicial districts, with low population counties grouped into multi-county districts.

#### ERPO risk factors outlined in statute

- A history of suicide threats or attempts or acts of violence by the respondent directed against another person;
- A history of use, attempted use or threatened use of physical force by the respondent against another person;
- A previous conviction for: misdemeanors involving violence, a stalking or other similar offense, domestic violence, driving under the influence, or cruelty to animals;
- Evidence of recent unlawful use of controlled substances;
- Previous unlawful and reckless use, display or brandishing of a deadly weapon;
- A previous violation of a court order including restraining orders;
- Evidence of the acquisition or attempted acquisition of a deadly weapon within the previous 180 days;
- Any additional information the court finds to be reliable, including a statement by the respondent.

Local law enforcement, particularly county sheriffs, also play a key role in Oregon's ERPO law. In addition to being potential petitioners, county sheriff's offices are responsible for serving ERPOs on respondents at no cost. When an ERPO is ordered by a judge, circuit court staff prepare the order and other required documentation and provide it to their county sheriff's office who is required to serve the order at no cost to the petitioner. This process requires the sheriff to personally deliver the order to the respondent.

Once served, the respondent can either turn over any firearms in their possession to the officer or give their firearms to a third party such as a friend, family member, or gun dealer within 24 hours. The serving officer is required to ask where the guns will go, but there is no requirement for the respondent to tell them. This creates a risk that the respondent may continue to have ready access to firearms

after the order is served. Once the order is served, county sheriffs are also responsible for entering the ERPO information into OSP's LEDS database as well as the federal National Criminal Information Center system. This data entry informs law enforcement and gun dealers of the presence of the ERPO. Because their officers are eligible to petition for ERPOs municipal police departments also have a role in the ERPO process.

### **The Oregon Judicial Department and OSP provide statewide support for key elements of Oregon's ERPO law**

The Oregon Judicial Department (OJD) and OSP have specific roles outlined within Oregon's ERPO law. While these roles are critical to the function of the law, they are more related to the overall structure and process than to the day-to-day administration of the ERPOs.

OJD is a unified system of state circuit courts, the Court of Appeals, the Oregon Supreme Court, and the Tax Court. The Chief Justice of the Supreme Court, with the support of the State Court Administrator, is responsible for ensuring the effective administration of the state courts through consistent standards, business processes, and administrative methods.

By statute, OJD is only responsible for providing the form respondents use to request a hearing contesting the order, but it has also developed forms used in the rest of the process, including a standardized petition form. In addition to these forms, OJD staff developed a detailed instruction guide describing the ERPO process for petitioners. OJD also has a process for receiving and incorporating stakeholder feedback used to improve forms over time. When the ERPO law was passed, OJD staff created a bench guide to provide judges and court staff with instructions for the process and the criteria to be considered when deciding ERPO cases. OJD has been manually collecting data on ERPO use that can be requested by interested stakeholders and the media.

OSP administers LEDS, a database that connects law enforcement, criminal justice agencies, and other authorized users to centrally maintained law enforcement records such as warrants, criminal histories and protective orders. County sheriffs enter approved ERPO information into LEDS as well as the National Crime Information Center<sup>13</sup> database providing notice to all law enforcement agencies in the country of the existence of the order. These same systems ensure gun dealers, both in Oregon and nationally, are notified of the presence of an ERPO when conducting required background checks before completing a firearm transaction. OSP, through its Firearms Instant Check System (FICS) Program is required by law to conduct criminal background checks for the purpose of determining the eligibility of persons attempting to receive a transferred or purchased firearm. OSP's role in the ERPO process, beyond administering and maintaining the LEDS system and ensuring ERPOs prevent gun purchases, is limited.

### **Other state agencies have programs designed to prevent gun violence and suicide**

The Oregon Health Authority, Department of Justice, and the Governor's Task Force on School Safety provide additional examples of state-level efforts intended to prevent gun violence and suicide. These efforts include data collection and reporting on gun violence and injuries, suicide prevention planning,

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<sup>13</sup> NCIC is a computerized index of criminal justice information available to federal, state, and local law enforcement and other criminal justice agencies maintained by the FBI. It allows for ready access to information on criminal justice information.

grants for community-based violence reduction, and a multi-agency effort to reduce violence and suicide in schools.

The Oregon Health Authority's Health Systems Division as well as the Public Health Division's Injury and Violence Prevention section, work to prevent firearm-related deaths and injuries through collecting and reporting of data and through collaboration with community, Tribal, local, state, and federal partners. Currently, the Oregon Health Authority has five program coordinators focused on suicide prevention efforts and has developed multiple suicide prevention plans and needs assessments focused on specific populations, including:

- **Youth Suicide Intervention and Prevention Plan:** Starting in 2014, the Legislature requested the Oregon Health Authority develop and oversee a five-year suicide intervention and prevention plan for youth ages 5 to 24. In 2021, the plan was updated to cover 2021 through 2025. Progress has been made in reducing Oregon's youth suicide rate, with decreases between 2019 and 2021; however, the rate remains higher than the national average. The current plan focuses on organizing Oregon's current suicide prevention infrastructure, addressing equity gaps, adding culturally responsive programming and treatment options, addressing workforce issues, and finding ways to meaningfully integrate the voices of youth and those with relevant lived experience into the work.<sup>14</sup>
- **Adult Suicide Intervention and Prevention Plan (forthcoming):** The Oregon Health Authority will also be releasing an Adult Suicide Intervention and Prevention Plan in 2023 built from the same Suicide Prevention Framework developed for the youth-focused plan. This plan will be updated annually to reflect completed efforts and progress made.
- **Oregon Veterans' Behavioral Health Services Improvement Study: Needs Assessment and Recommendations Report:** This report was commissioned by the Oregon Health Authority in response to a legislative request to prioritize the behavioral health of Oregon's veterans. The report found veterans aged 18 to 34 experienced the highest rate of suicide in Oregon. It calls for continued coordination in suicide prevention programs between OHA and the Department of Veterans' Affairs and offers a recommendation to seek out and embrace promising innovative practices.<sup>15</sup>

Additionally, the OHA's Injury and Violence Prevention section, in collaboration with the OHSU-PSU School of Public Health, tracks firearm injuries through the analysis of statewide emergency department visit data through the CDC-funded Firearm Surveillance Through Emergency Rooms (FASTER) project. The focus of the project is to use public health data to prevent firearm injuries. OHA is also collaborating with the Portland Opportunities Industrialization Center to implement House Bill 4045 passed in the 2022 legislative session. The bill allocated funds to support the expansion of hospital-based violence intervention programs in the Portland Metro Area, establish similar programs outside the Portland-Metro Area, and enabled Medicaid reimbursement for program services<sup>16</sup>.

