

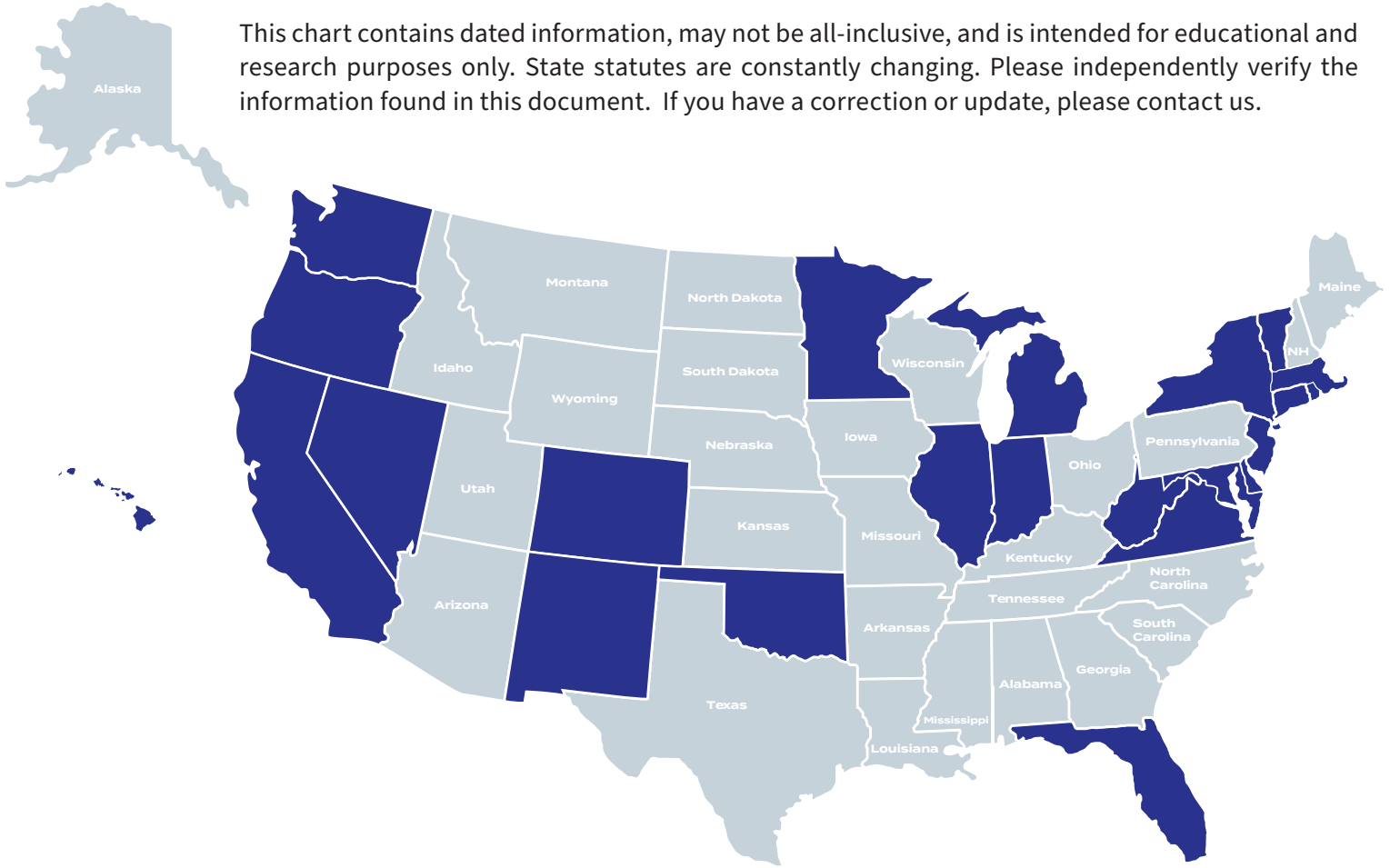
# Extreme Risk Protection Order

## STATE STATUTES



**Click on a blue state or state name below to skip to that state's statutes**

This chart contains dated information, may not be all-inclusive, and is intended for educational and research purposes only. State statutes are constantly changing. Please independently verify the information found in this document. If you have a correction or update, please contact us.



**Preemption Law-**

A law preventing the creation and/or enforcement of an ERPO statute.

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# California

**Types of orders:** Temporary Emergency Gun Violence Restraining Order, Ex Parte Gun Violence Restraining Order, Gun Violence Restraining Order

**Citation:** Cal. Penal Code §§ 18005, 18100 - 18205

## Highlighted Provisions

### Persons eligible to petition:

Temporary emergency order – law enforcement officer (Cal. Penal Code § 18125)

Ex parte order – an immediate family member, an employer of the subject of the petition, a coworker of the subject of the petition, an employee or teacher of a school the subject has attended in the last six months, a law enforcement officer, a roommate of the subject of the petition, an individual who has a dating relationship with the subject of the petition, an individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year.

Final order – an immediate family member, an employer of the subject of the petition, a coworker of the subject of the petition, an employee or teacher of a school the subject has attended in the last six months, or a law enforcement officer, a roommate of the subject of the petition, an individual who has a dating relationship with the subject of the petition, an individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year.

\*An immediate family member is a “ any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year.”

### Standard of proof:

Temporary emergency GVRO: Reasonable cause to believe respondent poses immediate and present danger of causing personal injury to himself, herself, or another and that less restrictive measures are inadequate or inappropriate.

Ex parte GVRO: Substantial likelihood that respondent poses significant danger in near future and that less restrictive measures are inadequate or inappropriate.

Gun violence restraining order after notice and hearing: Clear and convincing evidence that respondent poses significant danger and that less restrictive measures are inadequate or inappropriate.

### Findings required:

**1)** Temporary emergency GVRO: There must be a statement of the grounds supporting the issuance of the order.

**2)** Ex parte GVRO: The petition may be supported by an affidavit made in writing and signed by the petitioner under oath or an oral statement, and any additional information provided to the court shows that there is substantial likelihood that both are true:

**(1)** The subject of the petition poses a significant danger, in the near future, of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Section 18155.

**(2)** An ex parte gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.

**3) Gun violence restraining order after notice and hearing:** The court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

**Duration of order:**

Temporary emergency GVRO: 21 days

Ex parte GVRO: Up to 21 days

Gun violence restraining order after notice and hearing: One year

**Service procedures:**

Temporary emergency GVRO:

Served by law enforcement officer. Service only required if restrained person can reasonably be located. When serving the order, a law enforcement officer must verbally ask the restrained person whether they have any firearms or ammunition in their possession or control.

Ex parte GVRO:

Served by a law enforcement officer or anyone 18+ years old who is not a party to the action.

Service is only required if the restrained person can reasonably be located.

The person serving the order must inform the restrained person of the hearing scheduled under § 18165.

When serving the order, a law enforcement officer must verbally ask the restrained person whether they have any firearms or ammunition in their possession or control.

Gun violence restraining order after notice and hearing:

If the restrained person was present at the hearing at which the order was issued, no service is required.

If the restrained person was not present when the order was issued, then:

The order can be served by a law enforcement officer or anyone 18+ years old who is not a party to the action.

Service is not required if the restrained person cannot reasonably be located.

**Notification procedures for people at risk:**

Statute is silent

**Filing fees:**

There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a gun violence restraining order or other order authorized by this division if the request for the other order is necessary to obtain or give effect to a gun violence restraining order or other order authorized by this division. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

**Renewal/Termination:**

Temporary emergency GVRO: None

Ex parte GVRO: None

Gun violence restraining order after notice and hearing:

Termination: Respondent may make 1 request for a hearing to show there is no longer cause for the order

Renewal: May be requested by an immediate family member, an employer of the subject of the petition, a coworker of the subject of the petition, an employee or teacher of a school the subject has attended in the last six months, or a law enforcement officer

**Firearm prohibitions:**

A person subject to a gun violence restraining order issued pursuant to this division shall not have in his or her custody or control, own, purchase, possess, or receive any firearms or ammunition while that order is in effect.

**Firearm relinquishment process:**

Respondent must immediately surrender all firearms and ammunition in a safe manner upon request of a law enforcement officer. If no request is made, within 24 hours respondent must surrender all firearms and ammunition to the local law enforcement agency, or sell or transfer all firearms and ammunition to a licensed firearms dealer.

If the order indicates that respondent possesses any firearms or ammunition, the law enforcement officer serving the order must request that the respondent surrender all firearms and ammunition

**Firearm disposal process:**

Any firearm held by law enforcement for at least 180 days as unclaimed or abandoned must be sold or destroyed.

**Limitations on liability for law enforcement:**

These provisions do not require law enforcement to seek an order in any case. However, any person who files a petition with intent to harass or knowing information in it to be false is guilty of a misdemeanor.

**Return/transfer of firearms:**

Once respondent is no longer subject to an order, they may request that the law enforcement agency holding their firearm return it. The agency will do so unless respondent is otherwise prohibited from possessing the firearm or the firearm has been reported as stolen.

If respondent does not want to have their firearm returned to them, then at any time they may have it sold to a licensed dealer or another third party not otherwise prohibited from purchasing the firearm.

**Warrant authority:**

Statute is silent.

**Venue:**

Statute is silent.

**Penalties:** Guilty of a misdemeanor and shall be prohibited from having custody or control of, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order.

**Entry Registry/NCIC POF:**

The court shall notify the Department of Justice when a gun violence restraining order has been issued or renewed under this division no later than one court day after issuing or renewing the order.

## Statutes

**§ 18005. Sale or destruction of surrendered weapon**

(a) An officer to whom weapons are surrendered under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officer in charge of them considers to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Sections 26700 to 26915, inclusive, to engage in businesses involving any weapon purchased.

(b) If any weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, or is used in a manner as to constitute a nuisance under Section 19190, 21390, 21590, or 29300, or subdivision (a) of

Section 25700 without the prior knowledge of its lawful owner that it would be so used, it shall not be offered for sale under subdivision (a) but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

(c) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold under subdivision (a), the weapon, in the month of July, next succeeding, or sooner, if necessary to conserve local resources, including space and utilization of personnel who maintain files and security of those weapons, shall be destroyed so that it can no longer be used as a weapon subject to surrender under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(d) No stolen weapon shall be sold or destroyed pursuant to subdivision (a) or (c) unless reasonable notice is given to its lawful owner, if the lawful owner's identity and address can be reasonably ascertained.

## **General Provisions**

### **§ 18100. Purpose of order**

(a) A gun violence restraining order is an order, in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. This division establishes a civil restraining order process to accomplish that purpose.

(b) For purposes of this chapter, the term "ammunition" includes a "magazine" as defined in Section 16890.

### **§ 18105. Forms and rules of court by Judicial Council**

The Judicial Council shall prescribe the form of the petitions and orders and any other documents, and shall promulgate any rules of court, necessary to implement this division. These forms, orders, and documents shall refer to any order issued pursuant to this chapter as a gun violence restraining order.

### **§ 18107. Specified description of firearms and ammunition in petition**

A petition for a gun violence restraining order shall describe the number, types, and locations of any firearms and ammunition presently believed by the petitioner to be possessed or controlled by the subject of the petition.

### **§ 18108. Written policies and standards relating to gun violence restraining orders; Contents**

(a) Each municipal police department and county sheriff's department, the Department of the California Highway Patrol, and the University of California and California State University Police Departments shall, on or before January 1, 2021, develop, adopt, and implement written policies and standards relating to gun violence restraining orders.

(b) The policies and standards shall instruct officers to consider the use of a gun violence restraining order during a domestic disturbance response to any residence which is associated with a firearm registration or record, during a response in which a firearm is present, or during a response in which one of the involved parties owns or possesses a firearm. The policies and standards should encourage the use of gun violence restraining orders in appropriate situations to prevent future violence involving a firearm.

(c) The policies and standards should also instruct officers to consider the use of a gun violence restraining order during a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions, if that person owns or possesses a firearm. The policies and standards shall encourage officers encountering situations in which there is reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm to consider obtaining a mental health evaluation of the person by a medically trained professional or to detain the person for mental health evaluation pursuant to agency policy relating to Section 5150 of the

Welfare and Institutions Code. The policies and standards should reflect the policy of the agency to prevent access to firearms by persons who, due to mental health issues, pose a danger to themselves or to others by owning or possessing a firearm.

**(d)** The written policies and standards developed pursuant to this section shall be consistent with any gun violence restraining order training administered by the Commission on Peace Officer Standards and Training, and shall include all of the following:

**(1)** Standards and procedures for requesting and serving a temporary emergency gun violence restraining order.

**(2)** Standards and procedures for requesting and serving an ex parte gun violence restraining order.

**(3)** Standards and procedures for requesting and serving a gun violence restraining order issued after notice and hearing.

