Racial Equity Impact Assessment Tool

for Gun Violence Prevention

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JOHNS HOPKINS BLOOMBERG SCHOOL of PUBLIC HEALTH | Center for Gun Violence Prevention and Policy

Racial Equity Impact Assessment

To develop this tool, we compared eight racial equity impact assessment frameworks used by the Coalition to Stop Gun Violence (CSGV)[1], the Government Alliance on Race and Equity (GARE)[2], the Greenlining Institute[3], if, A Foundation for Radical Possibility[4] (formerly the Consumer Health Foundation), the Institute for Intersectionality Research and Policy[5], the Massachusetts Public Health Association (MPHA)[6], Race Forward[7], and the University of Southern California Program for Environmental and Regional Equity (USC PERE)[8] to identify the core themes of racial equity analyses. These themes were then discussed during a series of convenings with diverse groups of stakeholders involved in the policy creation and implementation process, and the insights from those discussions were distilled down to create the nine questions presented below.

The Racial Equity Impact Assessment tool is part of the Racial Equity Framework Report, to be released contemporaneously, that aims to provide context, resources, and recommendations to advance racial equity in our shared mission to end gun violence.

What is a Racial Equity Impact Assessment?

Racial equity impact assessments (REIAs) identify and assess factors bearing on racial equity that should be considered before a policy is implemented. These factors may be used to promote racial equity and avoid unintended negative effects, such as victimization, arrest, and incarceration, before a policy is fully developed. If a policy already exists, this REIA model can help guide ongoing implementation and or amendments to that policy to address equity concerns that are identified.

How to use the REIA?

The REIA tool can be used by all organizations working on gun violence prevention, their partners, and allies (as well as organizations working on violence prevention in general). It is designed to enable people from multidisciplinary perspectives to identify and assess all factors bearing on the assessment. Ideally, using the REIA should be a collaborative process within and beyond the organization. It is important to connect with trusted partners, find a diversity of perspectives within the organization, and embark on this task with partners with lived experience to encourage a more holistic assessment.

1   The Coalition to Stop Gun Violence. (2020). *Policy Impact Assessment*

2   Government Alliance on Race and Equity. (2015). *Racial Equity Toolkit: An Opportunity to Operationalize Equity*. https://www.racialequityalliance. org/wp-content/uploads/2015/10/GARE-Racial_Equity_Toolkit.pdf

3   The Greenlining Institute. (2013). *Racial Equity Toolkit: Implementing Greenlining's Racial Equity Framework*. https://greenlining.org/wp-content/ uploads/2013/07/GLI-REF-Toolkit.pdf

4   Consumer Health Foundation. (2017). *Racial Equity Impact Assessment Tool*.

5   Hankivsky, O., Grace, D., Hunting, G. et al. (2014). An intersectionality-based policy analysis framework: critical reflections on a methodology for advancing equity. *Int J Equity Health* 13, 119. https://doi.org/10.1186/s12939-014-0119-x

6   Massachusetts Public Health Association. (2016). *Health Equity Policy Framework*. https://mapublichealth.org/wp-content/uploads/2015/05/ mpha-health-equity-policy-framework-approved-11-16-201

7   Race Forward. (2009). *Racial Equity Impact Assessment*. https://www.raceforward.org/sites/default/files/RacialJusticeImpactAssessment_v5.pdf

8   Pastor, M., Wander, M., & Auer, M. (2012). Equity Issue Brief: Advancing Environmental Justice through Sustainability Planning. *University of Southern California Program for Environmental & Regional Equity*. https://dornsife.usc.edu/assets/sites/242/docs/EQUITY_ISSUE_BRIEF_Env_ Just_Full.pdf

Throughout the assessment, each answer helps guide organizations as they decide whether to move forward, support, change, or advocate for a policy while also considering the risk of inaction. The final answer depends on the values and goals of the particular organization. The REIA is a decision-making tool. It needs to be consulted and updated periodically as new information becomes available to incorporate changing circumstances or developing knowledge.

The REIA requires careful consideration of nine questions. The questions are open-ended and require deliberation and more detailed responses than "yes" or "no." The REIA should be considered as a guide, and not be reduced to a checklist. It should generate new points of discussion among stakeholders tailored to each specific proposal and context. Beneath each question are additional questions that may help contextualize the main topic and serve as a starting point or guide for dialogue.

In addition to the REIA, this document includes an example using Colorado's Extreme Risk Protection Order law to demonstrate how the tool can be applied to a specific policy.

Racial Equity Impact Assessment

1 *What are the stated objectives of the gun violence prevention policy?*

– What are the implicit objectives of the policy?