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<sup>14</sup> [2021-25 Youth Suicide Intervention and Prevention Plan](#)

<sup>15</sup> [Oregon Veterans' Behavioral Health Services Improvement Study: Needs Assessment and Recommendations Report](#)

<sup>16</sup> These programs are intended to improve health outcomes and reduce the likelihood the victim will commit or promote violence themselves through trauma-informed, supportive, and non-psychotherapeutic services such as peer mentoring, crisis intervention and targeted case management delivered by trusted community messengers.

In 2022, the Legislature approved \$15 million for the Oregon Department of Justice to create a Community Violence Intervention and Prevention grant program focused on communities disproportionately impacted by violence, including gun violence, suicide, and domestic violence. The program's grant-making strategy will be informed by stakeholder feedback from the individuals and communities affected by gun violence. Community-based violence intervention programs that can be supported include, but are not limited to, afterschool programs, group violence interventions, and mentoring. The agency released a grant application for these funds on March 10, 2023, requesting applications from community-based organizations that focus on community violence intervention and prevention. The agency began awarding grant funds in June 2023.

In 2014, the Legislature created the Task Force on School Safety to bring together policymakers from the Governor's Office, Legislature, education, law enforcement, fire and rescue, and public mental health to collaboratively focus on strengthening safety in Oregon schools. The task force has been involved in three key school safety initiatives:

- **House Bill 2661 (2015)** created common terminology for use in drills and by first responders and school districts during emergencies and also expanded the requirement for school safety drills and instruction be required from kindergarten through 12<sup>th</sup> grade.
- **HB 4075 (2016)** created the SafeOregon school safety tip line administered by OSP which provides students and parents with an accessible tool they can use to anonymously report incidents of bullying, harassment, and other threats to student safety. Through June 2022, SafeOregon has received over 8,000 tips with more than 500 related to threats of school attacks or possession of weapons in school.
- **School Safety and Prevention System:** Created as part of the 2019 Student Success Act, the School Safety and Prevention System is an integrated set of policies and practices intended to create a comprehensive school safety and prevention model centered on equity and focused on suicide prevention, behavioral safety assessments, use of the SafeOregon Tip Line and the creation of positive school culture and climate. This program is being implemented by the Oregon Department of Education in partnership with the Oregon Health Authority.

These examples show suicide prevention and gun violence reduction efforts require the efforts of multiple state agencies, local governments, and community partners.

### Question 3: How is Oregon's ERPO law being used and is it working as intended?

Answer: In the first 4 and a half years that Oregon's ERPO law was in effect a total of 564 petitions were filed, with the vast majority requested by local law enforcement. Most of these requests resulted in an ex parte order. Respondents only requested a hearing to challenge an order in about a third of these cases, with the orders being upheld about half of the time. ERPO use has varied widely among counties, with seven counties not having any since the law was implemented.

While OJD collects data on ERPO use and LEDS can provide demographic information of ERPO respondents, there is not currently a statewide effort to assess the equity or effectiveness of Oregon's ERPO law. Experts and researchers have identified a set of data elements and research questions that could be used to evaluate ERPO use, effectiveness, and equity in the future. Without more research and evaluation at the state level, it is difficult to determine if Oregon's ERPO law has led to a reduction in firearm violence and suicide.

#### Oregon's ERPO law is primarily used by law enforcement in a handful of counties

OJD provided data on every ERPO filed since the law was implemented in January 2018 through the end of June 2022. We analyzed how ERPOs were used across the state by petitioner type, as shown in Figure 3. Based on this data, we found:

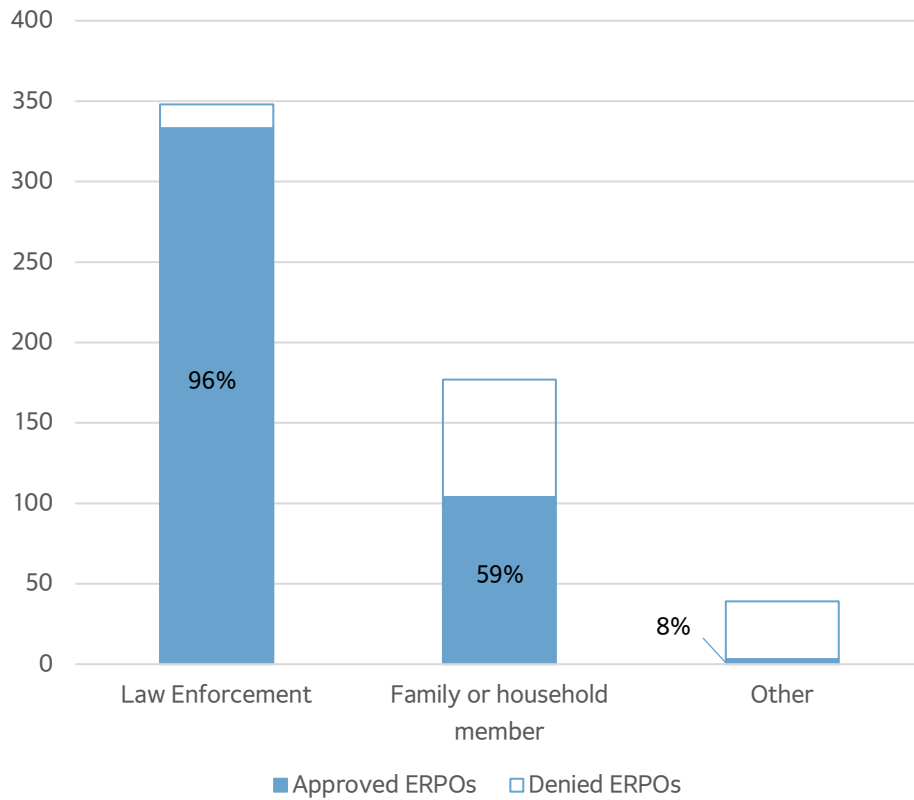
- In the first four and a half years the law was active, a total of 564 ERPOs were requested with 440, or 78%, being granted an ex parte order issued by a judge.
- Law enforcement requested most of the orders and nearly all of their requests were approved for a temporary order.
- Household or family members made up about a third of the requests and were granted an ex parte order about 60% of the time.
- The remaining 39 requests were filed by statutorily ineligible petitioners. These were denied an ex parte order in 92% of cases.

ERPOs filed by ineligible petitioners made up roughly 7% of the requested orders.<sup>17</sup> While the vast majority of requests were made by eligible petitioners, these ineligible requests indicate more public awareness and education of the law may be needed. The three that were approved for an ex parte order make up less than 1% of the approved orders and would likely have been overturned if the respondent had requested a hearing challenging the order; none of these orders remain in effect. Since then, OJD has updated the ERPO petition form to more clearly identify whether a petitioner is eligible to request an order.