**(4)** Standards and procedures for the seizure of firearms and ammunition at the time of issuance of a temporary emergency gun violence restraining order.

**(5)** Standards and procedures for verifying the removal of firearms and ammunition from the subject of a gun violence restraining order.

**(6)** Standards and procedures for obtaining and serving a search warrant for firearms and ammunition.

**(7)** Responsibility of officers to attend gun violence restraining order hearings.

**(8)** Standards and procedures for requesting renewals of expiring gun violence restraining orders.

**(e)** Municipal police departments, county sheriff's departments, the Department of the California Highway Patrol, and the University of California and California State University Police Departments are encouraged, but not required by this section, to train officers on standards and procedures implemented pursuant to this section, and may incorporate these standards and procedures into an academy course, preexisting annual training, or other continuing education program.

**(f)** In developing these policies and standards, law enforcement agencies are encouraged to consult with gun violence prevention experts and mental health professionals.

**(g)** Policies developed pursuant to this section shall be made available to the public upon request.

#### **§ 18109. Limitation on interpretation; Petition**

**(a)** This division does not require a law enforcement agency or a law enforcement officer to seek a gun violence restraining order in any case, including, but not limited to, in a case in which the agency or officer concludes, after investigation, that the criteria for issuance of a gun violence restraining order are not satisfied.

**(b)** A petition brought by a law enforcement officer may be made in the name of the law enforcement agency in which the officer is employed.

**(c)** This section shall become operative on September 1, 2020.

#### **§ 18110. Search of available records and databases prior to hearing**

Prior to a hearing on the issuance, renewal, or termination of an order under Chapter 3 (commencing with Section 18150) or Chapter 4 (commencing with Section 18170), the court shall ensure that a search as described in subdivision (a) of Section 6306 of the Family Code is conducted. After issuing its ruling, the court shall provide the advisement described in subdivision (c) of Section 6306 of the Family Code and shall keep information obtained from a search conducted pursuant to this section confidential in accordance with subdivision (d) of Section 6306 of the Family Code.

### **§ 18115. Notification to Department of Justice; Proof of service of order**

**(a)** The court shall notify the Department of Justice when a gun violence restraining order has been issued or renewed under this division no later than one court day after issuing or renewing the order.

**(b)** The court shall notify the Department of Justice when a gun violence restraining order has been dissolved or terminated under this division no later than five court days after dissolving or terminating the order. Upon receipt of either a notice of dissolution or a notice of termination of a gun violence restraining order, the Department of Justice shall, within 15 days, document the updated status of any order issued under this division.

**(c)** The notices required to be submitted to the Department of Justice pursuant to this section shall be submitted in an electronic format, in a manner prescribed by the department.

**(d)** When notifying the Department of Justice pursuant to subdivision (a) or (b), the court shall indicate in the notice whether the person subject to the gun violence restraining order has filed a relinquishment of firearm rights pursuant to subdivision (d) of Section 18175 or was present in court to be informed of the contents of the order or if the person failed to appear. The person's filing of relinquishment of firearm rights or the person's presence in court constitutes proof of service of notice of the terms of the order.

**(e)**

**(1)** Within one business day of service, a law enforcement officer who served a gun violence restraining order shall submit the proof of service directly into the California Restraining and Protective Order System, including his or her name and law enforcement agency, and shall transmit the original proof of service form to the issuing court.

**(2)** Within one business day of receipt of proof of service by a person other than a law enforcement officer, the clerk of the court shall submit the proof of service of a gun violence restraining order directly into the California Restraining and Protective Order System, including the name of the person who served the order. If the court is unable to provide this notification to the Department of Justice by electronic transmission, the court shall, within one business day of receipt, transmit a copy of the proof of service to a local law enforcement agency. The local law enforcement agency shall submit the proof of service directly into the California Restraining and Protective Order System within one business day of receipt from the court.

**(3)** Within one business day of issuance of a gun violence restraining order based on a relinquishment of firearm rights pursuant to subdivision (d) of Section 18175, the clerk of the court shall enter the relinquishment of firearm rights form directly into the California Restraining and Protective Order System. If the court is unable to provide this notification to the Department of Justice by electronic transmission, the court shall, within one business day of receipt, transmit a copy of the relinquishment of firearm rights form to a local law enforcement agency. The local law enforcement agency shall submit the relinquishment of firearm rights form directly into the California Restraining and Protective Order System within one business day of receipt from the court.

### **§ 18120. Effect of order; Surrender of firearms and ammunition**

**(a)** A person subject to a gun violence restraining order issued pursuant to this division shall not have in the person's custody or control, own, purchase, possess, or receive any firearms or ammunition while that order is in effect.

**(b)**

**(1)** Upon issuance of a gun violence restraining order issued pursuant to this division, the court shall order the restrained person to surrender all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns pursuant to paragraph (2).



**(2)** The surrender ordered pursuant to paragraph (1) shall occur by immediately surrendering all firearms and ammunition in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the restraining order. A law enforcement officer serving a gun violence restraining order that indicates that the restrained person possesses any firearms or ammunition shall request that all firearms and ammunition be immediately surrendered.

**(3)** If the gun violence restraining order is issued as an ex parte order or order after notice and hearing, and is served by a person other than a law enforcement officer, the surrender shall occur within 24 hours of being served with the order, by surrendering all firearms and ammunition in a safe manner to the control of a local law enforcement agency, selling all firearms and ammunition to a licensed firearms dealer, or transferring all firearms and ammunition to a licensed firearms dealer in accordance with Section 29830.

**(4)** The law enforcement officer or licensed firearms dealer taking possession of firearms or ammunition pursuant to this subdivision shall issue a receipt to the person surrendering the firearm or firearms or ammunition or both at the time of surrender.

**(5)** A person ordered to surrender all firearms and ammunition pursuant to this subdivision shall, within 48 hours after being served with the order, do both of the following:

**(A)** File with the court that issued the gun violence restraining order the original receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer. Failure to timely file a receipt shall constitute a violation of the restraining order.

**(B)** File a copy of the receipt described in subparagraph (A) with the law enforcement agency that served the gun violence restraining order. Failure to timely file a copy of the receipt shall constitute a violation of the restraining order.

**(c)**

**(1)** Except as provided in paragraph (2), any firearms or ammunition surrendered to a law enforcement officer or law enforcement agency pursuant to this section shall be retained by the law enforcement agency until the expiration of any gun violence restraining order that has been issued against the restrained person. Upon expiration of any order, any firearms or ammunition shall be returned to the restrained person in accordance with the provisions of Chapter 2 (commencing with Section 33850) of Division 11 of Title 4. Firearms or ammunition that are not claimed are subject to the requirements of Section 34000.

**(2)** A restrained person who owns any firearms or ammunition that are in the custody of a law enforcement agency pursuant to this section is entitled to sell any firearms or ammunition to a licensed firearms dealer or transfer any firearms or ammunition to a licensed firearms dealer in accordance with Section 29830, provided that the firearm or firearms or ammunition are otherwise legal to own or possess and the restrained person otherwise has right to title of the firearm or firearms or ammunition.

**(d)** If a person other than the restrained person claims title to any firearms or ammunition surrendered pursuant to this section, and the person is determined by the law enforcement agency to be the lawful owner of the firearm or firearms or ammunition, the firearm or firearms or ammunition shall be returned to the person pursuant to Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

**(e)** Within one business day of receiving the receipt referred to in paragraph (4) of subdivision (b), the court that issued the order shall transmit a copy of the receipt to the Department of Justice in a manner and pursuant to a process prescribed by the department.

**(f)** This section shall become operative on September 1, 2020.

### **§ 18121. Filing fee exemption**

There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain,

modify, or enforce a gun violence restraining order or other order authorized by this division if the request for the other order is necessary to obtain or give effect to a gun violence restraining order or other order authorized by this division. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause. There is no fee for any filings related to a petition filed pursuant to this division.

#### **§ 18122. Electronic filing of petition for restraining order**

(a) By July 1, 2023, a court or court facility that receives petitions for any restraining order under this division shall permit those petitions to be submitted electronically during and after normal business hours. The deadlines applicable to any action taken by the court with respect to a petition filed directly with the court shall apply to any action taken with respect to a petition submitted electronically.

(b) The superior court of each county shall develop local rules and instructions for electronic filing permitted under this section, which shall be posted on its internet website.

(c) The superior court of each county shall provide, and post on its internet website, a telephone number for the public to call to obtain information about electronic filing permitted under this section. The telephone number shall be staffed during regular business hours, and court staff shall respond to all telephonic inquiries within one business day.

#### **§ 18123. Remote appearances by parties and witnesses at hearing on petition for gun violence restraining order**

(a) A party or witness may appear remotely at the hearing on a petition for a gun violence restraining order. The superior court of each county shall develop local rules and instructions for remote appearances permitted under this section, which shall be posted on its internet website.

(b) The superior court of each county shall provide, and post on its internet website, a telephone number for the public to call to obtain assistance regarding remote appearances. The telephone number shall be staffed 30 minutes before the start of the court session at which the hearing will take place, and during the court session.

### **Temporary Emergency Orders**

#### **§ 18125. Limitation on ex parte order, Effect of order**

(a) A temporary emergency gun violence restraining order may be issued on an ex parte basis only if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following:

(1) The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

(2) A temporary emergency gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition.

(b) A temporary emergency gun violence restraining order issued pursuant to this chapter shall prohibit the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and shall expire 21 days from the date the order is issued.

#### **§ 18130. Validity of Order**

A temporary emergency gun violence restraining order is valid only if it is issued by a judicial officer after making

the findings required by Section 18125 and pursuant to a specific request by a law enforcement officer.

### **§ 18135. Contents of order**

(a) A temporary emergency gun violence restraining order issued under this chapter shall include all of the following:

- (1) A statement of the grounds supporting the issuance of the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the county in which the restrained party resides.
- (4) The following statement:

To the restrained person: This order will last until the date and time noted above. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive any firearm, ammunition, or magazine while this order is in effect. However, a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

(b) When serving a temporary emergency gun violence restraining order, a law enforcement officer shall verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control.

### **§ 18140. Requirements for law enforcement officer seeking order**

A law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:

- (a) If the request is made orally, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council.
- (b) Serve the order on the restrained person, if the restrained person can reasonably be located.
- (c) File a copy of the order with the court as soon as practicable, but not later than three court days, after issuance.
- (d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

### **§ 18145. Petition; Designation of judge to issue orders**

(a)

(1) A judicial officer may issue a temporary emergency gun violence restraining order orally based on the statements of a law enforcement officer made in accordance with subdivision (a) of Section 18140.

(2) If time and circumstances permit, a temporary emergency gun violence restraining order may be obtained in writing and based on a declaration signed under penalty of perjury.

(b) The presiding judge of the superior court of each county shall designate at least one judge, commissioner, or referee who shall be reasonably available to issue temporary emergency gun violence restraining orders when the court is not in session.

### **§ 18148. Hearing to determine if gun violence restraining order should be issued**

Within 21 days after the date on the order, the court that issued the order or another court in the same jurisdiction,

shall hold a hearing pursuant to Section 18175 to determine if a gun violence restraining order should be issued pursuant to Chapter 4 (commencing with Section 18170) after notice and hearing.

### **Ex Parte Gun Violence Restraining Order**

#### **§ 18150. Petition; Grounds for issuance; Supporting affidavit; Issuance or denial on same day petition filed**

**(a)**

**(1)** Any of the following individuals may file a petition requesting that the court issue an ex parte gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition:

**(A)** An immediate family member of the subject of the petition.

**(B)** An employer of the subject of the petition.

**(C)** A coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer.

**(D)** An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

**(E)** A law enforcement officer.

**(F)** A roommate of the subject of the petition.

**(G)** An individual who has a dating relationship with the subject of the petition.

**(H)** An individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year.

**(2)** For purposes of this subdivision, “dating relationship” has the same meaning as in paragraph (10) of subdivision (f) of [Section 243](#).

**(3)** For purposes of this subdivision, “immediate family member” means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year.

**(4)** For purposes of this subdivision, “roommate” means a person who regularly resides in the household, or who, within the prior six months, regularly resided in the household, and who has had substantial and regular interactions with the subject for at least one year.

**(5)** This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

**(b)** A court may issue an ex parte gun violence restraining order if the petition, supported by an affidavit made in writing and signed by the petitioner under oath, or an oral statement taken pursuant to subdivision **(a)** of [Section 18155](#), and any additional information provided to the court shows that there is a substantial likelihood that both of the following are true:

**(1)** The subject of the petition poses a significant danger, in the near future, of causing personal injury to the subject of the petition or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in [Section 18155](#).

**(2)** An ex parte gun violence restraining order is necessary to prevent personal injury to the subject of the

petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.