– What strategies are employed to achieve those objectives?

2 *What is the context of racial inequity that informs the issue being addressed?*

– What is the historical and contemporary racial context of the issue this policy addresses?

– What are the nuances related to the jurisdiction (national, state, or local) where the policy will be implemented?

– How might the policy impact different forms of inequity, including victimization, arrest, and incarceration?

3 *What types of racial disparities could potentially result from the policy's design and implementation?*

– How could the policy reduce, perpetuate, or exacerbate racial inequity?

– How could disparities in implementation and impact differ between and within impacted communities?

4 *Who are the specific communities that will be impacted by the policy?*

– Is the policy based on needs and goals expressed by impacted communities?

– Have drafters of the policy identified and engaged impacted communities at every step of the process?

5 *What, if any, data could be used to measure whether racial inequities could be reduced, perpetuated, or exacerbated by the policy?*

   – Does the policy rely on a variety of data sources and types to understand relevant equity issues?

   – What are the gaps in the data?

   – How could the data be improved?

6 *Can any potential racial inequities be avoided or mitigated without compromising the stated objective?*

   – Is the policy designed to effectively address the stated objectives without exacerbating potential racial inequities?

   – Could other options achieve the same goals while also achieving more equitable outcomes?

7 *Does the policy remedy existing racial inequities?*

   – Can the policy be drafted to ensure anti-racism, anti-violence, harm reduction, and decarceration?

8 *Is the proposed solution to mitigate gun violence viable and sustainable?*

   – Are there adequate resources to promote short and long-term success?

   – Is there authentic and informed community support for the policy?

   – Is the policy or the review process designed to evolve as circumstances change over time?

9 *What methodologies can be utilized to evaluate the implementation, progress toward stated objectives, and any racialized impacts of the policy?*

   – How do impacted communities define relevant outcomes, and how can they be measured?

   – How will data be collected, analyzed, and reported?

   – Are evaluation processes transparent and iterative?

Application of the Racial Equity Impact Assessment:
Colorado's Extreme Risk Protection Order Statute

This example examines Colorado's extreme risk protection order statute, codified in Colo. Rev. Stat. §§ 13-14.5-101 – 13-14.5-114. It is important to note that this REIA example was created with the collaboration of internal team members and external partners over an extended period of time. What a completed REIA looks like will differ depending on the partners involved and the time and resources available when completing it. The most significant aspect of an REIA is that it is used.

1

What are the stated objectives of the gun violence prevention policy?

– What are the implicit objectives of the policy?

– What strategies are employed to achieve those objectives?

Extreme Risk laws, also known as Extreme Risk Protection Orders or ERPOs, are civil court orders that can be used to temporarily prohibit the possession and purchase of firearms by persons a court deems to pose a significant danger of harming themselves or others by possessing a firearm. The goal of ERPOs is to reduce firearm homicides and suicides by removing firearms from individuals found to be at high risk of committing gun violence. An ERPO is a civil court order that utilizes alternative methods of risk reduction before resorting to the criminal legal system, as opposed to many prior gun violence prevention laws that have used criminal penalties as a primary remedy.

ERPO laws include short-term and long-term orders. Both processes begin when a petitioner (in Colorado, law enforcement or family or household members) requests the court to temporarily prohibit a person (referred to as the "respondent") from possessing firearms by presenting evidence that the person poses an "immediate" risk of danger to themselves or others by accessing or possessing firearms. If granted, the respondent is barred from purchasing and possessing firearms for the duration of the order. Generally, a hearing for a short-term order occurs when the petitioner files their request with the court and the order lasts 1-2 weeks if granted. The long-term order hearing includes both the respondent and petitioner and the resulting order is usually in place for one year. A long-term order may be extended or terminated early upon request of the parties involved and a court hearing.

Colorado's ERPO law, introduced as HB19-1177, took effect on January 1, 2020. There are a few noteworthy aspects of the state's law. First, Colorado is currently the only state that provides free, court-appointed representation to ERPO respondents. The respondent may hire a private attorney at their own expense, but they are guaranteed court-appointed counsel paid for by the state. Second, the law allows for alternative methods of surrendering firearms that minimize direct interactions with law enforcement. For example, an ERPO respondent could surrender their firearms for safekeeping to a federally licensed firearms dealer or a family member who does not reside with the respondent and may legally possess them. Third, law enforcement may concurrently petition for an ERPO and a search warrant for firearms. It is a class 2 misdemeanor offense for respondents to possess firearms while subject to an ERPO.

What is the context of racial inequity that informs the issue being addressed?