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<sup>17</sup> Non-eligible petitioners in the case files include a doctor, a deputy district attorney, and a family friend.

**Figure 3: Members of law enforcement petitioned for the most ERPOs and nearly all were approved**



Source: OAD analysis of OJD compiled ERPO case data

We did not review individual petitions to assess why petitioners filed ERPOs; instead, we relied on an in-depth analysis conducted by researchers during the first two years of Oregon’s ERPO law.<sup>18</sup> Of the 93 ERPO petitions examined, they found more than 70% of petitions involved respondents with a history of suicidality or reported risk of interpersonal violence, with more than half reported as having a history or risk of both. Researchers also found more than half of the cases were related to threats made within a week of filing the petition, indicating ERPOs were being used in times of immediate crisis. Researchers ultimately concluded ERPOs in Oregon were overwhelmingly being used as intended.

We examined ERPO use by county and found a wide variation in the number filed, both in raw counts and on a per-capita basis as shown in Figure 4. At least one ERPO was filed in 29 of Oregon’s 36 counties, with 15 counties having 10 or more, including a high of 94 in Washington County and 78 in Deschutes County.<sup>19</sup>

<sup>18</sup> Zeoli, A. M., Paruk, J., Branas, C. C., Carter, P. M., Cunningham, R., Heinze, J., & Webster, D. W. (2021). Use of extreme risk protection orders to reduce gun violence in Oregon. *Criminology & Public Policy*, 20(2), 243-261.

<sup>19</sup> The seven counties that have not filed an ERPO to date are: Gilliam, Grant, Harney, Morrow, Sherman, Wallowa, and Wheeler.

**Figure 4: Between 2018 and 2021, ERPO use varied widely between counties in Oregon**

County	Total ERPOs	ERPOs/100k Residents	County	Total ERPOs	ERPOs/100k Residents
Washington	94	15.2	Clatsop	8	20.3
Deschutes	78	39.6	Lake	8	99.1
Multnomah	70	8.4	Jefferson	6	24.9
Clackamas	60	14.1	Linn	6	4.7
Josephine	45	52.0	Klamath	5	7.3
Marion	29	8.3	Lincoln	5	10.4
Yamhill	26	23.9	Crook	4	17.1
Jackson	17	7.6	Malheur	4	12.5
Lane	15	3.9	Curry	3	13.0
Douglas	14	12.4	Wasco	3	11.0
Umatilla	14	17.2	Hood River	2	7.8
Coos	13	20.5	Baker	1	5.9
Benton	11	11.6	Tillamook	1	3.8
Columbia	11	20.6	Union	1	3.7
Polk	10	11.9	<b>Oregon Total</b>	<b>564</b>	<b>13.2</b>

Source: OAD analysis of OJD compiled ERPO case data

Between January 2018 and June 2022, ERPO use varied dramatically per 100,000 residents at the county level. Of the 15 counties with 10 or more ERPOs, use per 100,000 residents varied from a low of 3.9 in Lane County to a high of 52 in Josephine County. The counties without any ERPOs through June 2022, are rural, including seven of the eight lowest population counties in the state, with a combined population of less than 40,000. These results could indicate familiarity with the ERPO law for both law enforcement and the public vary among counties. This uneven distribution of ERPOs by county is common in other states with ERPO laws.

ERPO respondents are entitled to contest an ex parte order, allowing them the opportunity to provide evidence and testimony to challenge the order. Using a combination of data sources from OJD, we found respondents requested a hearing in only 19% of cases.<sup>20</sup> ERPOs in these cases were upheld 54% of the time, roughly 20% below the rate of the ex parte hearings. ERPOs requested by law enforcement were continued 61% of the time, more than twice the rate of family or household member requests. This result indicates the ability to challenge an ERPO provides respondents a legitimate chance to contest the order, although few respondents take advantage of the opportunity.

### Other types of protective orders are far more common than ERPOs in Oregon

There are four other types of civil protective orders that follow a similar process to ERPOs available in Oregon. These include orders designed to protect individuals at risk of sexual assault, domestic violence, elder abuse, and stalking. As shown in Figure 5, ERPOs made up less than 1% of the total of these protective orders between 2018 and 2021. Family Abuse Protection Act orders make up more

<sup>20</sup> In several cases a hearing was requested, but never held, or either the respondent or petitioner did not attend, leading to the ERPO being either continued or dismissed by default. These were included in our analysis because a hearing was requested.



than half of the civil protective orders requested in Oregon, accounting for more than 37,000 of the 64,000 orders requested in the period.

**Figure 5: ERPOs made up less than 1% of all protective orders requested in Oregon between 2018 and 2021**

Order Type	Orders requested	Percent of total
Family Abuse Protection Act	37,533	58.6%
Stalking Protection Orders	13,572	21.2%
Elderly Persons and Persons with Disabilities Abuse Prevention Act	11,860	18.5%
Sexual Abuse Protection Order	555	0.9%
Extreme Risk Protection Order	485	0.8%
Total	64,005	100%

Source: OAD analysis of OJD compiled protective order case data

### Enhanced data collection and evaluation are necessary to fully assess the effectiveness and equity of Oregon’s ERPO law

Research has shown there is an increased risk of suicide and homicide in dangerous situations when a firearm is present and individuals at risk of harming themselves or others are often identified by family members, law enforcement, and other members of their communities before an incident occurs. It logically follows from these two factors that ERPOs can help reduce incidents of firearm violence and suicide by suspending access to firearms for high-risk individuals in states where the tool is available. In order to confirm this, research and evaluation of the effectiveness of Oregon’s ERPO law is necessary. Further, evaluating the equity of ERPO use, particularly racial equity, is necessary to ensure they are not exacerbating existing inequities.

The Consortium for Risk-Based Firearms Policy, a group made up of experts in evidence-based gun violence prevention policies, recommends states and researchers conduct rigorous evaluation of ERPO laws and their implementation to enhance the understanding of their impacts, provide feedback to implementers to improve outcomes, and identify and correct inequitable uses, with the goal of empowering legislatures to make informed policy decisions regarding ERPOs. In order to facilitate this research, they recommend states require ERPO case data be reported to a centralized database for research and policy analysis purposes. Data to gather falls into four broad categories:

- **Petitioner information**, including relationship to respondent, demographic information, and for law enforcement the agency where they work.
- **Respondent information**, such as demographic information, whether they have been the subject of an ERPO or other type of protective order, and if there is a concurrent criminal case.
- **Order information and circumstances**, including location information, order expiration date, information about the risks the respondent posed and a summary of the events that precipitated the order, the outcome of the petition and subsequent hearings, service information, and other services provided to the respondent.
- **Firearms information**, such as the number and type of firearms surrendered, unaccounted for firearms, and information about the respondent’s compliance with the order.