**(c)** An affidavit supporting a petition for the issuance of an ex parte gun violence restraining order shall set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist.

**(d)** An ex parte order under this chapter shall be issued or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

**(e)** This section shall become operative on September 1, 2020.

**Cal. Penal Code § 243(f)(10) Punishment for battery generally; Punishment for battery against specified officers or others**

**(10)** “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

**§ 18155. Examination or affidavit of petitioner and witnesses; Evidence; Effect of order**

**(a)**

**(1)** The court, before issuing an ex parte gun violence restraining order, shall examine on oath, the petitioner and any witness the petitioner may produce.

**(2)** In lieu of examining the petitioner and any witness the petitioner may produce, the court may require the petitioner and any witness to submit a written affidavit signed under oath.

**(b)**

**(1)** In determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:

**(A)** A recent threat of violence or act of violence by the subject of the petition directed toward another.

**(B)** A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself.

**(C)** A violation of an emergency protective order issued pursuant to Section 646.91 or Part 3 (commencing with Section 6240) of Division 10 of the Family Code that is in effect at the time the court is considering the petition.

**(D)** A recent violation of an unexpired protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code, Section 136.2, Section 527.6 of the Code of Civil Procedure, or Section 213.5 or 15657.03 of the Welfare and Institutions Code.

**(E)** A conviction for any offense listed in Section 29805.

**(F)** A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another.

**(2)** In determining whether grounds for a gun violence restraining order exist, the court may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of any of the following:

**(A)** The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition.

**(B)** The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person.

**(C)** A prior arrest of the subject of the petition for a felony offense.

**(D)** A history of a violation by the subject of the petition of an emergency protective order issued pursuant to Section 646.91 or Part 3 (commencing with Section 6240) of Division 10 of the Family Code.

**(E)** A history of a violation by the subject of the petition of a protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code, Section 136.2, Section 527.6 of the Code of Civil Procedure, or Section 213.5 or 15657.03 of the Welfare and Institutions Code.

**(F)** Documentary evidence, including, but not limited to, police reports and records of convictions, of either recent criminal offenses by the subject of the petition that involve controlled substances or alcohol or ongoing abuse of controlled substances or alcohol by the subject of the petition.

**(G)** Evidence of recent acquisition of firearms, ammunition, or other deadly weapons.

**(3)** For the purposes of this subdivision, “recent” means within the six months prior to the date the petition was filed.

**(c)** If the court determines that the grounds to issue an ex parte gun violence restraining order exist, it shall issue an ex parte gun violence restraining order that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and expires no later than 21 days from the date of the order.

#### **§ 18160. Contents of order; Service**

**(a)** An ex parte gun violence restraining order issued under this chapter shall include all of the following:

**(1)** A statement of the grounds supporting the issuance of the order.

**(2)** The date and time the order expires.

**(3)** The address of the superior court in which any responsive pleading should be filed.

**(4)** The date and time of the scheduled hearing.

**(5)** The following statement: “To the restrained person: This order is valid until the expiration date and time noted above. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive any firearm, ammunition, or magazine while this order is in effect. A hearing will be held on the date and at the time noted above to determine if a more permanent gun violence restraining order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for a year. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.”

**(b)**

**(1)** An ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, as provided in Section 414.10 of the Code of Civil Procedure, if the restrained person can reasonably be located.

**(2)** When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing scheduled pursuant to Section 18165.

**(3)** When serving a gun violence restraining order, a law enforcement officer shall verbally ask the restrained

person if the person has a firearm, ammunition, or magazine in his or her possession or under the person's custody or control.

(c) This section shall become operative on September 1, 2020.

### **§ 18165. Hearing after issuance of order**

Within 21 days after the date on the order, before the court that issued the order or another court in the same jurisdiction, the court shall hold a hearing pursuant to Section 18175 to determine if a gun violence restraining order should be issued under Chapter 4 (commencing with Section 18170).

### **Gun Violence Restraining Order Issued After Notice and Hearing**

#### **§ 18170. Petition**

(a)

(1) Any of the following individuals may request that a court, after notice and a hearing, issue a gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of time between one to five years:

(A) An immediate family member of the subject of the petition.

(B) An employer of the subject of the petition.

(C) A coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer.

(D) An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

(E) A law enforcement officer.

(F) A roommate of the subject of the petition.

(G) An individual who has a dating relationship with the subject of the petition.

(H) An individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year.

(2) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) For purposes of this subdivision, "dating relationship" has the same meaning as in paragraph (10) of subdivision (f) of Section 243.

(c) For purposes of this section, "immediate family member" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year.

(d) For purposes of this subdivision, "roommate" means a person who regularly resides in the household, or who, within the prior six months, regularly resided in the household, and who has had substantial and regular interactions with the subject for at least one year.

(e) This section shall become operative on September 1, 2020.

### **§ 18175. Evidence; Grounds for issuance; Burden of proof; Effect of issuance or denial of order; Duration of order**

**(a)** In determining whether to issue a gun violence restraining order under this chapter, the court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

**(b)** At the hearing, the petitioner has the burden of proving, by clear and convincing evidence, that both of the following are true:

**(1)** The subject of the petition, or a person subject to a temporary emergency gun violence restraining order or an ex parte gun violence restraining order, as applicable, poses a significant danger of causing personal injury to themselves or another by having in the subject's or person's custody or control, owning, purchasing, possessing, or receiving a firearm, ammunition, or magazine.

**(2)** A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable.

**(c)**

**(1)** If the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in the subject's custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine.

**(2)** If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve a temporary emergency or ex parte gun violence restraining order then in effect.

**(d)**

**(1)** The subject of the petition may file a form with the court relinquishing the subject's firearm rights for the duration specified on the petition or, if not stated in the petition, for one year from the date of the proposed hearing, and stating that the subject is not contesting the petition.

**(2)** If the subject of the petition files a form pursuant to paragraph (1), the court shall issue, without any hearing, the gun violence restraining order at least five court days before the scheduled hearing. If the subject files the form within five court days before the scheduled hearing, the court shall issue, without any hearing, the gun violence restraining order as soon as possible. The court shall provide notice of the order to all parties.

**(3)** If the subject of the petition files a form pursuant to paragraph (1) and has not already surrendered all firearms, ammunition, and magazines in the subject's custody or control or those that the subject possesses or owns, the subject shall follow the procedures in Section 18120 but shall surrender the firearms, ammunition, and magazines within 48 hours of filing the form relinquishing firearm rights.

**(e)**

**(1)** The court shall issue a gun violence restraining order under this chapter for a period of time of one to five years, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and renewal by further order of the court pursuant to Section 18190.

**(2)** In determining the duration of the gun violence restraining order pursuant to paragraph (1), the court shall consider the length of time that the circumstances set forth in subdivision (b) are likely to continue, and shall issue the order based on that determination.



(f) This section shall become operative on September 1, 2020.

**§ 18180. Contents of order; Form to request hearing to terminate order**

(a) A gun violence restraining order issued pursuant to this chapter shall include all of the following:

(1) A statement of the grounds supporting the issuance of the order.

(2) The date and time the order expires.

(3) The address of the superior court for the county in which the restrained party resides.

(4) The following statement:

“To the restrained person: This order will last until the date and time noted above. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive a firearm, ammunition, or magazine, while this order is in effect. Pursuant to Section 18185, you have the right to request one hearing to terminate this order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.”

(b) When the court issues a gun violence restraining order under this chapter, the court shall inform the restrained person that the person is entitled to one hearing to request a termination of the order, pursuant to Section 18185, and shall provide the restrained person with a form to request a hearing.

(c) This section shall become operative on September 1, 2020.

**§ 18185. Request for hearing to terminate order**

(a) A person subject to a gun violence restraining order issued under this chapter may submit one written request at any time during the effective period of the order for a hearing to terminate the order.

(b) If the court finds after the hearing that there is no longer clear and convincing evidence to believe that paragraphs (1) and (2) of subdivision (b) of Section 18175 are true, the court shall terminate the order.

(c) This section shall become operative on September 1, 2020.

**§ 18190. Renewal of order; Duration of renewed order; Contents of Renewed Order**

(a)

(1) Any of the following people may request a renewal of a gun violence restraining order at any time within the three months before the expiration of a gun violence restraining order:

(A) An immediate family member of the subject of the petition.

(B) An employer of the subject of the petition.

(C) A coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer.

(D) An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

(E) A law enforcement officer.

(2) For purposes of this subdivision, “immediate family member” has the same meaning as in paragraph (3)

of subdivision (b) of Section 422.4.

**(3)** This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

**(b)** A court may, after notice and a hearing, renew a gun violence restraining order issued under this chapter if the petitioner proves, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 continue to be true.

**(c)** In determining whether to renew a gun violence restraining order issued under this chapter, the court shall consider evidence of the facts identified in paragraph **(1)** of subdivision **(b)** of Section 18155 and any other evidence of an increased risk for violence, including, but not limited to, evidence of any of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

**(d)** At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 are true.

**(e)** If the renewal petition is supported by clear and convincing evidence, the court shall renew the gun violence restraining order issued under this chapter.

**(f)**

**(1)** The renewal of a gun violence restraining order issued pursuant to this section shall have a duration of between one to five years, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and further renewal by further order of the court pursuant to this section.

**(2)** In determining the duration of the gun violence restraining order pursuant to paragraph (1), the court shall consider the length of time that the circumstances set forth in subdivision (b) of Section 18175 are likely to continue, and shall issue the order based on that determination.

**(g)** A gun violence restraining order renewed pursuant to this section shall include the information identified in subdivision (a) of Section 18180.

**(h)** This section shall become operative on September 1, 2020.

#### **§ 18195. Continuance of hearing for good cause.**

Any hearing held pursuant to this chapter may be continued upon a showing of good cause. Any existing order issued pursuant to this division shall remain in full force and effect during the period of continuance.

#### **§ 18197. Service of order**

**(a)** If a person subject to a gun violence restraining order issued or renewed pursuant to this chapter was not present in court at the time the order was issued or renewed, the gun violence restraining order shall be personally served on the restrained person by a law enforcement officer or by a person as provided in Section 414.10 of the Code of Civil Procedure, if the restrained person can reasonably be located.

**(b)** This section shall become operative on September 1, 2020.

#### **§ 18200. Filing petition knowing information false or with intent to harass**

Every person who files a petition for an ex parte gun violence restraining order pursuant to Chapter 3 (commencing with Section 18150) or a gun violence restraining order issued after notice and a hearing pursuant to Chapter 4 (commencing with Section 18170), knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor.

#### **§ 18205. Ownership or possession of firearm or ammunition by person subject to order**

**(a)** Every person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from

doing so by a temporary emergency gun violence restraining order issued pursuant to Chapter 2 (commencing with Section 18125), an ex parte gun violence restraining order issued pursuant to Chapter 3 (commencing with Section 18150), a gun violence restraining order issued after notice and a hearing issued pursuant to Chapter 4 (commencing with Section 18170), or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this division, is guilty of a misdemeanor and shall be prohibited from having custody or control of, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order.

**(b)** For purposes of this section, a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this section must be issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.

**§ 34000. Sale or destruction of firearm no longer needed, unclaimed or abandoned**

**(a)** Notwithstanding any provision of law or of any local ordinance to the contrary, when any firearm is in the possession of any officer of the state, or of a county, city, or city and county, or of any campus of the University of California or the California State University, and the firearm is an exhibit filed in any criminal action or proceeding which is no longer needed or is unclaimed or abandoned property, which has been in the possession of the officer for at least 180 days, the firearm shall be sold, or destroyed, as provided for in [Sections 18000](#) and [18005](#).

# Colorado

**Types of Orders:** Temporary Extreme Risk Protection Order, Extreme Risk Protection Order

**Citation:** Colo. Rev. Stat. Ann. §§ 13-14.5-101 to 13-14.5-116

## Highlighted Provisions

**Person eligible to petition:**

Family, household member, community member, law enforcement

**Standard of proof:**

Temporary ERPO: Preponderance of the evidence that the respondent poses a significant risk in the near future.

ERPO: Clear and convincing evidence that the respondent poses a significant risk

**Findings required:**

Respondent poses a significant risk of causing personal injury to self or others by possessing, controlling, purchasing, or receiving a firearm

**Length of order:**

Temporary ERPO: Expires on the date and time of the hearing on the extreme risk protection order petition OR withdrawal of petition

ERPO: 365 days

**Service on respondent:**

Respondent must be served by law enforcement officer.

**Notification of persons at risk:**

If the court issues an extreme risk protection order and the petitioner is a law enforcement officer or agency or community member, the petitioner shall make a good-faith effort to provide notice of the order to a family or household member of the respondent and to any known third party who may be at direct risk of violence.

