RESOLVED, That the American Bar Association urges state, local, territorial, and tribal
governments to enact statutes, rules, or regulations authorizing courts to issue gun violence
restraining orders, including *ex parte* orders, that include at least the following provisions:

1. That a person (a “petitioner”) with documented evidence that another person (a
   “respondent”) poses a serious threat to himself or herself or others may petition a court
   for an order temporarily suspending the respondent’s possession of a firearm or
   ammunition *poses a credible threat*;

2. That there shall be a verifiable procedure to ensure the surrender of firearms and
   ammunition pursuant to the court order; and

3. That the issuance of the gun violence restraining order shall be reported to appropriate
   state or federal databases in order to prevent respondent from passing a background
   check required to purchase a firearm or obtain a firearm license or permit while
   restraining order is in effect.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED
I. Introduction

There are few more contentious issues in our public policy debates than the contours of “the right to keep and bear arms.” Increasingly, however, there is consensus that guns should be kept away from those whose behavior suggests that they would be dangerous to themselves or others if they possessed a weapon. This resolution takes a small step toward translating that consensus into common-sense legal terms. A Gun Violence Restraining Order (GVRO) is a simple legal procedure to enable courts to remove guns from those who are proven likely to use them dangerously, and to do so in compliance with the Second Amendment and Due Process protections of the Constitution. The American Bar Association should continue its long tradition of being at the forefront of policy-making that meets the challenge of the gun violence crisis, which seriously threatens the health and welfare of the people of the United States.1

II. How GVROs Can Prevent Gun Violence

Studies have shown that individuals who are engaged in certain dangerous behaviors are significantly more likely to commit an act of violence towards themselves or others within the near future.2 Tragically, the current legal framework rarely provides a mechanism for witnesses to take preventive action, especially with respect to guns. Gun violence restraining orders – variously called gun violence protective orders, lethal violence protective orders, or other titles – fill this gap.

America’s recent experiences with mass shootings have demonstrated the urgent need for gun violence protective orders. In many of these incidents, community members noted warning signs beforehand, but there was nothing they could do to remove the shooter’s access to guns before the tragedy. Family members are the people most often in this position, such as the parents of Elliot Rodger, who killed six people in the college town of Isla Vista, California, before killing himself. Rodger's parents contacted his therapist about three weeks before his killing spree with concerns about his behavior and YouTube videos, and the therapist contacted the police, who interviewed him. The police observed that he did not meet the criteria to be taken into custody for a mental health evaluation, however, so nothing was done to remove his access to guns.3

Similarly, Jared Lee Loughner shot and killed six people and wounded 13 others, including U. S. Representative Gabrielle Giffords, in a parking lot in Tucson in January 2011. At one point, his parents had become so concerned about his behavior that they took away his shotgun, but they could not take any further action to restrict his access to guns.4

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1 The sponsors of this resolution wish to express their appreciation to the Law Center to Prevent Gun Violence in San Francisco, CA, for research assistance.
4 Michael Martinez and Chelsea J. Carter, New details: Loughner's parents took gun, disabled car to keep him
Dylann Roof, who shot and killed nine people at Emanuel African Methodist Episcopal Church in Charleston, South Carolina in June 2015, was known to have made violent, racist statements. These statements were so threatening that his friend, Joseph Meek, hid Roof’s handgun. Meek soon returned the handgun, however, at the urging of his girlfriend, because Meek himself was on probation.5

Gun violence restraining orders can help prevent such tragic shootings by allowing law enforcement officers, family, or other community members specified in the statute6 to obtain a court order to temporarily restrict a person’s access to firearms and ammunition based on a judge’s finding that the person poses a danger of committing violence against himself, herself, or others.

III. The Effect of the Resolution

This resolution proposes general standards for obtaining a GVRO that would give states wide latitude to states to enact laws best suited to their particular circumstances and existing public policy. GVROs are already a legal option in several states. In many cases, the laws are based on similar procedures in the state’s domestic violence laws.

Currently, domestic violence protective order laws in every state allow a victim of domestic abuse to seek a court order to prevent further acts of abuse. These court orders may restrict the abuser’s behavior in various ways, including through prohibitions on gun purchase or possession by the abuser. Research has shown these laws to be effective, and courts have upheld them against various constitutional challenges. Consequently, they serve as a useful model for state laws regarding gun violence protective orders.