The consortium stresses this should not be seen as an exhaustive list and all data points may not be necessary in all states. According to research guidance developed by leading experts, interpersonal

violence and suicide outcomes related to firearms are challenging to study due to their statistical rarity.<sup>21</sup> For an in-depth study of the effectiveness of ERPOs, data beyond ERPO records would likely be necessary from sources such as vital statistics, law enforcement, and hospital data. These data would likely need to come from a large number of ERPO cases and include time periods after the ERPO expired in order to understand how individual risks change over time.

Oregon’s ERPO statute does not include a requirement for data collection or evaluation of the use and outcomes of ERPO cases and there is no database in Oregon that includes all the elements recommended above. However, OJD has manually collected information on the location, petitioner type, and ex parte order outcome for every ERPO filed since the law was implemented. According to OJD staff, this data is collected for multiple purposes, including case management, assisting judges and courts in understanding how ERPOs are being used, and to satisfy stakeholder requests and public records requests.

While this data collection is useful for determining the distribution and use of ERPOs across the state, a more robust collection would be required to evaluate the effectiveness of the ERPO law at reducing gun violence and suicide in Oregon. Further, this and other OJD data sources lack consistent demographic information on ERPO respondents and petitioners, limiting the ability of the state to assess the equity of the implementation of the ERPO law. OSP’s LEDS system has demographic information on ERPO respondents, but it does not include information on petitioners.

Figure 6 shows demographic data on current ERPO respondents as of December 22, 2022. Based on this small number of ERPOs, respondents tend to be young to middle-aged, male, and white. Notably, one quarter of respondents are between the age of 18 and 25 and another 44% are between the ages of 26 and 45. These results are typical of other studies of ERPO respondents around the country.

**Figure 6: ERPO respondents in Oregon are largely white men under the age of 45**

Race	Count	%
White	100	95%
Asian/Pacific Islander	2	2%
Black	2	2%
Unknown	1	1%
Gender		
Male	90	86%
Female	15	14%
Age		
18-25	26	25%
26-35	22	21%
36-45	24	23%
46-55	13	12%
>55	20	19%

Source: OAD analysis of OSP LEDS ERPO data as of December 22, 2022

<sup>21</sup> [Extreme Risk Protection Order Research Agenda, by April Zeoli, PHD, MPH.](#)

## There are barriers and challenges for petitioners, respondents, and law enforcement that affect their experience using the ERPO law

Based on our review, Oregon's ERPO law has likely been used as intended but there are several factors that make the process difficult for some petitioners to use, including being able to take the time to attend a hearing, a lack of familiarity with filling out court documents, a lack of awareness of the law, and language barriers. Further, some elements of the process limit the ability of the law to ensure ERPO respondents do not have access to firearms.

In our discussions with stakeholders and review of the literature, we learned about several barriers faced by ERPO petitioners that may limit their ability to use the law. Many of these barriers are more acutely felt by lower-income Oregonians and other historically underserved groups. Barriers identified by stakeholders include:

- **Time:** The process to petition for an ERPO, while streamlined by OJD and circuit courts, can be time-consuming. A petitioner needs to be able to take time to fill out the petition request form, attend the ex parte hearing, and be available for subsequent challenge hearings if requested by the respondent. Each of these steps takes time which many petitioners, particularly lower-income petitioners, may not have available. Costs associated with missed work, childcare, and transportation could make petitioning for an ERPO difficult for some Oregonians.
- **Lack of familiarity with court forms and process:** OJD developed the ERPO petition form and instructions in a way to help ensure it could be filled out by a member of the public. At the same time, most potential petitioners lack familiarity with filling out court forms and engaging in the legal process. ERPO petitioners can hire an attorney to help them with the process, but they must do so at their own expense. While court staff are unable to provide legal advice to members of the public, they may be able to assist the public in accessing and completing a petition for an ERPO or other protective order, connecting a petitioner to resources, and answer general questions about the process for obtaining an ERPO.
- **Lack of awareness of the law:** Many stakeholders told us that there is not widespread public awareness of the law, limiting the number of potential ERPO petitions. OJD provides information on ERPOs on their website, as does the Oregon Department of Justice.
- **Language barriers:** The challenges noted in the prior two bullet points are exacerbated for individuals with limited English proficiency. OJD provides translated ERPO forms in Spanish and translation services and support filling out forms is available in county circuit courts. At the same time, by statute the ERPO petition must be filled out in English in order to be considered and the court proceedings are also conducted entirely in English.<sup>22</sup> If needed, access to interpreter services for hearings are available to respondents and petitioners.

Respondents face barriers as well, many of them similar to those faced by petitioners. Because ERPOs are a civil matter, a respondent is not entitled to an attorney to help them challenge the order. They also need to be able to make time and incur expenses related to attending hearings and may face the same court process familiarity and language barrier issues identified for petitioners.

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<sup>22</sup> ORS 1.150

There are also some elements of the process that present challenges for law enforcement. Overall, we learned the process is very similar to the other, more commonly used, protective orders. Due to the relatively low number of ERPOs, local law enforcement officials told us ERPOs were not a significant burden on their operations. At the same time, serving an ERPO can be a risky process considering the order is served without warning to an individual who has been identified as being at a high risk of violence to themselves or others. Further, once the ERPO is served, the respondent has 24 hours to surrender their firearms, a potentially high-risk period particularly for respondents at risk of suicide. Finally, there is not a mechanism in place to ensure all of a respondent's firearms have been surrendered.

### ERPOs and the time tax

**What is the “time tax?”** Individuals seeking government services typically are required to fill out forms, wait in lines or on hold for support or other time-consuming tasks in order to receive the benefits and services they are entitled to. This time tax is regressive because benefits designed for lower-income individuals typically require more work than those available to higher income individuals.

**How does it relate to ERPOs?** While everyone requesting or responding to an ERPO follows the same form and hearing process, the impacts of these time-consuming requirements are felt more acutely by lower-income petitioners and respondents. For example, lower income individuals are less likely to be able to afford to miss work, obtain childcare or travel to a hearing. They are also less likely to be able to obtain a lawyer to help them with the process.

OJD is implementing online submission for many of their court forms, including for protective orders. Currently the Family Abuse Protection Order form is available for online submission and staff told us they will add more protective order forms in the future, potentially including the ERPO form at some point in the future. If implemented, an online ERPO form would reduce the time required for petitioners to request an ERPO.

**Tension with due process:** While the time related difficulties associated with the ERPO process likely present a barrier for some people in Oregon, they are largely unavoidable because of due process rights. Due process is a fundamental right ensuring fairness and equal treatment in legal matters. For ERPOs this means ensuring that the accused have an opportunity to confront adverse witnesses, be heard before an impartial judge, know opposing evidence, and to present their own evidence at a hearing. Any effort to lessen the impact of the time tax on ERPO processes and proceedings will need to be implemented in a way that ensures the due process rights of ERPO respondents.