If the law enforcement agency cannot complete service within 5 days, the law enforcement agency shall notify the petitioner.

The court shall notify the petitioner of the impending expiration of an extreme risk protection order sixty-three calendar days before the date that the order expires.

**Filing fees:**

A court or public agency shall not charge a fee for filing or service of process to a petitioner seeking relief pursuant to this article 14.5. A petitioner or respondent must be provided the necessary number of certified copies, forms, and instructional brochures free of charge.

**Renewal/Termination of the order:**

Termination: Respondent may make up to one request to terminate an order. The court must set up a hearing to terminate the extreme risk protection order (“ERPO”) 14 days after filing of request.

Renewal: Petitioner/family or household member of petitioner/law enforcement officer may motion for request of renewal of the ERPO within 63 calendar days before the expiration of the order.

**Firearm prohibitions:**

Respondent must surrender all firearms. court shall order the respondent to surrender all firearms by:

(i) Selling or transferring possession of the firearm to a federally licensed firearms dealer described in 18 u.s.c. sec. 923, as amended; except that this provision must not be interpreted to require

any federally licensed firearms dealer to purchase or accept possession of any firearm;

**(ii)** Arranging for the storage of the firearm by a law enforcement agency. The law enforcement agency shall preserve the firearm in a substantially similar condition that the firearm was in when it was surrendered. If the respondent does not choose the option in subsection (1)(a)(i) of this section, a local law enforcement agency shall store the firearm; or

**(iii)** Only for either an antique firearm, as defined in 18 U.S.C. sec. 921 (a)(16), as amended, or a curio or relic, as defined in 27 cfr 478.11, as amended, transferring possession of the antique firearm or curio or relic to a relative who does not live with the respondent after confirming, through a criminal history record check, the relative is currently eligible to own or possess a firearm under federal and state law.

**(b)** The court shall order the respondent to surrender any concealed carry permit to the law enforcement officer serving the extreme risk protection order.

**Firearm relinquishment process:**

Law enforcement officer serving the ERPO shall immediately request the respondent to surrender all firearms. If not personally served, the respondent must surrender all firearms within 24 hours of service or 24 hours of hearing in which the respondent was present.

Law enforcement officer may conduct any search and seizure for any firearm pursuant to other lawful authority.

**Firearm disposal process:**

Any firearm surrendered by the respondent that remains unclaimed for at least 1 year after an order to vacate the risk protection order will be disposed of according to the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

**Limitations on liability:**

Article 14.5 does not impose criminal/civil liability on any person or entity for acts/omissions made in good faith related to obtaining an ERPO/temporary ERPO

A federally licensed firearms dealer or law enforcement agency that stores a firearm as permitted by this article 14.5 is not civilly liable for any resulting damages to the firearm, as long as such damage did not result from the willful and wrongful act or gross negligence of the person or law enforcement agency storing the firearm.

**Return/Transfer of firearms:**

If an ERPO/temporary ERPO expires without renewal or is terminated, the law enforcement that has the firearm must return it to respondent within 3 days after confirming through a criminal history record check that the respondent is eligible to own/possess a firearm under federal/state law and after confirming with the court the ERPO was terminated or expired w/o renewal

**Warrant authority:**

Any court may issue a search warrant to search for and take custody of any firearm in the possession of a named respondent.

**Venue:**

Must be filed in the county where the respondent resides.

**Penalties:**

Any person who has in the person's custody, possession, or control a firearm, or purchases, possesses, or receives a firearm with knowledge that the person is prohibited from doing so by an extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 is guilty of a class 2 misdemeanor.

**Entry Registry/NCIC POF:**

**(1)** The court clerk shall enter any extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 into a statewide judicial information system on the same day the order is issued.

(2) The court clerk shall forward a copy of an extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 the same day the order is issued to the Colorado bureau of investigation and the law enforcement agency specified in the order. Upon receipt of the copy of the order, the Colorado bureau of investigation shall enter the order into the national instant criminal background check system, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies.

## Statutes

### § 13-14.5-101. Short title

The short title of this article 14.5 is the “Deputy Zackari Parrish III Violence Prevention Act”.

### § 13-14.5-102. Definitions

As used in this article 14.5, unless the context otherwise clearly requires:

- (1) “Community member” means a licensed health-care professional or mental health professional who, through a direct professional relationship, provided care to the respondent or the respondent’s child within six months before requesting the protection order or an educator who, through a direct professional relationship, interacted with the respondent or the respondent’s child within six months before requesting the protection order.
- (2) “Educator” means a teacher employed to instruct students or a school administrator in a school district, private school, charter school institute, or an individual charter school; or a faculty member at an institution of higher education.
- (3) “Extreme risk protection order” means either a temporary order or a continuing order granted pursuant to this article 14.5.
- (4) “Faculty member” means a president, dean, professor, administrator, instructor, or research worker at an institution of higher education.
- (5) “Family or household member” means, with respect to a respondent, any:
  - (a) Person related by blood, marriage, or adoption to the respondent;
  - (b) Person who has a child in common with the respondent, regardless of whether such person has been married to the respondent or has lived together with the respondent at any time;
  - (c) Person who regularly resides or regularly resided with the respondent within the last six months;
  - (d) Domestic partner of the respondent;
  - (e) Person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren;
  - (f) Person who is acting or has acted as the respondent’s legal guardian; and
  - (g) Person in any other relationship described in section 18-6-800.3 (2) with the respondent.
- (6) “Firearm” has the same meaning as in section 18-1-90 (3)(h).
- (7) “Law enforcement officer” means a peace officer that is:
  - (a) Employed by a political subdivision of the state and certified by the P.O.S.T board pursuant to section 16-2.5-102;

(b) Authorized by section 16-2.5-113 when assistance is requested by an individual or entity pursuant to section 24-33.5-412;

(c) Authorized by [section 16-2.5-114](#) and who interacted with the respondent in the scope of the law enforcement officer's official duties;

(d) Employed by a district attorney, designated by a district attorney, and authorized by [section 16-2.5-132](#) or 16-2.5-133;

(e) Employed by the department of law, designated by the attorney general, and authorized by [section 16-2.5-128](#), 16-2.5-129, or 16-2.5-130;

(f) Authorized by [section 16-2.5-136](#), 16-2.5-137, or 16-2.5-138;

(g) Authorized by [section 16-2.5-120](#); or

(h) Authorized by [section 16-2.5-149](#).

(8) "Licensed health-care professional" means a school nurse who holds a current nursing license through the department of regulatory agencies and who has applied for or holds a special services license from the department of education pursuant to article 60.5 of title 22 or a physician, physician assistant, or advanced practice registered nurse who is a primary provider of health services to a respondent; a psychiatrist; or a licensed emergency room medical care provider, licensed pursuant to title 12.

(9) "Mental health professional" means a psychologist, licensed professional social worker, marriage and family therapist, licensed professional counselor, or addiction counselor licensed, registered, or certified pursuant to article 245 of title 12; a psychologist candidate, clinical social worker candidate, marriage and family therapist candidate, licensed professional counselor candidate, or addiction counselor candidate registered pursuant to [section 12-245-304](#) (3), 12-245-404 (4), 12-245-504 (4), 12-245-604 (4), or 12-245-804 (3.7), respectively; a school counselor who holds a special services provider license with a school counselor endorsement issued pursuant to article 60.5 of title 22 or who is otherwise endorsed or accredited by a national association to provide school counseling services; school psychologist licensed pursuant to [section 22-60.5-210](#); school social worker who has obtained the special services license with social work endorsement issued pursuant to article 60.5 of title 22; or an unlicensed psychotherapist registered pursuant to [section 12-245-703](#).

(10) "Petitioner" means the person who petitions for an extreme risk protection order pursuant to this article 14.5.

(11) "Respondent" means the person who is identified as the respondent in a petition filed pursuant to this article 14.5.

### **§ 13-14.5-103. Temporary extreme risk protection orders**

#### **(1)**

(a) A family or household member of the respondent, a community member, or a law enforcement officer or agency may request a temporary extreme risk protection order without notice to the respondent by including in the petition for the extreme risk protection order an affidavit, signed under oath and penalty of perjury, supporting the issuance of a temporary extreme risk protection order that sets forth the facts tending to establish the grounds of the petition or the reason for believing they exist and, if the petitioner is a family or household member or community member, attesting that the petitioner is a family or household member or community member. The petition must comply with the requirements of [section 13-14.5-104](#) (3). If the petitioner is a law enforcement officer or law enforcement agency, the law enforcement officer or law enforcement agency shall concurrently file a sworn affidavit for a search warrant pursuant to [section 16-3-301.5](#) to search for any firearms in the possession or control of the respondent at a location or locations to be named in the warrant. If a petition filed pursuant to [section 27-65-106](#) is also filed against the respondent,

a court of competent jurisdiction may hear that petition at the same time as the hearing for a temporary extreme risk protection order or the hearing for a continuing extreme risk protection order.

**(b)** Notwithstanding any provision of law to the contrary, a licensed health-care professional or mental health professional authorized to file a petition for a temporary extreme risk protection order, upon filing the petition for a temporary extreme risk protection order, is authorized to disclose protected health information, of the respondent as necessary for the full investigation and disposition of the request for a temporary extreme risk protection order. When disclosing protected health information, the licensed health-care professional or mental health professional shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the petition. Upon receipt of a petition by a licensed health-care professional or mental health professional, and for good cause shown, the court may issue orders to obtain any records or documents relating to diagnosis, prognosis, or treatment, and clinical records, of the respondent as necessary for the full investigation and disposition of the petition for a temporary extreme risk protection order. When protected health information is disclosed or when the court receives any records or documents related to diagnosis, prognosis, or treatment or clinical records, the court shall order that the parties are prohibited from using or disclosing the protected health information for any purpose other than the proceedings for a petition for a temporary extreme risk protection order and shall order the return to the covered entity or destroy the protected health information, including all copies made, at the end of the litigation or proceeding. The court shall seal all records and other health information received that contain protected health information. The decision of a licensed health-care professional or mental health professional to disclose or not to disclose records or documents relating to the diagnosis, prognosis, or treatment, and clinical records of a respondent, when made reasonably and in good faith, shall not be the basis for any civil, administrative, or criminal liability with respect to the licensed health-care professional or licensed mental health professional.

**(c)**

**(I)** Venue for filing a petition pursuant to this section if the petitioner is a family or household member is proper in any county where the acts that are the subject of the petition occur, in any county where one of the parties resides, or in any county where one of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

**(II)** A petition for an extreme risk protection order by a petitioner who is not a family or household member must be filed in the county where the respondent resides.

**(2)** In considering whether to issue a temporary extreme risk protection order pursuant to this section, the court shall consider all relevant evidence, including the evidence described in [section 13-14.5-105](#) (3).

**(3)** If a court finds by a preponderance of the evidence that, based on the evidence presented pursuant to [section 13-14.5-105](#) (3), the respondent poses a significant risk of causing personal injury to self or others in the near future by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm, the court shall issue a temporary extreme risk protection order.

**(4)** The court shall hold a temporary extreme risk protection order hearing in person or by telephone on the day the petition is filed or on the court day immediately following the day the petition is filed. The court may schedule a hearing by telephone pursuant to local court rule to reasonably accommodate a disability or, in exceptional circumstances, to protect a petitioner from potential harm. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. A copy of the telephone hearing must be provided to the respondent prior to the hearing for an extreme risk protection order.

**(5)**

**(a)** In accordance with [section 13-14.5-105](#) (1), the court shall schedule a hearing within fourteen days after the issuance of a temporary extreme risk protection order to determine if a three-hundred-sixty-four-day extreme risk protection order should be issued pursuant to this article 14.5. Notice of that hearing date must



be included with the temporary extreme risk protection order that is served on the respondent. The court shall provide notice of the hearing date to the petitioner.

(b) Any temporary extreme risk protection order issued expires on the date and time of the hearing on the extreme risk protection order petition or the withdrawal of the petition.

(6) A temporary extreme risk protection order must include:

(a) A statement of the grounds asserted for the order;

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) The address of the court in which any responsive pleading should be filed;

(e) The date and time of the scheduled hearing;

(f) The requirements for surrender of firearms pursuant to [section 13-14.5-108](#); and

(g) The following statement:

To the subject of this temporary extreme risk protection order: this order is valid until the date and time noted above. You may not have in your custody or control a firearm or purchase, possess, receive, or attempt to purchase or receive a firearm while this order is in effect. You must immediately surrender to the (insert name of law enforcement agency in the jurisdiction where the respondent resides) all firearms in your custody or possession, and any concealed carry permit issued to you. A hearing will be held on the date and at the time noted above to determine if an extreme risk protection order should be issued. Failure to appear at that hearing may result in a court entering an order against you that is valid for three hundred sixty four days. An attorney will be appointed to represent you, or you may seek the advice of your own attorney at your own expense as to any matter connected with this order.