– What is the historical and contemporary racial context of the issue this policy addresses?

– What are the nuances related to the jurisdiction (national, state, or local) where the policy will be implemented?

– How might the policy impact different forms of inequity, including victimization, arrest, and incarceration?

Black Americans are shot by law enforcement at disproportionately higher rates than white Americans. Unarmed black people are over three times more likely to be shot and killed by police compared to white people. Colorado is no exception, with Black and Latino people disproportionately shot by law enforcement as compared to white people. High-profile incidents of police brutality against BIPOC, such as the 2019 killing of Elijah McClain in Aurora, CO, have also shaken public trust in Colorado police. Concerns about potentially violent interactions by law enforcement with BIPOC ERPO respondents are not unfounded.

The lack of trust between BIPOC communities and law enforcement creates the additional concern of potential under-use of ERPOs by these communities. They may be less likely to petition the courts for an ERPO or work with law enforcement to file for an ERPO to avoid interactions with the legal system. If that were the case, then opportunities to employ the life-saving benefits of ERPO would be lost. Another explanation for the under-use of ERPOs with BIPOC communities could be that law enforcement are bringing criminal charges against people of color for the same sets of circumstances that result in an ERPO petition when the respondent is white. As explored in greater detail below, BIPOC populations are currently underrepresented in ERPO petitions filed. Since there is only one year of data available on Colorado ERPO and relatively few orders were petitioned during that time, the question of ERPO use and enforcement by race cannot yet be conclusively answered. ERPO petition rates by race should be closely monitored to see if petition disparities persist.

Though ERPOs are civil orders, violations of an ERPO may result in a misdemeanor criminal charge. While data are lacking on ERPO violations, Black people are overrepresented for weapon offense arrests and charges in Colorado as compared to white people, but are also more likely to have their charges dismissed. It remains to be seen whether similar trends will apply in response to ERPO violations.

ERPO is a tool most often used to prevent firearm suicide, with research suggesting that at least one suicide is averted for every 10 to 20 orders issued. Colorado has a consistently high gun suicide rate compared to other states in the country, which disproportantly impacts white men. On average, 633 Coloradans die by firearm suicide each year, 81% of whom are white men. White people in Colorado have firearm suicide rate over two time times higher than their Black and Latino counterparts. These differences in firearm suicide rate may contribute to differences in ERPO usages among racial groups.

Half of the counties in Colorado have declared themselves as "Second Amendment sanctuaries," in part to reject the application of Colorado's ERPO law. It is unclear how a Second Amendment sanctuary status will impact the implementation of the law in the long term. An analysis of the first year of ERPO implementation in Colorado shows that 24% of "sanctuary" counties have had at least one petition for an ERPO, as compared to 48% of non-sanctuary counties. More specifically, there were 1.52 ERPO petitions filed per 100,000 people in "sanctuary" counties and 2.05 per 100,000 in non-sanctuary counties. Observing ERPO petition rates by county over time could provide more insight into whether Second Amendment sanctuary status impacts ERPO implementation.

What types of racial disparities could potentially result from the policy's design and implementation?

3
- – How could the policy reduce, perpetuate, or exacerbate racial inequity?
- – How could disparities in implementation and impact differ between and within impacted communities?

If abused by law enforcement or other petitioners, ERPOs could be disproportionately used to disarm people of color without good cause. Similarly, law enforcement could disproportionately bring violations of ERPOs against BIPOC communities, which would involve the criminal legal system. However, either of these potential scenarios requires egregious misuse, as opposed to a routine functioning of the law. The appointment of attorneys to represent respondents, in addition to evidentiary standards that must be satisfied by courts during every step of the case, are both built-in protections for the civil liberties of respondents. Colorado's ERPO law also allows for family members to petition for ERPOs in addition to law enforcement, and permits respondents to either sell or transfer their firearms to a federally licensed firearms dealer or family members as an alternative to engaging with law enforcement for gun dispossession. Though law enforcement acts in service of the courts and is an inherent aspect of the ERPO process, Colorado's ERPO law provides alternative avenues to reduce their direct involvement with respondents.

Early court data on ERPO usage in Colorado has also shown that courts are able to identify and dismiss improper ERPO petitions. Out of the more than 100 Colorado ERPO petitions filed in 2020, an analysis by the Colorado School of Public Health found only four instances of misuse, where the petitioner falsely characterized their relationship to the respondent. All of those petitions were dismissed.