### The impact of ERPOs on communities of color is unclear

There are concerns about how ERPO laws might impact people of color, particularly in light of racial disparities in the criminal justice system. One concern is ERPOs could be used to disproportionately target people of color because of implicit bias. For example, research has shown people of color are more likely to be recipients of police-initiated contact and to be unfairly stopped by police, and this could also apply to ERPO proceedings.<sup>23</sup> Research further shows people of color might be more

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<sup>23</sup> Susan Nembhard and Lily Robin, Racial and Ethnic Disparities throughout the Criminal Legal System, August 2021

apprehensive to use ERPO due to mistrust of the criminal justice system.<sup>24</sup> Additionally, poverty can make it more difficult to access legal representation.

Another concern is that ERPOs could be used to justify increased policing and surveillance of communities of color. This is particularly worrying because people of color are more likely to be killed by police, and communities of color are often over-policed and under-protected.<sup>25</sup>

However, it is also important to note ERPOs have the potential to save lives in communities of color. Studies have shown communities of color are disproportionately affected by gun violence.<sup>26</sup> Given the chance to remove weapons from individuals deemed as a risk, this could help to reduce the number of lives lost in these communities.

Researchers and standard setting bodies encourage governments to be aware of these concerns and take steps to address them as they work to develop and implement ERPO laws. Some suggested actions include engaging with impacted communities to better understand barriers to petitioning for ERPOs and appropriate strategies for reducing such barriers, providing legal representation for petitioners and respondents, incorporating non-law enforcement professionals into the process for serving an ERPO, and monitoring the impact of ERPOs and other firearm violence prevention policies on racial equity.

While the results identified in Figure 6 indicate that people of color are not disproportionately targeted by currently active ERPOs in Oregon, the relationship between gun violence and racial equity requires a more nuanced evaluation. For example, analysis of ERPO use should include demographic analysis of both respondents and petitioners. Also, firearm violence itself is rife with inequity, for example young Black males in Oregon have the highest firearm homicide rate and nationally are 11 times more likely to be victims than their white counterparts. Prevention efforts, such as ERPOs, should be studied to ensure that they reduce and not exacerbate current disparities such as these. A recent study in California found no examples of ERPOs being requested by Black or Hispanic/Latino family or household members indicating that these communities are more hesitant to use ERPOs. Understanding how ERPOs are perceived and used within and against communities of color is essential for understanding and ensuring their equity and effectiveness as a tool to reduce gun violence.

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<sup>24</sup> V.A. Pear, [Extreme risk protection orders, race/ethnicity, and equity](#): Evidence from California, *Preventive Medicine*.

<sup>25</sup> Susan Nembhard and Lily Robin, Racial and Ethnic Disparities throughout the Criminal Legal System, August 2021

<sup>26</sup> J Urban Health (2022) 99:610–625 [Inequities in Community Exposure to Deadly Gun Violence by Race/Ethnicity, Poverty, and Neighborhood Disadvantage among Youth in Large US Cities](#)

## Question 4: How does Oregon’s Red Flag law compare to best practices and similar laws in other states?

**Answer:** ERPO laws are often compared based on factors such as who may petition, how long the ex parte and final orders last, the evidence threshold required, and other factors. Oregon’s ERPO law is like ERPO laws in other states but there are a handful of unique characteristics that set it apart — particularly the length of the ex parte period and a high standard of evidence. Based on our review, Oregon’s law is generally in line with best practices and model legislation but lacks the more robust firearm surrender procedures and specific provisions for minor respondents found in some other states or identified in best practices.

Oregon’s firearm safety laws have seen significant changes over the last two decades, with provisions adding expanded background checks, safe storage requirements, and firearm restrictions for those convicted of domestic violence or under restraining orders. Measure 114, passed in November 2022, adds a permit-to-purchase process and restricts gun magazines to 10 or fewer rounds, although its implementation is currently paused by both state and federal courts.

### Several key differences exist between ERPO laws in Oregon and those in other states

Oregon is among 21 states and the District of Columbia with ERPO laws, as shown in Figure 7. The first ERPO-like laws were enacted in Connecticut and Indiana nearly two decades ago, after high-profile shooting incidents in each state. After the shooting at Sandy Hook Elementary School in 2012, other states passed similar laws, with Oregon passing its ERPO law during the 2017 session. While ERPO laws are similar across states, there are several key distinctions between Oregon’s law and those in other states. These include the burden of evidence required to order a temporary and final ERPO, the period of time for which temporary ERPOs are effective, and who can petition for an order.

**Burden of evidence for ex parte and final ERPOs:** Oregon, along with Michigan, has the highest burden of evidence, “clear and convincing,” for obtaining ex parte orders out of any of the states with ERPO laws. Oregon’s statute maintains the same threshold for obtaining final orders, in line with 14 other states requiring clear and convincing evidence for issuing final orders, while six use the lower “preponderance of evidence” level. Some jurisdictions have lower evidentiary burdens for both ex parte and final orders, while others have escalating burdens from the ex parte order to the final order.

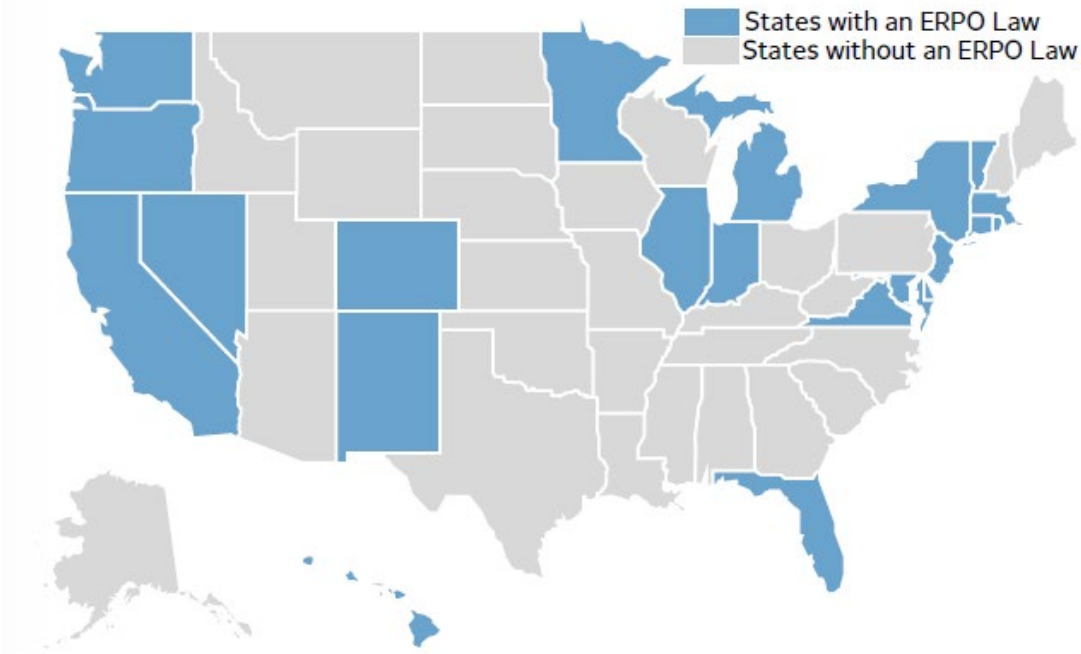
Having the same elevated evidentiary threshold for an ex parte order, with an optional second hearing protects the rights of the respondent, while minimizing administrative burdens related to scheduling hearings that may not be held. In most other states, the two hearings are typically held regardless of whether the respondent opted for one or not.