(7) A law enforcement officer shall serve a temporary extreme risk protection order concurrently with the notice of hearing and petition and a notice that includes referrals to appropriate resources, including domestic violence, behavioral health, and counseling resources, in the same manner as provided for in [section 13-14.5-105](#) for service of the notice of hearing where the respondent resides.

(8)

(a) If the court issues a temporary extreme risk protection order, the court shall state the particular reasons for the court's issuance.

(b) If the court declines to issue a temporary extreme risk protection order, the court shall state the particular reasons for the court's denial.

#### **§ 13-14.5-104. Petition for extreme risk protection order**

(1)

(a) A petition for an extreme risk protection order may be filed by a family or household member of the respondent, a community member, or a law enforcement officer or agency. If the petition is filed by a law enforcement officer or agency, a county or city attorney shall represent the officer or agency in any judicial proceeding upon request. If the petition is filed by a family or household member or community member, the petitioner, to the best of the petitioner's ability, shall notify the law enforcement agency in the jurisdiction where the respondent resides of the petition and the hearing date with enough advance notice to allow for participation or attendance. Upon the filing of a petition, the court shall appoint an attorney to represent the respondent, and the court shall include the appointment in the notice of hearing provided to the respondent pursuant to [section 13-14.5-105](#) (1)(a). The respondent may replace the attorney with an attorney of the

respondent's own selection at any time at the respondent's own expense. The court shall pay the attorney fees for an attorney appointed for the respondent.

**(b)** Notwithstanding any provision of law to the contrary, a licensed health-care professional or mental health professional authorized to file a petition for an extreme risk protection order, upon filing the petition for an extreme risk protection order, is authorized to disclose protected health information, of the respondent as necessary for the full investigation and disposition of the petition for an extreme risk protection order. When disclosing protected health information, the licensed health-care professional or mental health professional shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the request. Upon receipt of a petition by a licensed health-care professional or mental health professional and for good cause shown, the court may issue orders to obtain any records or documents relating to diagnosis, prognosis, or treatment, and clinical records, of the respondent as necessary for the full investigation and disposition of the petition for an extreme risk protection order. When protected health information is disclosed or when the court receives any records or documents related to diagnosis, prognosis, or treatment or clinical records, the court shall order that the parties are prohibited from using or disclosing the protected health information for any purpose other than the proceedings for a petition for an extreme risk protection order and shall order the return to the covered entity or destroy the protected health information, including all copies made, at the end of the litigation or proceeding. The court shall seal all records and other health information received that contain protected health information. The decision of a licensed health-care professional or mental health professional to disclose or not to disclose records or documents relating to the diagnosis, prognosis, or treatment, and clinical records of a respondent, when made reasonably and in good faith, must not be the basis for any civil, administrative, or criminal liability with respect to the licensed health-care professional or mental health professional.

**(2)**

**(a)** Venue for filing a petition pursuant to this section if the petitioner is a family or household member is proper in any county where the acts that are the subject of the petition occur, in any county where one of the parties resides, or in any county where one of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

**(b)** A petition for an extreme risk protection order by a petitioner who is not a family or household member must be filed in the county where the respondent resides.

**(3)** A petition must:

**(a)** Allege that the respondent poses a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm and must be accompanied by an affidavit, signed under oath and penalty of perjury, stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent;

**(b)** Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, or control;

**(c)** Identify whether the respondent is required to possess, carry, or use a firearm as a condition of the respondent's current employment;

**(d)** Identify whether there is a known existing domestic abuse protection order or emergency protection order governing the petitioner or respondent;

**(e)** Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition; and

**(f)** If the petitioner is not a law enforcement agency, identify whether the petitioner informed a local law enforcement agency regarding the respondent.

(4) The court shall verify the terms of any existing order identified pursuant to subsection (3)(d) of this section governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties. A petition for an extreme risk protection order may be granted whether or not there is a pending action between the parties.

(5) If the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household, the petitioner's address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address pursuant to this section, the petitioner must designate an alternative address at which the **respondent may serve notice of any** motions. If the petitioner is a law enforcement officer or agency, the address of record must be that of the law enforcement agency.

(6) A court or public agency shall not charge a fee for filing or service of process to a petitioner seeking relief pursuant to this article 14.5. A petitioner or respondent must be provided the necessary number of certified copies, forms, and instructional brochures free of charge.

(7) A person is not required to post a bond to obtain relief in any proceeding pursuant to this section.

(8) The district and county courts of the state of Colorado have jurisdiction over proceedings pursuant to this article 14.5.

### § 13-14.5-105. Hearings on petition - grounds for order issuance

(1)

(a) Upon filing of the petition, the court shall order a hearing to be held and provide a notice of hearing to the respondent. The court must provide the notice of the hearing no later than one court day after the date of the extreme risk protection order petition. The court may schedule a hearing by telephone pursuant to local court rule to reasonably accommodate a disability or, in exceptional circumstances, to protect a petitioner from potential harm. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.

(b) Before the next court day, the court clerk shall forward a copy of the notice of hearing and petition to the law enforcement agency in the jurisdiction where the respondent resides for service upon the respondent.

(c) A copy of the notice of hearing and petition must be served upon the respondent in accordance with the rules for service of process as provided in rule 4 of the Colorado rules of civil procedure or rule 304 of the Colorado rules of county court civil procedure. Service issued pursuant to this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(d) The court may, as provided in [section 13-14.5-103](#), issue a temporary extreme risk protection order pending the hearing ordered pursuant to subsection (1)(a) of this section. The temporary extreme risk protection order must be served concurrently with the notice of hearing and petition.

(2) Upon hearing the matter, if the court finds by clear and convincing evidence, based on the evidence presented pursuant to subsection (3) of this section, that the respondent poses a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm, the court shall issue an extreme risk protection order for a period of three hundred sixty-four days.

(3) In determining whether grounds for an extreme risk protection order exist, the court may consider any relevant evidence, including but not limited to any of the following:

(a) A recent act or credible threat of violence by the respondent against self or others, whether or not such violence or credible threat of violence involves a firearm;

(b) A pattern of acts or credible threats of violence by the respondent within the past year, including but not

limited to acts or credible threats of violence by the respondent against self or others;

**(c)** A violation by the respondent of a civil protection order issued pursuant to article 14 of this title 13;

**(d)** A previous or existing extreme risk protection order issued against the respondent and a violation of a previous or existing extreme risk protection order;

**(e)** A conviction of the respondent for a crime that included an underlying factual basis of domestic violence as defined in [section 18-6-800.3](#) (1);

**(f)** The respondent's ownership, access to, or intent to possess a firearm;

**(g)** A credible threat of or the unlawful or reckless use of a firearm by the respondent;

**(h)** The history of use, attempted use, or threatened use of unlawful physical force by the respondent against another person, or the respondent's history of stalking another person, as described in [section 18-3-602](#);

**(i)** Any prior arrest of the respondent for a crime listed in [section 24-4.1-302](#) (1) or [section 18-9-202](#);

**(j)** Evidence of the respondent's abuse of controlled substances or alcohol;

**(k)** Whether the respondent is required to possess, carry, or use a firearm as a condition of the respondent's current employment; and

**(l)** Evidence of recent acquisition of a firearm or ammunition by the respondent.

**(4)** The court may:

**(a)** Examine under oath the petitioner, the respondent, and any witnesses they may produce, or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent, and any witnesses they may produce; and

**(b)** Request that the Colorado bureau of investigation conduct a criminal history record check related to the respondent and provide the results to the court under seal.

**(5)** The court shall allow the petitioner and respondent to present evidence and cross-examine witnesses and be represented by an attorney at the hearing.

**(6)** In a hearing pursuant to this article 14.5, the rules of evidence apply to the same extent as in a civil protection order proceeding pursuant to article 14 of this title 13.

**(7)** During the hearing, the court shall consider any available mental health evaluation or chemical dependency evaluation provided to the court.

**(8)**

**(a)** Before issuing an extreme risk protection order, the court shall consider whether the respondent meets the standard for a court-ordered evaluation for persons with mental health disorders pursuant to [section 27-65-106](#). If the court determines that the respondent meets the standard, then, in addition to issuing an extreme risk protection order, the court shall order mental health treatment and evaluation authorized pursuant to [section 27-65-106](#) (4)(d).

**(b)** Before issuing an extreme risk protection order, the court shall consider whether the respondent meets the standard for an emergency commitment pursuant to [section 27-81-111](#). If the court determines that the respondent meets the standard, then, in addition to issuing an extreme risk protection order, the court shall order an emergency commitment pursuant to [section 27-81-111](#).

**(9)** An extreme risk protection order must include:

- (a) A statement of the grounds supporting the issuance of the order;
- (b) The date and time the order was issued;
- (c) The date and time the order expires;
- (d) The address of the court in which any responsive pleading should be filed;
- (e) The requirements for relinquishment of a firearm and concealed carry permit pursuant to [section 13-14.5-108](#); and
- (f) The following statement:

To the subject of this extreme risk protection order: this order will last until the date and time noted above. If you have not done so already, you must immediately surrender any firearms in your custody, control, or possession and any concealed carry permit issued to you. You may not have in your custody or control a firearm or purchase, possess, receive, or attempt to purchase or receive a firearm while this order is in effect. You have the right to request one hearing to terminate this order during the period that this order is in effect, starting from the date of this order and continuing through any renewals. You may seek the advice of an attorney as to any matter connected with this order.

(10) When the court issues an extreme risk protection order, the court shall inform the respondent that the respondent is entitled to request termination of the order in the manner prescribed by [section 13-14.5-107](#). The court shall provide the respondent with a form to request a termination hearing.

(11)

(a) If the court issues an extreme risk protection order, the court shall state the particular reasons for the court's issuance.

(b) If the court denies the issuance of an extreme risk protection order, the court shall state the particular reasons for the court's denial.

(12) If the court denies the issuance of an extreme risk protection order but ordered a temporary extreme risk protection order and a law enforcement agency took custody of the respondent's concealed carry permit or the respondent surrendered the respondent's concealed carry permit as a result of the temporary extreme risk protection order, the sheriff who issued the concealed carry permit shall reissue the concealed carry permit to the respondent within three days, at no charge to the respondent.

(13) If the court issues an extreme risk protection order and the petitioner is a law enforcement officer or agency or community member, the petitioner shall make a good-faith effort to provide notice of the order to a family or household member of the respondent and to any known third party who may be at direct risk of violence. The notice must include referrals to appropriate resources, including domestic violence, behavioral health, and counseling resources.

### **§ 13-14.5-106. Service of protection orders**

(1) An extreme risk protection order issued pursuant to [section 13-14.5-105](#) must be served personally upon the respondent, except as otherwise provided in this article 14.5.

(2) The law enforcement agency in the jurisdiction where the respondent resides shall serve the respondent personally.

(3) The court clerk shall forward a copy of the extreme risk protection order issued pursuant to this article 14.5 on or before the next court day to the law enforcement agency specified in the order for service. Service of an order issued pursuant to this article 14.5 takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

- (4) If the law enforcement agency cannot complete service upon the respondent within five days, the law enforcement agency shall notify the petitioner. The petitioner shall then provide any additional information regarding the respondent's whereabouts to the law enforcement agency to effect service. The law enforcement agency may request additional time to allow for the proper and safe planning and execution of the court order.
- (5) If an extreme risk protection order entered by the court states that the respondent appeared in person before the court, the necessity for further service is waived, and proof of service of that order is not necessary.
- (6) Returns of service pursuant to this article 14.5 must be made in accordance with the applicable court rules.
- (7) If the respondent is a veteran and there are any criminal charges against the respondent that result from the service or enforcement of the extreme risk protection order, the judge shall refer the case to a veterans court if the jurisdiction has a veterans court and the charges are veterans court eligible.

### **§ 13-14.5-107. Termination or renewal of protection orders**

#### **(1) Termination.**

- (a) The respondent may submit one written request for a hearing to terminate an extreme risk protection order issued pursuant to this article 14.5 for the period that the order is in effect. Upon receipt of the request for a hearing to terminate an extreme risk protection order, the court shall set a date for a hearing. Notice of the request and date of hearing must be served on the petitioner in accordance with the Colorado rules of civil procedure or Colorado rules of county court civil procedure. The court shall set the hearing fourteen days after the filing of the request for a hearing to terminate an extreme risk protection order. The court shall terminate the extreme risk protection order if the respondent establishes by clear and convincing evidence that the respondent no longer poses a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm. The court may consider any relevant evidence, including evidence of the considerations listed in [section 13-14.5-105](#) (3).
- (b) The court may continue the hearing if the court determines that it cannot enter a termination order at the hearing but determines that there is a strong possibility that the court could enter a termination order at a future date before the expiration of the extreme risk protection order. If the court continues the hearing, the court shall set the date for the next hearing prior to the date for the expiration of the extreme risk protection order.