In an attempt to anticipate the potential impacts of adopting an ERPO law, the Colorado Legislative Staff Council issued a fiscal note on the state's ERPO bill. Since Colorado's ERPO law creates a class 2 misdemeanor offense for a respondent who does not surrender possession of their firearms while under a long-term or short-term ERPO, the state sought to estimate the impact of the new law by analyzing the existing Colorado offense of knowingly possessing an illegal weapon (a class 1 misdemeanor). The Council's analysis found that within the last three fiscal years before ERPO's passage in Colorado, Black people made up 4% of the population and accounted for 5.4% of persons charged for an illegal weapons charge and Latino people made up 21% of the population and accounted for 5% of persons charged for an illegal weapons charge. Looking at ERPO research from other states, the fiscal note reasoned that "assuming that 95 percent of respondents comply with an ERPO, it is estimated that there will be an increase of less than 10 criminal case filings and convictions per year."

That being said, there is a potential equity concern with the concurrent search warrant feature of Colorado's ERPO law. Giving law enforcement greater authority to enter people's homes without undergoing a separate search warrant request process could lead to other types of exposure to the criminal system. The concurrent filing of a search warrant with an ERPO petition expedites the search warrant process. Concurrent filing is more efficient than filing for both requests independently and reduces the likelihood of a respondent using a firearm while law enforcement waits for a separate search warrant, but can result in the search for and discovery of items law enforcement did not have justification to seek out. Ultimately, the concurrent filing feature is not a necessary component for the functioning of the law.

4

Who are the specific communities that will be impacted by the policy?

– Is the policy based on needs and goals expressed by impacted communities?

– Have drafters of the policy identified and engaged impacted communities at every step of the process?

ERPOs can apply to anyone in Colorado who may legally possess firearms. However, individuals at risk of suicide or prone to mental health or behavioral crises may be more likely to experience ERPOs than the general public. Sensitive to the diverse needs and interests across their state, the primary sponsors of Colorado's ERPO law went to great lengths to receive input from impacted parties in crafting the policy.

According to the office for the Colorado House Democrats, who oversaw the creation of the bill, the primary bill sponsors engaged a diverse array of stakeholders throughout the legislative process. The primary sponsors met with several Colorado cities and counties, including the cities of Aurora, Boulder, Colorado Springs, Commerce City, Denver, Northglen, Trinidad, and Westminster, and the counties of Boulder, Denver, Douglas, and El Paso. State police, district attorneys, defense attorneys, and county sheriffs were in contact with the bill sponsors on behalf of the criminal legal system. State organizations committed to mental health and violence reduction, such as the Colorado Behavioral Healthcare Council, Colorado Ceasefire, Colorado Public Health Association, Colorado Psychiatric Society, Mental Health Colorado, and Violence Free Colorado, were also engaged. National interest groups, such as Everytown for Gun Safety Action Fund, Giffords, the National Alliance on Mental Illness, the National Rifle Association, and the National Sports Shooting Foundation, weighed in on the bill as well.

Beyond external engagement, the primary sponsors also worked closely with the Colorado Black and Latino caucuses. The caucuses, in turn, engaged directly with their community connections to provide further input on the legislation. By engaging opponents and proponents of the legislation and expanding their stakeholder network through partnerships with diverse caucuses, the primary sponsors of Colorado's ERPO law applied a holistic outreach strategy to identify and engage with impacted parties during the policy creation process.

5

What, if any, data could be used to measure whether racial inequities could be reduced, perpetuated, or exacerbated by the policy?

– Does the policy rely on a variety of data sources and types to understand relevant equity issues?

– What are the gaps in the data?

– How could the data be improved?

An ERPO implementation report released by the Colorado Office of the Attorney General evidenced geographical differences in ERPO usage. Using court information, preliminary data from the first seven months of the law taking effect illustrates that ERPOs were filed in 18 of Colorado's 64 counties. While a few cases were filed in rural counties in Western and Eastern Colorado, the bulk of the cases were filed in the Denver metro area and along the Front Range (Fort Collins, Colorado Springs, Boulder, and Golden). Denver filed the most ERPOs. About 34% of all ERPOs were filed in Denver County, where around 12% of the state's population resides. It was expected that localities more supportive of ERPO would be more likely to implement it during the law's early

days. Continued evaluations will be necessary to see if more counties begin to embrace ERPO as a tool to reduce gun violence.

A study from the Colorado School of Public Health presents an even closer look at the available court data on ERPO petitions that were filed and granted. In 2020, the first year ERPO was implemented in Colorado, 109 ERPO petitions were filed. Out of the 86 petitions that were analyzed, 61 were granted for short-term ERPOs, 49 were subsequently granted for long-term ERPOs, and 25 were denied outright. Over 75% of ERPO petitions were filed by law enforcement, with 85% of requests for orders being granted. Family or household members filed far fewer petitions, and only 15% of their long-term ERPO requests were granted.