**Period of time covered by ex parte orders:** Oregon and California have the longest ex parte order period at 21 days.<sup>27</sup> Ex parte order durations are typically less than two weeks with some states having periods less than one week. As noted above, Oregon only requires a final hearing be held if requested by the respondent; if a hearing is not requested, the final order goes into effect for one year.

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<sup>27</sup> In Oregon, a respondent has 30 days to request a hearing to challenge the order. A requested hearing must be held within 21 days.

**Figure 7: Oregon is one of 21 states and the District of Columbia with an ERPO Law**



**Eligible petitioners:** Oregon, along with 15 other states, only allows family or household members or law enforcement to petition courts for ERPOs. Some states allow additional types of petitioners and others allow fewer. For example, in addition to family or household members and law enforcement, California also allows employers, coworkers and certain school personnel to petition for ERPOs. Florida, on the other hand, only allows members of law enforcement to request an ERPO. Differences in ERPO statutes between Oregon and other key states are identified in Figure 8.

**Figure 8: Oregon’s ERPO law shares similarities and differences with other states**

State	Ex parte Order Evidentiary Burden	Length of ex parte order	Final Order Evidentiary Burden	Eligible ERPO Petitioners
Oregon	Clear and convincing	21 Days	Clear and convincing	Law Enforcement; family/household member
California	Probable/Reasonable/Good Cause (law enforcement) Substantial likelihood (family and household members)	21 Days	Clear and convincing	Law Enforcement; family/household member, Employers, coworkers, certain school personnel
Florida	Probable/Reasonable/Good Cause	14 Days	Clear and convincing	Only law enforcement
Washington	Probable/Reasonable/Good Cause	14 Days	Preponderance of the evidence	Law Enforcement; family/household member
Nevada	Preponderance of the Evidence	7 Days	Clear and convincing	Law Enforcement; family/household member
Colorado	Preponderance of the Evidence	14 Days	Clear and convincing	Law Enforcement; family/household member

Source: OAD analysis of other state ERPO statutes

All jurisdictions allow law enforcement officers to petition for ERPOs, and most states also allow family members and household members. Model federal legislation, as well as guidance from the Consortium for Risk-Based Firearm Policy includes health care providers as recommended potential ERPO petitioners. Currently Hawaii, Colorado, Connecticut, Maryland, Michigan, New York, and the District of Columbia allow for health care professionals or mental health practitioners to request ERPOs in line with this guidance. However, based on our research and discussions with key stakeholders, there are factors that must be considered by policy makers before expanding Oregon's current set of eligible petitioners.

The primary argument in favor of including health care providers is they are trained to identify and mitigate crisis situations and many already engage with people in crisis or are at an elevated risk of violence as part of their professional work. On average, active shooters as defined by the FBI, display four to five observable and concerning behaviors prior to their attacks and up to 80% of people considering suicide give signs of their intentions. Including health care providers as petitioners would also allow for an additional pathway to an ERPO for people who do not want to immediately involve law enforcement.

Including health care providers as petitioners may require policy changes related to legal liability protections for providers as well as considerations related to the disclosure of patient medical information in court proceedings. Suicide prevention and firearm safety advocates we spoke with expressed concerns with including health care professionals, noting that trust is a critical factor in getting individuals to seek help and some may be hesitant to seek medical or mental health help if they fear that their provider is able to request an ERPO and have their firearms removed. Further, multiple stakeholders expressed concern about the increased potential for abuse of ERPOs from an increase in the types of eligible petitioners.

Additionally, model federal legislation as well as best practices identify additional firearm surrender practices that are not present in Oregon. The Giffords Law Center recommends ERPO laws require the immediate surrender of all firearms in the respondent's possessions to law enforcement when the order is served and also recommends the laws contain a search warrant-related component allowing courts to issue search and seizure warrants if all firearms believed to be in the possession of a respondent are not relinquished.<sup>28</sup> Both federal model legislation and the ERPO statute in the State of Washington, for example, include these provisions, with Washington's ERPO form asking petitioners to identify all firearms they believe are in the respondent's possession. Oregon's lack of these types of provisions, its limited process for confirming firearm surrenders, and the 24-hour period to transfer firearms increase the risk that an ERPO respondent will continue to possess firearms after an order is served.

Best practices also call for ERPOs to be applicable to minors but stress that additional protections should be afforded to minor respondents. Specifically, the guidance calls for court records regarding minor respondents to be kept confidential and sealed following the expiration of the order. Further, because minors who are at elevated risk of harm to themselves or others are a particularly vulnerable

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<sup>28</sup> The Giffords Law Center "is a non-profit policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to reduce gun violence and save lives."



population, efforts should be taken to ensure the appropriate authorities are made aware of the situation to support the safety and protection of the minor.

Many states, Oregon included, do not allow individuals under the age of 18 to own firearms, but ERPOs can still be beneficial for minors if they have access to firearms in their home or if they will soon be eligible to purchase firearms themselves. Washington's ERPO law includes provisions specific to minors, whereas Oregon's law is silent on the matter. Oregon's ERPO law has been used on a minor respondent in at least one case to date.

### Washington's ERPO Law

Oregon and Washington both have ERPO laws that operate similarly, but Washington's law has four key elements that make it better aligned with best practices and model federal legislation:

1. **More robust firearm surrender procedure:** In Washington, firearms must be turned over to law enforcement when the ERPO is served and the statute explicitly allows them to conduct searches as needed to collect firearms. Respondents are required to submit to the court a confirmation that all firearms were surrendered when a final order is issued.
2. **More expansive definition of family/household members:** In Washington, people who formerly lived with a respondent as well as former intimate partners are eligible petitioners, whereas in Oregon, only current family and household members are eligible.
3. **Provisions for minor respondents:** Washington's statute specifically identifies minors as potential ERPO respondents and requires their guardian be notified with a description of their responsibility to safely secure firearms. Minor respondents can request their court records be sealed.
4. **Guidance on public information strategies:** Washington's statute outlines public information expectations including the development of instructions and informational brochures and notes additional methods to better inform the public about protection orders, such as informational videos and social media (in multiple languages) should be considered.