In fact, California drew heavily from its domestic violence protective order law when – in response to the Isla Vista shooting described above – it enacted its Gun Violence Restraining Order law7 in 2014.

Similar laws have been enacted in Connecticut,8 Indiana, and Washington. In each of these states, a law enforcement officer or a family member may seek a court order for the temporary removal of guns from a potentially dangerous person pending a full hearing.9 Law enforcement officers in Illinois and Massachusetts may also seek the removal of guns from a potentially dangerous person through those states’ gun owner licensing law.10

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6 The resolution does not specify who shall have standing to petition a court for a GVRO, leaving this decision to the states.
7 Cal. Penal Code §18150 et seq.
IV. Legal Challenges to Gun Violence Restraining Order Laws

Litigation challenging firearms laws has become a routine strategy of gun manufacturers, the National Rifle Association, and others. These challenges most often raise the following issues: (1) the Second Amendment to the U.S. Constitution; and (2) the Due Process Clause. The following brief discussion illustrates why a GVRO, as described in this resolution, comports with these constitutional provisions.

A. Second Amendment

The GVRO process is consistent with the Second Amendment. In the landmark case, District of Columbia v. Heller, 554 U.S. 570 (2008), the Supreme Court determined that the Second Amendment guarantees the right of “law-abiding, responsible citizens” to keep a handgun in the home for self-defense. However, the Supreme Court also stated that the Second Amendment is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” The Court explicitly recognized “the problem of handgun violence in this country,” and confirmed that the “Constitution leaves ... a variety of tools for combating that problem.” Among those tools, the Court identified several examples of presumptively valid gun regulations, including those that prohibit firearm possession by felons and the mentally ill.

Since the 2008 decision in Heller, courts across the country have been faced with challenges to many kinds of gun regulations. Courts have almost uniformly upheld strong gun laws, and the Supreme Court has also repeatedly declined to hear any new cases raising Second Amendment claims, denying certiorari in 70 Second Amendment cases since Heller and McDonald v. Chicago, 561 U.S. 742, 778 (2010). The courts have consistently upheld laws aimed at reducing access to guns by those who are deemed likely to misuse them.11 Courts have also broadly upheld restrictions on firearm access by persons who have been detained or hospitalized for mental health treatment and evaluation,12 and they have affirmed law enforcement’s authority to provisionally remove firearms from individuals found to pose an imminent risk of danger to themselves or others as a result of mental illness.13 In 2013, an Indiana Appellate Court rejected a

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13 See Sutterfield v. City of Milwaukee, 751 F.3d 542 (7th Cir. 2014) (Police authorized to seize stored firearms within home of potentially suicidal individual without a warrant under community caretaking function if they believe individual is a danger to themselves or others); Pyles v. Winters, 2013 U.S. Dist. LEXIS 96227 (D. Or. 2013) (Police authorized to seize individual’s firearms based on probable cause that individual was a danger to himself or others after being placed on administrative leave from work for behaving erratically); City of San Diego v. Boggess, 216 Cal. App. 4th 1494, 1505 (Cal. App. 4th Dist. 2013) (noting that Heller and McDonald “did not
Second Amendment challenge to that state’s gun violence restraining order law, ruling that the state may restrict access to firearms by dangerous individuals in the interest of public safety and welfare. The Court noted that “the United States Supreme Court has recently and repeatedly recognized the legitimate governmental purpose of prohibiting violent mentally ill persons from possessing firearms.” Because the state’s GVRO law provided ample due process protections, the Court found that it did “not place a material burden upon the core value of the individual’s right” under the Second Amendment. A similar law has been successfully implemented in Connecticut since 1999, and withstood a constitutional challenge in 2016.

B. Due Process

Procedures for obtaining a GVRO can also be instituted so as to satisfy the requirements of the Due Process Clause. These procedures are generally based on existing domestic violence laws that courts have repeatedly upheld against due process challenges. (The legal basis for these challenges lies in the court’s authority to issue an *ex parte* order before a full hearing occurs, which is neither explicitly required nor precluded by this resolution.)