Though demographic data on ERPO implementation in Colorado was not included in the Attorney General's report, it was acquired for the Colorado School of Public Health study. Most petitions were filed against male respondents (85%), and 80% of all respondents were white. BIPOC populations were underrepresented in short-term ERPO petitions, drawing 16% of petitions despite making up 31% of the state population. There was no data available on the ages of respondents.

The lack of comprehensive demographic data is a significant limitation of Colorado's ERPO law. Information on the race, gender, and age of ERPO respondents is essential to understanding whether the law is being applied in an equitable manner and should be readily available to legislators, researchers, and the public. Though the Colorado School of Public Health was able to access that data, they did so by examining all relevant court records. Such methods are labor-intensive and time-consuming. Creating legal requirements for demographic data collection and sharing could resolve this problem.

6 *Can any potential racial inequities be avoided or mitigated without compromising the stated objective?*

– Is the policy designed to effectively address the stated objectives without exacerbating potential racial inequities?

– Could other options achieve the same goals while also achieving more equitable outcomes?

Colorado's ERPO law raises concerns that innocent individuals will unlawfully lose their firearms, be arrested, and charged with criminal violations. However, the law has several layers of built-in legal protections to reduce the likelihood of any of these risks coming to fruition. The guaranteed appointment of counsel for ERPO respondents, standards of proof necessary for court findings during every step of the ERPO process, and guaranteed opportunities for respondents to present their case in court all reduce the chances that Colorado's ERPO law will be applied unjustly. Though not inherent in the design of the law, inequitable implementation will need to be carefully monitored as well. The under-use of ERPOs, or overreliance on criminal penalties in situations where ERPOs could have been utilized, could result in disparate impacts along racial lines.

Preliminary assessments of the issuance of ERPOs in Colorado are promising and do not show signs of misuse. No current legal alternatives to ERPO present a lower risk to racial equity. Though there is no evidence of concurrent search warrants being issued or utilized improperly, requiring a separate warrant filing process is recommended to prevent the risks of such misuse in the future.

7 ***Does the policy remedy existing racial inequities?***

– Can the policy be drafted to promote anti-racism, anti-violence, harm reduction, and decarceration?

Colorado's ERPO law was not passed with an explicit intention to remedy racial inequities in the state or mitigate future ones. However, the robust due process protections, options to surrender firearms without law enforcement involvement, and a guaranteed right to counsel for respondents in long-term ERPO hearings all promote anti-violence and harm reduction without initially contributing further to mass incarceration. Violations of ERPOs could result in misdemeanor offenses, so the risk of criminal legal involvement is still present, but only after all other attempts at constructive intervention have been exhausted.

Further, ERPOs were designed with specific intent to address mental health equity. ERPOs, including Colorado's law, focus on evidence-based behavioral indicators of risk and avoid using mental health diagnoses as prohibitors. ERPOs are civil orders, as opposed to criminal, "because they are designed to keep people safe by preventing a tragedy from occurring, not to criminalize elevated risk of violence or self-harm." These measures, while intended to promote mental health equity, may serve to advance harm reduction and decarceration outcomes pertinent to racial equity as well.

8 ***Is the proposed solution to mitigate gun violence viable and sustainable?***

– Are there adequate resources to promote short and long-term success?
– Is there authentic and informed community support for the policy?
– Is the policy or the review process designed to evolve as circumstances change over time?

ERPOs appear to be a viable and sustainable means of preventing likely firearm deaths and injuries. ERPOs require few judicial resources and entail little cost, aside from unresolved questions regarding storage of surrendered firearms. Stakeholder education is the largest hurdle to effective ERPO implementation. ERPOs are only useful if they are applied, which will not happen if law enforcement, community members, and judicial officers do not know what an ERPO is or how it can be used to prevent gun violence, or if there are not assigned resources to support its implementation. Since Colorado's ERPO law was enacted in 2020, data on its implementation is currently limited.

9 ***What methodologies can be utilized to evaluate the implementation, progress toward stated objectives, and any racialized impacts of the policy?***

– How do impacted communities define relevant outcomes, and how can they be measured?
– How will data be collected, analyzed, and reported?
– Are evaluation processes transparent and iterative?

Colorado's ERPO law should be evaluated on an annual basis to allow for adjustments in each coming legislative session. Data on the number of ERPOs sought and granted in each county can be acquired from the state court system. However, data are not currently collected in a systematic way on demographic information (such as age, race, and gender) related to ERPO usage. This deficiency should be corrected.