### Oregon's ERPO use ranks 10<sup>th</sup> out of the 20 states and DC with similar laws

Comparing ERPO use across states is complicated by the fact that ERPOs laws vary by state. Additionally, each state has a unique combination of firearm safety laws, rates of gun ownership, prevalence of gun violence, differences in how firearms are treated under other protective orders, and other factors which impact the number of ERPOs filed. Experts caution against asserting an ideal number of ERPOs and drawing too many conclusions from comparing state ERPO statistics.

The Associated Press gathered data on approved ERPOs across the 19 states and the District of Columbia with ERPO laws from 2020 through September of 2022.<sup>29</sup> Based on this data, Oregon ranks 10th in the rate of ERPOs approved per 100,000 adults, as shown in Figure 9.<sup>30</sup>

<sup>29</sup> AP: "Red flag laws get little use as shootings, gun deaths soar", September 2, 2022.

<sup>30</sup> Michigan and Minnesota enacted ERPO laws in 2023 and were not a part of this analysis.

**Figure 9: Oregon had the 10<sup>th</sup> most ERPOs per 100,000 adults between 2020-2022**

State	ERPOs since 2020	ERPO rate per 100k adults	State	ERPOs since 2020	ERPO rate per 100k adults
Florida	5,872	33.6	Washington	419	7.1
Delaware	137	25.2	Vermont	30	5.7
Maryland	903	18.8	Virginia	282	4.2
Connecticut	524	18.2	Colorado	151	3.3
Indiana	645	12.4	D.C.	15	1.9
New Jersey	877	12.1	Illinois	154	1.6
California	3,197	10.5	New Mexico	8	0.5
New York	1,442	9.2	Nevada	11	0.4
Rhode Island	79	8.9	Massachusetts	12	0.2
Oregon	290	8.6	Hawaii	1	0.1

Note: Orders in New Mexico start May 2020; Virginia July 2020 when their laws took effect. Illinois figures double count in some years because of a change in how it classified orders. Indiana tracks just final orders. Washington did not break out ex parte orders for two years and so those are based on estimates. Vermont's 2020 figure reflects only final orders.

Source: Associated Press count of approved ERPOs as of September 2022

Notably, Florida, the state with the most approved ERPOs and the highest rate of ERPOs, only allows law enforcement to be petitioners. This result indicates there may not be a strong link between the number of eligible petitioner types and the number of ERPOs requested or approved. However, the relative lack of high-quality data on ERPO use nationally makes it difficult to draw conclusions from interstate comparisons of ERPO use.

### **Oregon's gun safety laws have undergone significant change over the last two decades**

Oregon has passed a broad range of gun safety laws since 2000, both through the Legislature and citizen ballot initiatives. These laws have added background check requirements for sales at gun shows and for private firearm transfers, ensured individuals convicted of domestic violence or under a restraining order are barred from possessing firearms, and required the safe storage of firearms, among other provisions. Figure 10 shows a timeline of recent firearm legislation in Oregon. Oregon ranks 9<sup>th</sup> in the country for gun law strength, according to Everytown for Gun Safety's assessment of state-level firearm safety laws.

In November of 2022, Oregon voters enacted Measure 114, which requires a permit and training to purchase a firearm, limits the sale and transfer of magazines with more than 10 rounds, and bans transfer or sale of guns without a completed background check.<sup>31</sup> The law was supposed to go into effect on December 8, 2022, but has been delayed by multiple lawsuits.

<sup>31</sup> Prior to the passage of Measure 114, a firearm sale or transfer can be completed if the background check is not completed within three business days.

**Figure 10: Oregon's gun regulations have evolved significantly in the last two decades**



### **Oregon's ERPO law appears to meet the requirements for funding from the recently passed Bipartisan Safer Communities Act of 2022**

In June 2022, President Joe Biden signed the Bipartisan Safer Communities Act, which was implemented “to reduce gun violence and save lives,” in part by supporting the creation and implementation of ERPO programs, state crisis intervention court proceedings, and related gun violence reduction initiatives

through supplemental funding to an existing grant program.<sup>32</sup> To be eligible for support under the program guidance, states must have ERPO statutes that meet minimum requirements related to due process and preventing abuse.

Oregon stands to receive over \$3.1 million from law for fiscal years 2022-23 under the Byrne State Crisis Intervention Program. The grant funding available from this law will be administered in Oregon by the Criminal Justice Commission,<sup>33</sup> which is currently working on creating the required Crisis Intervention Advisory Board, identifying program priorities, and gathering stakeholder feedback. The Criminal Justice Commission anticipates that the Crisis Intervention Advisory Board will begin meeting before the end of 2023.

Minimum requirements outlined in the federal statute for ERPO laws, as summarized by the Congressional Research Service, include<sup>34</sup>:

- Due process rights, including, at a minimum, the right to an in-person hearing, the right to an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses;
- The right to be represented by counsel at no expense to the government.
- Evidentiary standards that, at a minimum, are equal to those of a similarly situated litigant in federal or state court, including procedures to prevent admission of evidence that is unsworn, irrelevant, based on hearsay, unreliable, vague, speculative, and lacking in a foundation; and
- Penalties for abuse of the program.

Based on our review, Oregon appears to meet the criteria set forth by the Bipartisan Safer Communities Act. Officials from the Criminal Justice Commission told us if ERPOs are identified as a priority for these grant funds, they will work with OJD to confirm Oregon's program meets the minimum requirements.

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<sup>32</sup> For full text of the act see: <https://www.congress.gov/bill/117th-congress/senate-bill/2938/text>

<sup>33</sup> The Criminal Justice Commission is Oregon's State Administering Agency for federal grants of this type.

<sup>34</sup> Congressional Research Service: "Department of Justice Grant Funding in the Bipartisan Safer Communities Act", July 12<sup>th</sup>, 2022

## Question 5: What resources are available to law enforcement and the public to learn more about the Red Flag law?

**Answer:** The first step in the ERPO process is for a family or household member or member of law enforcement to identify someone is at risk of hurting themselves or others and file a petition with the court. This crucial first step will only occur if the public and law enforcement are aware of the ERPO law and know enough about the tool to recognize when it can be beneficial. Based on our research and discussions with stakeholders, more awareness and training on ERPOs would likely lead to their more effective use in Oregon. Other states and localities have taken additional steps to help ensure the public and law enforcement are aware of the availability of ERPOs and understand when they should be used.