#### **(2) Renewal.**

- (a) The court shall notify the petitioner of the impending expiration of an extreme risk protection order sixty-three calendar days before the date that the order expires.
- (b) A petitioner, a family or household member of a respondent, a community member, or a law enforcement officer or agency may, by motion, request a renewal of an extreme risk protection order at any time within sixty-three calendar days before the expiration of the order.
- (c) Upon receipt of the motion to renew, the court shall order that a hearing be held not later than fourteen days after the filing of the motion to renew. The court may schedule a hearing by telephone in the manner prescribed by [section 13-14.5-105](#) (1)(a). The respondent must be personally served in the same manner prescribed by [section 13-14.5-105](#) (1)(b) and (1)(c).
- (d) In determining whether to renew an extreme risk protection order issued pursuant to this section, the court shall consider all relevant evidence and follow the same procedure as provided in [section 13-14.5-105](#).
- (e) If the court finds by clear and convincing evidence that, based on the evidence presented pursuant to [section 13-14.5-105](#) (3), the respondent continues to pose a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm, the court shall renew the order for a period of time the court deems appropriate, not to

exceed one year. In the order, the court shall set a return date to review the order no later than thirty-five days prior to the expiration of the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit, signed under oath and penalty of perjury, stating that there has been no material change in relevant circumstances since the entry of the order and stating the reason for the requested renewal.

**(3)** If an extreme risk protection order is terminated or not renewed for any reason, the law enforcement agency storing the respondent's firearms shall provide notice to the respondent regarding the process for the return of the firearms.

### **§ 13-14.5-108. Surrender of a firearm**

**(1)**

**(a)** Upon issuance of an extreme risk protection order pursuant to this article 14.5, including a temporary extreme risk protection order, the court shall order the respondent to surrender all firearms by:

(I) Selling or transferring possession of the firearm to a federally licensed firearms dealer described in [18 U.S.C. sec. 923](#), as amended; except that this provision must not be interpreted to require any federally licensed firearms dealer to purchase or accept possession of any firearm;

(II) Arranging for the storage of the firearm by a law enforcement agency. The law enforcement agency shall preserve the firearm in a substantially similar condition that the firearm was in when it was surrendered. If the respondent does not choose the option in subsection (1)(a)(I) of this section, a local law enforcement agency shall store the firearm.

(III) Only for either an antique firearm, as defined in [18 U.S.C. sec. 921 \(a\)\(16\)](#), as amended, or a curio or relic, as defined in [27 CFR 478.11](#), as amended, transferring possession of the antique firearm or curio or relic to a relative who does not live with the respondent after confirming, through a criminal history record check, the relative is currently eligible to own or possess a firearm under federal and state law.

**(b)** The court shall order the respondent to surrender any concealed carry permit to the law enforcement officer serving the extreme risk protection order.

**(2)**

**(a)** The law enforcement agency serving any extreme risk protection order pursuant to this article 14.5, including a temporary extreme risk protection order in which the petitioner was not a law enforcement agency or officer, shall request that the respondent immediately surrender all firearms in the respondent's custody, control, or possession and any concealed carry permit issued to the respondent and conduct any search permitted by law for such firearms or permit. After the law enforcement agency or officer has custody of the firearms, the respondent may inform the law enforcement officer of the respondent's preference for sale, transfer, or storage of the firearms as specified in subsection (1) of this section. If the respondent elects to sell or transfer the firearms to a federally licensed firearms dealer described in [18 U.S.C. sec. 923](#), as amended, the law enforcement officer or agency shall maintain custody of the firearms until they are sold or transferred pursuant to subsection (1)(a)(I) of this section. The law enforcement officer shall take possession of all firearms and any such permit belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. Alternatively, if personal service by the law enforcement agency is not possible, or not required because the respondent was present at the extreme risk protection order hearing, the respondent shall surrender the firearms and any concealed carry permit within twenty-four hours after being served with the order by alternate service or within twenty-four hours after the hearing at which the respondent was present.

**(b)** If the petitioner for an extreme risk protection order is a law enforcement agency or officer, the law enforcement officer serving the extreme risk protection order shall take custody of the respondent's firearms

pursuant to the search warrant for firearms possessed by a respondent in an extreme risk protection order, as described in [section 16-3-301.5](#), if a warrant was obtained. After the law enforcement agency or officer has custody of the firearms, the respondent may inform the law enforcement officer of the respondent's preference for sale, transfer, or storage of the firearms as specified in [section 13-14-105.5](#) (4). The law enforcement officer shall request that the respondent immediately surrender any concealed carry permit issued to the respondent and conduct any search permitted by law for the permit.

**(3)** At the time of surrender or taking custody pursuant to [section 16-3-301.5](#), a law enforcement officer taking possession of a firearm or a concealed carry permit shall issue a receipt identifying all firearms and any permit that have been surrendered or taken custody of and provide a copy of the receipt to the respondent. Within seventy-two hours after service of the order, the officer serving the order shall file the original receipt with the court and shall ensure that the officer's law enforcement agency retains a copy of the receipt, or, if the officer did not take custody of any firearms, shall file a statement to that effect with the court.

**(4)** Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that there is probable cause to believe the respondent has failed to comply with the surrender of firearms or a concealed carry permit as required by an order issued pursuant to this article 14.5, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or a concealed carry permit in his or her custody, the respondent's control, or possession. If probable cause exists, the court shall issue a search warrant that states with particularity the places to be searched and the items to be taken into custody.

**(5)** If a person other than the respondent claims title to any firearms surrendered or taken custody of pursuant to [section 16-3-301.5](#) pursuant to this section and the law enforcement agency determines that he or she is the lawful owner of the firearm, the firearm shall be returned to him or her if:

- (a)** The firearm is removed from the respondent's custody, control, or possession, and the lawful owner agrees to store the firearm so that the respondent does not have access to or control of the firearm; and
- (b)** The firearm is not otherwise unlawfully possessed by the lawful owner.

**(6)**

**(a)** Within forty-eight hours after the issuance of an extreme risk protection order, a respondent subject to the order may either:

**(I)** File with the court that issued the order one or more proofs of relinquishment or removal showing that all firearms previously in the respondent's custody, control, or possession, and any concealed carry permit issued to the respondent, were relinquished to or removed by a law enforcement agency, and attest to the court that the respondent does not currently have any firearms in the respondent's custody, control, or possession, and does not currently have a concealed carry permit; or

**(II)** Attest to the court that:

- (A)** At the time the order was issued, the respondent did not have any firearms in the respondent's custody, control, or possession and did not have a concealed carry permit; and
- (B)** The respondent does not currently have any firearms in the respondent's custody, control, or possession and does not currently have a concealed carry permit.

**(b)** If two full court days have elapsed since the issuance of an extreme risk protection order and the respondent has made neither the filing and attestation pursuant to subsection (6)(a)(I) of this section nor the attestations pursuant to subsection (6)(a)(II) of this section, the clerk of the court for the court that issued the order shall inform the local law enforcement agency in the county in which the court is located that the respondent has not filed the filing and attestation pursuant to subsection (6)(a)(I) of this section or the



attestations pursuant to subsection (6)(a)(II) of this section.

(c) A local law enforcement agency that receives a notification pursuant to subsection (6)(b) of this section shall make a good faith effort to determine whether there is evidence that the respondent has failed to relinquish any firearm in the respondent's custody, control, or possession or a concealed carry permit issued to the respondent.

(7) The peace officers standards and training board shall develop model policies and procedures by December 1, 2019, regarding the acceptance, storage, and return of firearms required to be surrendered pursuant to this article 14.5 or taken custody of pursuant to [section 16-3-301.5](#) and shall provide those model policies and procedures to all law enforcement agencies. Each law enforcement agency shall adopt the model policies and procedures or adopt their own policies and procedures by January 1, 2020.

#### **§ 13-14.5-109. Firearms - return - disposal**

(1) If an extreme risk protection order or temporary extreme risk protection order is terminated or expires without renewal, a law enforcement agency holding any firearm that has been surrendered pursuant to [section 13-14.5-108](#) or taken custody of pursuant to [section 16-3-301.5](#), or a federally licensed firearms dealer described in [18 U.S.C. sec. 923](#), as amended, with custody of a firearm, or a relative with custody of an antique firearm or curio or relic pursuant to [section 13-14.5-108](#) (1)(a)(III), must return the firearm requested by a respondent within three days only after confirming, through a criminal history record check performed pursuant to [section 24-33.5-424](#), that the respondent is currently eligible to own or possess a firearm under federal and state law and after confirming with the court that the extreme risk protection order has terminated or has expired without renewal.

(2) Any firearm surrendered by a respondent pursuant to [section 13-14.5-108](#) or taken custody of pursuant to [section 16-3-301.5](#) that remains unclaimed by the lawful owner for at least one year from the date the temporary extreme risk protection order or extreme risk protection order expired, whichever is later, shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

#### **§ 13-14.5-110. Reporting of extreme risk protection orders**

(1) The court clerk shall enter any extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 into a statewide judicial information system on the same day the order is issued.

(2) The court clerk shall forward a copy of an extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 the same day the order is issued to the Colorado bureau of investigation and the law enforcement agency specified in the order. Upon receipt of the copy of the order, the Colorado bureau of investigation shall enter **the order into the national** instant criminal background check system, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only expunge orders from the systems that have expired or terminated and shall promptly remove the expired or terminated orders. Entry into the computer-based criminal intelligence information system is notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(3) The issuing court shall, within three court days after issuance of an extreme risk protection order or a temporary extreme risk protection order, forward all identifying information the court has regarding the respondent, along with the date the order is issued, to the county sheriff in the jurisdiction where the respondent resides. Upon receipt of the information, the county sheriff shall determine if the respondent has a concealed carry permit. If the respondent does have a concealed carry permit, the issuing county sheriff shall

immediately revoke the permit. The respondent may reapply for a concealed carry permit after the temporary extreme risk protection order and extreme risk protection order, if ordered, are no longer in effect.

(4) If an extreme risk protection order is terminated before its expiration date, the court clerk shall forward, on the same day as the termination order, a copy of the termination order to the Colorado bureau of investigation and the appropriate law enforcement agency specified in the termination order. Upon receipt of the order, the Colorado bureau of investigation and the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to subsection (2) of this section.

(5) Upon the expiration of a temporary extreme risk protection order or extreme risk protection order, the Colorado bureau of investigation and the law enforcement agency specified in the order shall promptly remove the order from any computer-based system in which it was entered pursuant to subsection (2) of this section.

(6) An extreme risk protection order does not constitute a finding that a respondent is a prohibited person pursuant to [18 U.S.C. sec. 922](#) (d)(4) or (g)(4). This subsection (6) does not alter a temporary extreme risk protection order or an extreme risk protection order, and a respondent subject to a temporary extreme risk protection order or an extreme risk protection order is prohibited from possessing a firearm under state law. This subsection (6) does not change the duty to enter a temporary extreme risk protection order or extreme risk protection order into the appropriate databases pursuant to this section.

#### **§ 13-14.5-111. Penalties**

Any person who has in the person's custody, possession, or control a firearm, or purchases, possesses, or receives a firearm with knowledge that the person is prohibited from doing so by an extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 is guilty of a class 2 misdemeanor.

#### **§ 13-14.5-112. Other authority retained**

This article 14.5 does not affect the ability of a law enforcement officer to remove a firearm or concealed carry permit from a person or conduct a search and seizure for any firearm pursuant to other lawful authority.

#### **§ 13-14.5-113. Liability**

(1) Except as provided in [section 13-14.5-111](#), this article 14.5 does not impose criminal, administrative, or civil liability on any person, including a community member, or entity for acts or omissions made in good faith related to obtaining an extreme risk protection order or a temporary extreme risk protection order, including but not limited to reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition pursuant to this article 14.5. This article 14.5 does not impose criminal or civil liability on a peace officer lawfully enforcing an order pursuant to this article 14.5.

(2) A person who files a malicious or knowingly false petition for a temporary extreme risk protection order or an extreme risk protection order may be subject to criminal prosecution or civil liability for those acts.

(3) A federally licensed firearms dealer or law enforcement agency that stores a firearm as permitted by this article 14.5 is not civilly liable for any resulting damages to the firearm, as long as such damage did not result from the willful and wrongful act or gross negligence of the person or law enforcement agency storing the firearm.

(4) This article 14.5 does not require a family or household member of the respondent, a community member, or a law enforcement officer or agency to file a petition for a temporary emergency extreme risk protection order or petition for an extreme risk protection order.

