

LEGISLATIVE RESOURCE SHEET | 2018 SESSION

Minnesota Chiefs of Police Association

ISSUE/LEGISLATION:

GUN VIOLENCE PROTECTION ORDERS (GVPOS)

The MCPA supports allowing law enforcement, qualified health care practitioners, family members and intimate partners who believe an individual's dangerous behavior has a substantial likelihood to lead to violence to request an order from a civil court authorizing law enforcement to temporarily remove any guns in the individual's possession and to prohibit new gun purchases for the duration of the order.

PROPOSAL STATUS

MCPA will actively support this proposal as part of its 2018 Legislative Agenda

- Bills were introduced in 2017 and referred to both the Minnesota House Public Safety committee Minnesota Senate Judiciary Committee
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BACKGROUND

- The proposal is designed to provide safe and effective options for law enforcement – working with an individual's family members and partners - to prevent gun tragedies before they occur. Gun violence protective order laws, also known as gun violence restraining orders and extreme risk protection orders, allow families and household members, as well as law enforcement officers, to petition a court to remove a person's access to guns if he or she poses an imminent danger to self or others. Working with loved ones, law enforcement can deescalate potentially tense and difficult encounters.
- The bill has built in protections against abuse and includes due process. When a judge finds a person presents an "immediate and present danger," the subject can appear at a hearing and respond to allegations that he/she is too dangerous to be armed. If the judge finds by a preponderance of evidence that the person poses a significant danger to himself or others, his guns could be removed for 6 months to 2 years.

- This bill also allows Minnesotans to voluntarily request to be prohibited from having guns and obtaining firearms permits for a temporary period. Any person who chooses to be prohibited may transfer any firearms already owned to law enforcement or a gun dealer for safekeeping, and may later request that those guns be returned. Medical and mental health professionals will inform patients about voluntary prohibition for people facing health emergencies.

SUMMARY OF FEDERAL LAW (SOURCE: *GIFFORDS LAW CENTER*)

Under federal law, a person suffering from mental illness is not prohibited from purchasing and possessing a gun unless he or she has been formally, and involuntarily, committed to a mental institution, found not guilty by reason of insanity, or undergone some other formalized court proceeding regarding his or her mental illness.⁷ Similarly, a person who has committed a violent act towards others is not prohibited from possessing guns under federal law unless he or she is the subject of a domestic violence restraining order, has been convicted of a felony, or has been convicted of a domestic violence misdemeanor.⁸

SUMMARY OF STATE LAW (SOURCE: *GIFFORDS LAW CENTER*)

Most states have laws mirroring the federal prohibitions on gun possession by seriously mentally ill individuals. These laws allow states to enforce prohibitions on gun possession by mentally ill individuals utilizing their own law enforcement agencies and criminal justice systems. Similar to federal law, however, these laws do not provide a process for law enforcement or family members to disarm a dangerous individual who has not been adjudicated mentally ill or committed to a mental institution.

Only two states — California and Washington — have enacted comprehensive laws allowing law enforcement officers and family or household members to petition a court to keep guns away from a dangerous person in the throes of a crisis. Because it closely mirrors the domestic violence restraining order process, California’s law is known as a “Gun Violence Restraining Order.” Washington’s law, which was enacted via a ballot initiative supported by an overwhelming majority of voters in 2016, is also based on the state’s domestic violence protections and is known as an “Extreme Risk Protection Order (ERPO).” In both states, the person seeking the order is known as the “petitioner” and the person subject to the order is known as the “respondent.”