



April 30, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Re: Development of Model “Red Flag” legislation for states within the Administrations Action on Gun Violence in the United States

Dear Attorney General Garland:

On behalf of the National Alliance on Mental Illness (NAMI), I want to express my gratitude for the Administration’s efforts to address the gun violence public health epidemic in our country. Among several actions taken by the President, he directed your department to publish model “red flag” legislation for states. As your agency moves forward with crafting this model extreme risk protection order (ERPO) legislation, we implore you to focus on effective solutions that do not unnecessarily target, single out, or discriminate against people with mental health conditions.

NAMI, the National Alliance on Mental Illness, is the nation’s largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness. The communities we serve and advocate for are as diverse as our nation. NAMI is a voice for youth and adolescents, veterans and service members, individuals involved with the criminal justice system, those who are homeless, family caregivers and everyday Americans who are impacted by mental illness. We are all connected by the shared hope of new and innovative treatments, improved health care coverage and support through recovery.

Following incidents of mass violence, public opinion and dialogue often centers around mental illness as the culprit. This discussion reinforces long standing, unfounded stereotypes linking mental illness with violence. Research tells us that other factors — such as a history of violence, misuse of alcohol or drugs, or prior convictions for violent misdemeanors — are greater predictors of violence. Overlooked in the dialogue around gun violence is the issue of suicide. Suicide is the 10th leading cause of death in America and accounts for nearly 60% of gun deaths in the U.S. Firearm suicide rates have increased by 59% over the last decade, and the firearm suicide rate for veterans is 1.5 times higher than the non-veteran population. Because of the lethality of guns, 90% of suicide attempts where a gun is used result in death.

NAMI supports Extreme Risk Protection Orders (sometimes referred to as “Red flag” laws) that focus on specific, current behaviors and evidence-based risk factors for violence, and not a diagnosis of mental illness. When crafted and implemented effectively, they can help to prevent unnecessary tragedies that impact the mental health of individuals, families, and communities. As you craft the model legislation for states, we hope you will consider our following

recommendations to prevent these laws from having unintended consequences for people with mental health conditions.

Model Legislation Should Focus on Evidence-Based Factors

The public misperception that people with mental illness are violent or dangerous has led to the over-criminalization of people with mental illness. But, in fact, people with mental illness are more likely to be victims of violence and only 4% of violent acts in the U.S. can be attributed to mental illness. Research shows that an individual’s mental health diagnosis is not a good indicator for violence. Instead, determination of risk should focus on specific, current behaviors, as well as other evidence-based risk factors – such as a history of violence, including domestic violence, a history of physical or sexual abuse in childhood, misuse of alcohol or drugs, delusions and paranoia, or prior convictions for violent misdemeanors. ERPO laws, when crafted effectively, should provide guidance for risk assessment that focuses on an effective determination of risk and not on a mental health diagnosis.

Model Legislation Should Extend Petition Authority to Family and Mental Health Providers

Most existing ERPO laws limit authority to petition the courts for an order to remove firearms to law enforcement. NAMI believes that authority should be extended to family members, intimate partners, and mental health providers. Often, family and friends are the first to notice signs that someone might be at risk for gun violence but are limited in the tools they have to intervene. Extending authority to family members could support early intervention—before someone reaches a crisis point.

While NAMI respects the importance of protecting the therapeutic relationship between mental health professionals and their patients, we also recognize these professionals are often best positioned to recognize when someone is at risk of harming themselves or others. Although laws such as HIPAA and state confidentiality statutes set forth privacy protections, they also contain exceptions that permit communicating information when necessary to protect the safety of individuals or the public. Adding mental health professionals to the list of those with authority to initiate petitions would not establish a mandate; rather, it would create an option for practitioners to act when they feel it is appropriate. The purpose of expanding this list of petitioners is to ensure that those around an individual in crisis can take action for early intervention.

Model Legislation Should Allow for Emergency Orders and Due Process Protections

We believe that any model legislation should allow for emergency ex parte orders to be issued by the courts given the urgent nature of the situations these laws are trying to address. Issuing an order on an emergency basis can support the safety of individuals, families and the community at large. However, an individual subject to an order should be allowed full due process rights, including the right to receive notice, a right to a hearing, obtain legal representation, and to present evidence on their own behalf.

Model Legislation Should Not Use Stigmatizing Language

The use of stigmatizing language and terminology should be avoided in writing or describing ERPO laws. Terms like “Red Flag Laws” risk increasing stigma towards people who have been historically marginalized and subjected to prejudice and discrimination, such as people with mental illnesses. Perhaps the most blatant example is the term “adjudicated as mentally defective”, which is currently used in federal law. Terms such as these are offensive to people with mental illness and may increase stigma and create barriers to seeking mental health care. The term “Extreme Risk

Protection Order” is less stigmatizing and more accurately describes the purpose of these laws, which is to reduce risks and save lives.

Model Legislation Should Recognize De-escalation Training for Law Enforcement

Law enforcement officers assigned responsibility for removing firearms from individuals subject to ERPO laws should receive training on crisis de-escalation and crisis intervention. The removal of firearms from individuals who are reluctant to give up their guns or who are in crisis can be difficult and even potentially volatile. In such situations, protecting the safety of officers and the individuals they are responding to is paramount. The nationally recognized Crisis Intervention Team (CIT) model is a proven best practice for training first responders on crisis intervention and for linking people with needed services and supports.

Model Legislation Should Address Public Education and Guidance

ERPO laws are only effective if information about their availability and how to access their relief is readily available. The model legislation should include provisions for public education campaigns directed towards mental health professionals, law enforcement, and families. It should also include provisions for developing resources that support the law’s use.

Thank you for your leadership on this public health crisis and for considering NAMI’s priorities on this issue. We would welcome the opportunity to meet with you or your staff to discuss this matter in more detail. We stand ready to answer any questions and work with you as you develop model legislation. To discuss further, please contact Angela Kimball National Director, Government Relations, Public Policy and Advocacy at akimball@nami.org.

Sincerely,



National Director, Government Relations, Public Policy and Advocacy
National Alliance on Mental Illness (NAMI)