(5) A community member's employer shall not use a community member's acts or omissions made in good faith related to obtaining an extreme risk protection order or a temporary extreme risk protection order, including but not limited to reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition pursuant to this article 14.5 as a basis for discipline or termination.

### **§ 13-14.5-114. Instructional and informational material - definition**

**(1)**

**(a)** The state court administrator shall develop standard petitions and extreme risk protection order forms and temporary extreme risk protection order forms in more than one language consistent with state judicial department practices. The standard petition and order forms must be used after January 1, 2020, for all petitions filed and orders issued pursuant to this article 14.5. The state court administrator may consult with interested parties in developing the petitions and forms. The materials must be available online consistent with state judicial department practices.

**(b)** The extreme risk protection order form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order and the following statement:

You have the sole responsibility to avoid or refrain from violating this extreme risk protection order's provisions. Only the court can change the order and only upon written motion.

**(2)** A court clerk for each judicial district shall create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

**(3)** The state court administrator shall distribute a master copy of the standard petition and extreme risk protection order forms to all court clerks and all district and county courts.

**(4)** Courts shall accept petitions pursuant to sectionS 13-14.5-103 and 13-14.5-104 beginning on January 1, 2020.

### **13-14.5-115. Effect of previous issued orders.**

The enactment of SB 23-170 and the provisions of this article 14.5 authorizing the court to enter an order pursuant to section 13-14.5-103 or 13-14.5-104 do not limit, change, void, or otherwise impact an extreme risk protection order entered by the court pursuant to this article 14.5 prior to the effective date of SB 23-170. Any such order remains in effect until it expires by its own terms or is terminated by the court.

### **13-14.5-116. Severability.**

If any provision of this article 14.5 or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this article 14.5 that can be given effect without the invalid provision or application, and to this end the provisions of this article 14.5 are declared to be severable.

# Connecticut

**Type of Orders:** Risk Protection Order and Warrant

**Citation:** Conn. Gen. Stat. § 29-38c

## Highlighted Provisions

### **Persons eligible to petition:**

Investigation: Family / Household member / Medical Professional

Order: Any state's attorney/assistant state's attorney or two police officers

### **Standard of proof:**

Investigation: Good Faith Belief

Ex Parte: Probable Cause

Final: Clear and convincing evidence

### **Findings required:**

Person poses a risk of imminent personal injury to such person's self or to another person

### **Duration of order:**

Ex parte: 14 days

Final: Indefinite or at least in 180 day increments if respondent petitions court to terminate

Investigation: After receiving investigation order, law enforcement shall seek a RPO not later than 24 hours or as soon thereafter as it practicable

### **Service procedures:**

Copy of the warrant shall be given to the person named on the warrant.

**Notification procedures for persons at risk:** Statute is silent

### **Evidence required/ Warrant denial:**

The warrant will not be permitted if the judge finds there is no grounds for the warrant.

During the hearing, if the government fails to prove by clear and convincing evidence the material facts, the court will order the firearms/ammunition seized to be returned to the person named in the warrant.

### **Filing fees:**

Statute is silent

### **Firearm prohibitions:**

Named individual must allow law enforcement to seize all firearms, other deadly weapons and ammunition pursuant to the warrant.

### **Firearm relinquishment process:**

Pursuant to the warrant, law enforcement may take custody of all firearms/ other deadly weapons/ammunition pursuant to the warrant.

### **Firearm disposal process:**

The Commissioner of Emergency Services and Public Protection, or any local police department holding on their behalf, cannot destroy any seized firearm, deadly weapon, or ammunition under this section until at least one year after the warrant's termination date.

**Limitations on liability:**

Statute is silent

**Return/Transfer of firearms:**

Any person whose firearm was seized pursuant to subsection (e) of this section, or such person's legal representative, may transfer such firearms and ammunition to any person eligible to possess such firearms.

Court shall order the return of the firearm if it finds that respondent has imposed no risk.

**Warrant Authority:**

if there is probable cause to believe that (1) such person possesses one or more firearms or other deadly weapons, and (2) such firearm or firearms or other deadly weapon or deadly weapons are within or upon any place, thing or person, such judge shall issue a warrant commanding a police officer to enter into or upon such place or thing, search the same or the person and take into such officer's custody any and all firearms and other deadly weapons and ammunition.

**Venue:**

Superior Court. Conn. Gen. Stat. § 29-38c(a)

Family or household members or medical professionals can also an apply for a risk protection order investigation with the clerk of the court for any geographical area. Conn. Gen. Stat. § 29-38c(b)(1)

**Penalties:**

Silent

**Entry Registry/NCIC POF:**

Upon issuance by the court of an order for investigation, the court shall: (A) Give notice to the Commissioner of Emergency Services and Public Protection of the issuance of the order for a risk protection order investigation; and (B) immediately give notice of the order and transmit the order and the application and affidavit on which the order is based to the law enforcement agency for the town in which the subject of the investigation resides. The court shall immediately enter into the National Instant Criminal Background Check System (NICS) a record indicating that the person who is the subject of the investigation is ineligible to purchase or otherwise receive a firearm.

## Statutes

**§ 29-38c. Person posing risk of imminent personal injury to self or others. Firearms or other deadly weapons or ammunition. Warrant for seizure. Risk protection order prohibiting acquisition or possession.**

(a) Except as provided pursuant to section 2 of this act in the case of a complaint concerning a child under eighteen years of age, upon complaint on oath by any state's attorney or assistant state's attorney or by any police officer, to any judge of the Superior Court, that such state's attorney, assistant state's attorney or police officer has probable cause to believe that a person who is at least eighteen years of age poses a risk of imminent personal injury to such person's self or to another person, the judge may issue a risk protection order prohibiting such person from acquiring or possessing a firearm or other deadly weapon or ammunition. If such state's attorney, assistant state's attorney or police officer has a good faith belief that such person posing the risk is already prohibited from acquiring or possessing a firearm, or is already the subject of a risk protection order or pending risk protection order, the state's attorney, assistant state's attorney or police officer need not, but shall have the discretion to, pursue a risk protection order pursuant to this section. As part of or following the issuance of such order, if there is probable cause to believe that (1) such person possesses one or more firearms or other deadly weapons, and (2) such firearm or firearms or other deadly weapon or deadly weapons are within or upon any place, thing or person, such judge shall issue a warrant commanding a police officer to enter into or upon such place or thing, search the same or the person and take into such officer's custody any and all firearms and

other deadly weapons and ammunition. No such warrant shall be issued if the applicant for the order is a police officer, unless the application is supported by more than one police officer, under oath on the complaint. Such state's attorney, assistant state's attorney or police officer or officers may not make any such complaint unless such state's attorney, assistant state's attorney or police officer or officers, as applicable, have conducted an independent investigation and determined that such probable cause exists. Upon the issuance of any such order and warrant, if applicable, the judge shall order the clerk of the court to give notice to the Commissioner of Emergency Services and Public Protection of the issuance of such order and warrant, as applicable.

**(b)**

**(1)** Any family or household member or medical professional who has a good faith belief that a person who is at least eighteen years of age poses a risk of imminent personal injury to such person's self or to another person may make an application for a risk protection order investigation with the clerk of the court for any geographical area. The application and accompanying affidavit shall be made under oath and indicate: (A) The factual basis for the applicant's belief that such person poses a risk of imminent personal injury to such person's self or to another person; (B) whether such person holds a permit under subsection (b) of section 29-28, as amended by this act, or an eligibility certificate issued under section 29-36f, as amended by this act, 29-37p, as amended by this act, or 29-38n or currently possesses one or more firearms or other deadly weapons or ammunition, if known; and (C) where any such firearm or other deadly weapon or ammunition is located, if known.

**(2)** Upon receipt of an application and affidavit pursuant to this subsection, if the court finds that there is a good faith belief that a person who is the subject of the application poses a risk of imminent personal injury to such person's self or to another person, the court shall order a risk protection order investigation to determine if the person who is the subject of the application poses a risk of imminent personal injury to such person's self or to another person. Upon issuance by the court of an order for investigation, the court shall: (A) Give notice to the Commissioner of Emergency Services and Public Protection of the issuance of the order for a risk protection order investigation; and (B) immediately give notice of the order and transmit the order and the application and affidavit on which the order is based to the law enforcement agency for the town in which the subject of the investigation resides. The court shall immediately enter into the National Instant Criminal Background Check System (NICS) a record indicating that the person who is the subject of the investigation is ineligible to possess, purchase or otherwise receive a firearm.

**(3)** Upon receipt of an investigation order, the law enforcement agency shall immediately investigate whether the subject of the investigation poses a risk of imminent personal injury to such person's self or to another person. If the law enforcement agency determines that there is probable cause to believe that the subject of the investigation poses a risk of imminent personal injury to such person's self or to another person, such law enforcement agency shall seek a risk protection order, and when applicable, a warrant pursuant to subsection (a) of this section not later than twenty-four hours after receiving the investigation order, or, if the law enforcement agency needs additional time to complete the investigation, as soon thereafter as is practicable. If the law enforcement agency determines that there is no probable cause to believe that the subject of the investigation poses a risk of imminent personal injury to such person's self or to another person, the law enforcement agency shall notify the court, the applicant, and the Commissioner of Emergency Services and Public Protection of such determination, in writing, not later than forty-eight hours after receiving the investigation order, if practicable, or, if the law enforcement agency needs additional time to complete the risk warrant investigation, as soon thereafter as is practicable. Upon receiving such notification that there was not a finding of probable cause, the court shall immediately remove or cancel any record entered into the National Instant Criminal Background Check System associated with such investigation for which there was no finding of probable cause.

**(c)** A risk protection order issued under subsection (a) of this section, may issue only on an affidavit sworn to by the complainant establishing the grounds for issuing the order. A risk warrant issued under subsection (a) of this section may issue only on an affidavit sworn to by the complainant before the judge establishing the grounds

for issuing the warrant. Any such affidavit shall be part of the court file. In determining whether there is probable cause for a risk protection order and warrant, if applicable, under subsection (a) of this section, the judge shall consider: (1) Recent threats or acts of violence by such person directed toward other persons; (2) recent threats or acts of violence by such person directed toward such person's self; and (3) recent acts of cruelty to animals as provided in subsection (b) of section 53-247 by such person. In evaluating whether such recent threats or acts of violence constitute probable cause to believe that such person poses a risk of imminent personal injury to such person's self or to others, the judge may consider other factors including, but not limited to (A) the reckless use, display or brandishing of a firearm or other deadly weapon by such person, (B) a history of the use, attempted use or threatened use of physical force by such person against other persons, (C) prior involuntary confinement of such person in a hospital for persons with psychiatric disabilities, and (D) the illegal use of controlled substances or abuse of alcohol by such person. In the case of a complaint made under subsection (a) of this section, if the judge is satisfied that the grounds for the complaint exist or that there is probable cause to believe that such grounds exist, such judge shall issue a risk protection order and warrant, if applicable, naming or describing the person, and, in the case of the issuance of a warrant, the place or thing to be searched. The order and warrant, if applicable, shall be directed to any police officer of a regularly organized police department or any state police officer. The order and warrant, if applicable, shall state the grounds or probable cause for issuance and, in the case of a warrant, the warrant shall command the officer to search within a reasonable time the person, place or thing named for any and all firearms and other deadly weapons and ammunition. A copy of the order and warrant, if applicable, shall be served upon the person named in the order not later than three days prior to the hearing scheduled pursuant to subsection (e) of this section, together with a notice informing the person that such person has the right to a hearing under this section, the telephone number for the court clerk who can inform the person of the date and time of such hearing and the right to be represented by counsel at such hearing.

**(d)**

**(1)** In the case of a warrant, the municipal or state police agency that executed the warrant shall file a copy of the application for the warrant and all affidavits upon which the warrant is based with the clerk of the court for the geographical area within which the search was conducted and with the state's attorney's office for such judicial district no later than the next business day following the execution of the warrant. Prior to the execution and return of the warrant, the clerk of the court shall not disclose any information pertaining to the application for the warrant or any affidavits upon which the warrant is based. The warrant shall be executed and returned with reasonable promptness consistent with due process of law and shall be accompanied by a written inventory of all firearms and other deadly weapons and ammunition seized.

**(2)** In the case of a risk protection order, not later than the next business day following the service of the order, the municipal or state police agency that served the order shall file with the court of the geographical area in the location in which the subject of the order resides a copy of the order and transmit to the state's attorney's office for such judicial district a return of service stating the date and time that the order was served. Prior to the service and return of the order, the clerk of court shall not disclose any information pertaining to the application for the order or any affidavits upon which the order is based to any person outside the Judicial Branch, the municipal or state police agency that served the order, or the state's attorney's office for the judicial district within which the order was served. The order shall be served and returned with reasonable promptness consistent with due process of law.