### Other states and localities provide additional resources to potential ERPO petitioners and respondents

One of the primary barriers to ERPO use we heard from stakeholders was that the public generally lacks awareness of its availability. This lack of awareness of ERPO laws is not confined to Oregon. A 2020 survey found two-thirds of Californians had never heard of their state's ERPO law<sup>35</sup>. When the law was originally passed, the State of Oregon provided minimal financial or resource support for counties, nonprofits, law enforcement, and the public to implement ERPOs beyond what was necessary to implement the law.

While there has not been funding directed by the Legislature to support public awareness of ERPOs at the state level, both OJD and the Oregon Department of Justice have resources available on their respective websites. OJD has a webpage providing the public with a list of the protective orders available, including ERPOs, and all of the forms necessary to request them.<sup>36</sup> Further, the default ERPO form packet includes a detailed set of instructions outlining the process and expectations for petitioners. The Department of Justice has an informational webpage and a succinct one-page overview of the process.<sup>37</sup> Additionally, nonprofit organizations in Oregon — such as Legal Aid of Oregon and the Oregon Coalition Against Domestic and Sexual Violence — provide detailed information on protective orders, including ERPOs, and links to additional resources.

In our research, we identified several states that have provided additional resources for implementing their ERPO laws including resources to better inform the public:

- In the summer of 2022, California provided \$10 million to enhance public awareness of the state's ERPO law. This funding was split evenly between grants to community-based domestic violence prevention groups and for statewide outreach to communities most at risk of gun violence.
- Colorado created the Office of Gun Violence Prevention to lead efforts on public education and training for the state's law, which took effect in 2020.

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<sup>35</sup> Kravitz-Wirtz, Nicole et al. "Public Awareness of and Personal Willingness to Use California's Extreme Risk Protection Order Law to Prevent Firearm-Related Harm." JAMA health forum vol. 2,6 e210975. 4 Jun. 2021, doi:10.1001/jamahealthforum.2021.0975

<sup>36</sup> <https://www.courts.oregon.gov/programs/family/forms/Pages/protective-orders.aspx>

<sup>37</sup> <https://www.doj.state.or.us/crime-victims/victims-resources/other-resources/oregons-red-flag-law/>

- Illinois enacted legislation to create a public education campaign through the state's Department of Health.
- King County and Seattle prosecutors and law enforcement officers developed model policy for jurisdictions that created a point of contact to guide law enforcement and communities through the complicated process. The office has worked to connect stakeholders and created and delivered training on the process. The State of Washington did not dedicate funding to ERPO education or training when their law was originally passed.

Several stakeholders told us there is limited public awareness of ERPOs, indicating increased awareness could increase their use in Oregon. Additionally, in an interview with Pew Stateline in 2021, Oregon's Attorney General said: "The law is not complicated, but it is important to get the word out to the public about a law they can actually use to save lives." The approaches identified from other states could help inform a public awareness campaign for Oregon.

### **Additional law enforcement training and education on ERPOs may increase use by law enforcements**

Law enforcement has a wide range of experience with the ERPO process. ERPOs also exist in a constellation of other protective orders that tend to contain provisions for firearm prohibitions, meaning law enforcement has analogs to ERPOs with which to understand the ERPO process. Despite this, auditors were told there is a need for additional law enforcement training on the use of ERPOs. Increasing law enforcement training and awareness would likely increase the effectiveness of Oregon's ERPO law to reduce incidents of gun violence and suicide.

We reviewed the Oregon Department of Public Safety Standards and Training's training materials and found there is no statewide training on ERPOs provided in Oregon, either during basic academy training or through regional training programs. Without statewide training, building awareness and knowledge on the ERPO law falls to local law enforcement agencies and officers. For example, a former Bend Police Department officer who worked as part of the city's Crisis Response Unit learned about ERPOs through his own research and became a frequent user of the tool to help mitigate firearm risks in his community. He also developed training materials and has continued to educate law enforcement agencies in Deschutes County on the use of ERPOs. Deschutes County has one of the highest rates of ERPO use in Oregon. Although anecdotal, it is likely this education and training effort has been a factor contributing to the high rate of use in Deschutes County.

Other states' efforts to increase public awareness of ERPOs also include initiatives to increase law enforcement awareness and education. For example, California included an additional \$1 million for training city attorney offices and law enforcement groups on ERPO use, using a model developed by the San Diego City Attorney's Office. In Illinois, recent legislation adds yearly training on the state's ERPO law for law enforcement. Training law enforcement officers on the use of ERPO laws may be an effective way to enhance the use of Oregon's ERPO law.

# Project Approach

This advisory report — a research-based, non-audit project — included interviews, data analysis, and a review of statutes, academic research, and best practices on ERPOs from research organizations.

Those interviewed included:

- Academic researchers focused on public health and gun violence;
- Criminal defense attorneys and district attorney office staff;
- State legislators and staff with the Governor’s Office;
- Sexual and domestic violence victim advocates;
- Mental health and disability rights experts;
- Suicide prevention professionals;
- Oregon Health Authority staff and management;
- OJD staff;
- County court and sheriff’s office staff;
- OSP management who oversee records management;
- A Racial Justice Council member;
- Oregon Criminal Justice Commission management; and
- Gun rights and safety advocates.

We also analyzed and evaluated data on ERPO use and gun violence from OJD, the Associated Press, and Every Town for Gun Safety’s compilation of the Centers for Disease Control firearm fatality statistics. We also evaluated similar laws and regulations in other states and reviewed government and academic literature on gun violence and suicide prevention and the effective use of ERPOs.

We chose to perform this work as a non-audit project because no single agency oversees this statute in a programmatic manner. Accordingly, this report does not adhere to the complete set of government auditing standards, including standards for detailed planning of fieldwork steps and internal control reviews of auditees. This advisory report has undergone the same rigorous quality assurance process as does each audit from the Oregon Audits Division, with auditors not involved in the project checking evidence for each assertion in the report. We also provided the OJD with a copy of the report and gave them the opportunity to provide feedback.

This report complements three other audit reports recently conducted by our office regarding public safety initiatives and efforts of the state, as well as the division’s future work related to public safety.<sup>38</sup> Collectively, this work highlights the importance of coordination between state and local entities in administration of state laws related to public safety.

We would like to thank OJD and OSP management and staff for their cooperation as well as the many participants in the emergency response and violence prevention fields who provided their time and information to us for this project.

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<sup>38</sup> [Additional Resources Needed to Strengthen Police Training and Accountability, December 2021](#)  
[Additional Data Analytics Could Better Determine Trooper Staffing Levels and Resource Needs, January 2022](#)  
[Oregon Can Do More to Mitigate the Alarming Risk of Domestic Terrorism and Violent Extremist Attacks, March 2022](#)

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### About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of the office, Auditor of Public Accounts. The Audits Division performs this duty. The division reports to the Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division has constitutional authority to audit all state officers, agencies, boards and commissions as well as administer municipal audit law.





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