In *Blazel v. Bradley*, 698 F. Supp. 756, 768 (W.D. Wis. 1988), a federal district court held that a Wisconsin law allowing victims of domestic abuse to seek *ex parte* restraining orders against their abusers was constitutional and satisfied due process requirements. The court emphasized that the procedure under Wisconsin law requires:

1. Judicial participation;
2. A verified petition containing detailed allegations before the *ex parte* order is issued;
3. A prompt hearing; and
4. An allegation of risk of imminent and irreparable harm based on personal knowledge of the respondent.

Courts across the country have come to similar conclusions. They have rejected due process challenges to *ex parte* domestic violence orders issued after these or similar requirements have been met.

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extend Second Amendment protections to persons whose firearms are seized because they were found to be a danger to themselves by reason of their mental health”; *Redington v. State*, 992 N.E.2d 823 (Ind. Ct. Appl. 2013) (Law enforcement authorized to seize firearms from delusional man scoping a bar with loaded firearms from a parking garage under Indiana statute permitting the seizure of firearms from “dangerous” individuals even in the absence of commission of a crime).

The resolution accompanying this report explicitly requires that a GVRO be consistent with the strictures of the Due Process Clause of the Constitution. In particular, the provisions outlined in subsections 1 through 3 of the resolution set specific standards that comport with due process. It is left to the states to determine whether or not to provide for an *ex parte* order, and, if so, to ensure that such a provision is consistent with due process.

**V. Conclusion**

Gun Violence Restraining Orders are a sensible approach to curbing the epidemic of senseless shootings, both the infamous events with which we are all familiar and the little-known incidents that take place regularly all over the country. This is only a modest step, to be sure, but the American Bar Association must advocate strongly for any legal step that may be employed to mitigate the crisis of gun violence in our midst.

Respectfully submitted,

David W. Clark, Chair
Standing Committee on Gun Violence
August 2017

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those patterns); State ex rel *Williams v. Marsh*, 626 S.W.2d 223, 232 (Mo. 1982) (finding the means reasonable, the goal legitimate, and safeguards adequate, along with the need for prompt action.)
118B

GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Gun Violence

Submitted By: David Clark, Chair

1. **Summary of Resolution(s).**

   Urges state, local, territorial, and tribal governments to enact statutes, rules, or regulations that authorize courts to issue gun violence restraining orders, including *ex parte* orders.

2. **Approval by Submitting Entity.** Approved by the Standing Committee on Gun Violence by conference call on April 20, 2017.

3. **Has this or a similar resolution been submitted to the House or Board previously?** No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   The ABA has approved a number of policies regarding state and federal regulation of firearms. These include: Concealed Carry Permits licensing requirements (11A111); mandated use of micro-stamping technology with new semi-automatic weapons (10A115); restriction of sale and possession of sniper weapons (5A10C); and 1994 policy reaffirming many positions dating back to the 60s related to waiting periods for firearm purchases, mandatory background checks, prohibitions of certain individuals (e.g., felons) from selling, purchasing, or acquiring firearms (94M8D). The ABA also has policy expressly supporting the right of employers and private property owners to exclude firearms from their places of business or other private property. (7M107).

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?** NA

6. **Status of Legislation.** (If applicable) NA

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   If adopted this policy can be the basis of advocacy at the federal and state level and possible amicus brief applications. It will also be incorporated into trainings that the Gun Violence Committee offers.

8. **Cost to the Association.** (Both direct and indirect costs) None

9. **Disclosure of Interest.** (If applicable) none
10. Referrals. This resolution will be circulated to all sections and interested committees and commissions, such as the Commission on Domestic and Sexual Violence, the Criminal Justice Section, and the Commission on Youth at Risk.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)
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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   Urges state, local, territorial, and tribal governments to enact statutes, rules, or regulations that authorize courts to issue gun violence restraining orders, including *ex parte* orders.

2. **Summary of the Issue that the Resolution Addresses**

   A Gun Violence Restraining Order (GVRO) is a simple legal procedure to enable courts to remove guns from those who are likely to use them to harm themselves or others.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   This resolution sets general standards for obtaining a GVRO and provides wide latitude to states to enact laws best suited to their particular circumstances and existing public policy. GVROs are already a legal option in several states. In many cases, the laws are based on similar procedures in the state’s domestic violence laws.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   None at this time.