**(e)** Not later than fourteen days after the issuance of a risk protection order and, if applicable, a warrant under this section, the court for the geographical area where the person named in the order or warrant resides shall hold a hearing to determine whether the risk protection order should continue to apply and whether the firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized should be returned to the person named in the warrant or should continue to be held by the state. At such hearing the state shall have the burden of proving all material facts by clear and convincing evidence. If, after such hearing, the court finds by clear and convincing evidence that the person poses a risk of imminent personal injury to such person's self or

to another person, the court may order that the risk protection order continue to apply and that the firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized pursuant to the warrant issued under subsection (a) of this section continue to be held by the state until such time that the court shall terminate such order pursuant to subsection (f) of this section and order the firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized to be returned as soon as practicable to the person named in the warrant, provided such person is otherwise legally able to possess such firearm or firearms or other deadly weapon or deadly weapons and ammunition. If the court finds that the state has failed to prove by clear and convincing evidence that the petitioner poses a risk of imminent personal injury to such person's self or to another person, the court shall terminate such order and warrant, if applicable, and order the firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized to be returned as soon as is practicable to the person named in the warrant, provided such person is otherwise legally eligible to possess such firearm or firearms or other deadly weapon or deadly weapons and ammunition. If the court finds that the person poses a risk of imminent personal injury to such person's self or to another person, the court shall give notice to the Department of Mental Health and Addiction Services which may take such action pursuant to chapter 319i as the department deems appropriate.

**(f)** A risk protection order, and warrant, if applicable, shall continue to apply and the firearm or firearms or other deadly weapon or deadly weapons and any ammunition held pursuant to subsection (e) of this section shall continue to be held by the state until such time that the person named in the order and warrant, if applicable, successfully petitions the court to terminate such order and warrant, if applicable. The person named in the order may first petition the court of the geographical area where the proceeding was originally conducted for a hearing to terminate such order, and warrant if applicable, at least one hundred eighty days after the hearing held pursuant to subsection (e) of this section. Upon the filing of such petition, the court shall (1) provide to the petitioner a hearing date that is on the twenty-eighth day following the filing of such petition or the business day nearest to such day if such twenty-eighth day is not a business day, (2) notify the Division of Criminal Justice of the filing of such petition, and (3) direct the law enforcement agency for the town in which the petitioner resides to determine, not later than fourteen days after the filing of such petition, whether there is probable cause to believe that the petitioner poses a risk of imminent personal injury to such person's self or to another person. No finding of probable cause may be found solely because the petitioner is subject to an existing risk protection order or warrant. If the law enforcement agency finds no probable cause, the agency shall so notify the court which shall cancel the hearing and terminate the order and warrant, if applicable. If the law enforcement agency finds probable cause, the agency shall notify the court of such finding and the hearing shall proceed as scheduled. At such hearing the state shall have the burden of proving all material facts by clear and convincing evidence. If the court, following such hearing, finds by clear and convincing evidence that the petitioner poses a risk of imminent personal injury to such person's self or to another person, the order and warrant, if applicable, shall remain in effect. If the court finds that the state has failed to prove by clear and convincing evidence that the petitioner poses a risk of imminent personal injury to such person's self or to another person, the court shall terminate such order and warrant, if applicable. Any person whose petition is denied may file a subsequent petition in accordance with the provisions of this subsection at least one hundred eighty days after the date on which the court denied the previous petition.

**(g)** The court shall immediately upon termination of a risk protection order pursuant to this section remove or cancel any record entered into the National Instant Criminal Background Check System associated with such order.

**(h)** Any person whose firearm or firearms and ammunition have been ordered seized pursuant to subsection (e) of this section, or such person's legal representative, may transfer such firearm or firearms and ammunition in accordance with the provisions of section 29-33 or other applicable state or federal law, to a federally licensed firearm dealer. Upon notification in writing by such person, or such person's legal representative, and the dealer, the head of the state agency holding such seized firearm or firearms and ammunition shall within ten days deliver such firearm or firearms and ammunition to the dealer.



**(i)** Notwithstanding the provisions of section 29-36k, the Commissioner of Emergency Services and Public Protection holding any firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized pursuant to a warrant issued under this section, or any local police department holding on behalf of said commissioner any such firearm or firearms or other deadly weapon or deadly weapons or ammunition, shall not destroy any such firearm or other deadly weapon or ammunition until at least one year has passed since date of the termination of a warrant under subsection (e) of this section.

**(j)** For purposes of this section, (1) “ammunition” means a loaded cartridge, consisting of a primed case, propellant or projectile, designed for use in any firearm, (2) “family or household member” means (A) a person eighteen years of age or older who is a: (i) Spouse, (ii) parent, (iii) child, (iv) sibling, (v) grandparent, (vi) grandchild, (vii) step-parent, (viii) step-child, (ix) step-sibling, (x) mother or father-in-law, (xi) son or daughter-in-law, or (xii) brother or sister-in-law of the person who is the subject of an application pursuant to subsection (b) of this section; (B) a person residing with the person who is the subject of the application; (C) a person who has a child in common with the person who is the subject of the application; (D) a person who is dating or an intimate partner of the person who is the subject of the application; or (E) a person who is the legal guardian or former legal guardian of the person who is the subject of the application, (3) “medical professional” means any person who has examined the person who is the subject of the application and who is (A) a physician or physician assistant licensed under chapter 370, (B) an advanced practice registered nurse licensed under chapter 378, (C) a psychologist licensed under chapter 383, or (D) a clinical social worker licensed under chapter 383b, and (4) “deadly weapon” has the same meaning as provided in section 53a-3.

# Delaware

**Types of Orders:** Emergency Lethal Violence Protective Order (“LVPO”), Nonemergency LVPO

**Citation:** Del. Code Ann. tit. 10, §§ 7701-7709

## Highlighted Provisions

### **Persons eligible to petition:**

Emergency LVPO: Law enforcement officer

Nonemergency LVPO: Family members or law enforcement

### **Standard of proof:**

Emergency LVPO: preponderance of the evidence

Nonemergency LVPO: clear and convincing evidence

### **Findings required:**

Respondent poses an immediate and present danger of causing physical injury to himself or others by owning, possessing, controlling, purchasing, having access to, or receiving a firearm.

### **Duration of order:**

Emergency LVPO: May not exceed 45 days

Nonemergency LVPO: Fixed period of time not to exceed 1 year.

### **Service on respondent:**

Emergency LVPO:

The Superior Court will direct that a lethal violence protective order be immediately served on the respondent by personal service, any form of mail, or any manner directed by the court (including publication) if other methods of service have failed.

Note: Emergency LVPO: If an emergency lethal violence protective order is issued, the respondent must be served immediately.

Nonemergency LVPO: If respondent is not present at the hearing, the Superior Court will direct that a lethal violence protective order be immediately served on the respondent by personal service, any form of mail, or any manner directed by the court (including publication) if other methods of service have failed.

Note: If a hearing is held, the respondent has a right to notice of the hearing. If a lethal violence protective order is issued, the respondent must be served immediately.

### **Notification procedures for persons at risk:**

Statute is silent.

### **Filing fees:**

Statute is silent.

### **Renewal/Termination:**

Emergency LVPO: Justice of the Peace Court or the Superior Court may extend an emergency order as needed to effectuate service of the order or where necessary to ensure protection of the respondent or others

Nonemergency LVPO: Respondent is entitled to 1 hearing to request a termination of the order (If the respondent can prove by clear and convincing evidence that the respondent does not pose a danger to causing physical injury to self or others by controlling, owning, purchasing, possessing,

having access to, or receiving a firearm, the court will terminate the order). Petitioner may request a renewal of the lethal violence protective order at any time within 3 months before the expiration of a lethal violence protective order issued under § 7704 of this title or this subsection.

**Firearm prohibitions:**

Respondent must relinquish to a law enforcement officer receiving the court’s order any firearm or ammunition owned, possessed, or controlled by the respondent.

**Firearm relinquishment process:**

Emergency LVPO: The order requires that the respondent must relinquish to a law enforcement officer any firearms or ammunition owned, possessed, or controlled by the respondent.

Nonemergency LVPO: Respondent may voluntarily relinquish to a law enforcement officer receiving the court’s order any firearm or ammunition owned, possessed, or controlled by the respondent.

Respondent may relinquish any firearms to a designee of the respondent (designee must not reside with the respondent and must not be a person prohibited under § 1448 of Title 11).

The court may direct a law-enforcement agency having jurisdiction where the respondent resides or the firearms and ammunition are located to immediately search for and seize any firearms or ammunition, owned, possessed, or controlled by the respondent.

**Firearm disposal process:**

Statute is silent

**Limitations on liability:**

A law enforcement officer, who in good faith does not seek a lethal violence protective order, is immune from civil liability. A law enforcement officer is also immune from civil or criminal liability for any damage or deterioration of firearms stored or transported under this section (does not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law-enforcement officer or federally-licensed firearms dealer).

**Return/transfer of firearms:**

If the order is vacated under § 7704(e), terminated under § 7705(a), or expired and not renewed, the law-enforcement agency will return to the respondent any firearms or ammunition taken from the respondent unless otherwise prohibited under § 1441 of Title 11.

**Warrant Authority:**

The court may direct a law-enforcement agency having jurisdiction where the respondent resides or the firearms and ammunition are located to immediately search for and seize any firearms or ammunition, owned, possessed, or controlled by the respondent.

**Venue:**

Must be filed in the county where the respondent resides

**Penalties:**

Any person who violates a lethal violence protection order may be guilty of criminal contempt.

**Entry Registry/NCIC POF:**

Silent

**Statutes**

**§ 7701. Definitions**

As used in this section:

**(1)** “Firearm” means as defined in § 222 of Title 11.

**(2)** “Law-enforcement officer” means as defined in § 222 of Title 11.\*

\*police officers, the Attorney General and the Attorney General’s deputies, agents of the State Division of Alcohol and Tobacco Enforcement, agents employed by a state, county or municipal law-enforcement agency engaged in monitoring sex offenders, correctional officers, probation and parole officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/ authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, and constables. A sheriff or deputy sheriff shall be considered a “law-enforcement officer” when acting upon a specific order of a judge or commissioner of Superior Court. Sheriffs and deputy sheriffs shall not have any arrest authority. However, sheriffs and deputy sheriffs may take into custody and transport a person when specifically so ordered by a judge or commissioner of Superior Court.

**(3)** “Lethal violence protective order” means an order issued by the Justice of the Peace Court or Superior Court prohibiting and enjoining a person from controlling, owning, purchasing, possessing, having access to, or receiving a firearm.

**(4)** “Petitioner” means either of the following:

**a.** A family member of the respondent as defined in § 901 of this title or a member of the class defined in § 1041(2)b. of this title.

**b.** A law-enforcement officer who files a petition alleging that the respondent poses a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to or receiving a firearm.

**(5)** “Physical injury” means as defined in § 222 of Title 11.

**(6)** “Respondent” means the individual who is alleged to pose a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to or receiving a firearm.

#### **§ 1041 (2). Definitions.**

**(2)** “Domestic violence” means abuse perpetrated by 1 member against another member of the following protected classes:

**a.** Family, as that term is defined in § 901(12) of this title, regardless, however, of state of residence of the parties, or whether parental rights have been terminated; or

**b.** Former spouses; persons cohabitating together who are holding themselves out as a couple, with or without a child in common; persons living separate and apart with a child in common; or persons in a current or former substantive dating relationship. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a substantive dating relationship. Factors to consider for a substantive dating relationship may include the length of the relationship, or the type of relationship, or the frequency of interaction between the parties.

#### **§ 901(12). Definitions.**

**(12)** “Family” means spouses; a couple cohabitating in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage who are residing in 1 home under 1 head or where 1 is related to the other by any of the following degrees of relationship, both parties being residents of this State:

- a. Mother;
- b. Father;
- c. Mother-in-law;
- d. Father-in-law;
- e. Brother;
- f. Sister;
- g. Brother-in-law;
- h. Sister-in-law;
- i. Son;
- j. Daughter;
- k. Son-in-law;
- l. Daughter-in-law;
- m. Grandfather;
- n. Grandmother;
- o. Grandson;
- p. Granddaughter;
- q. Stepfather;
- r. Stepmother;
- s. Stepson;
- t. Stepdaughter.

The relationships referred to in this definition include blood relationships without regard to legitimacy and relationships by adoption.

**§ 7702. Commencement of action; procedure.**

- (a) A petitioner may request relief under § 7703 or § 7704 of this title by filing an affidavit or verified petition.
- (b) A petition for a lethal violence protective order must be filed in the county where the respondent resides.
- (c) Forms and instructions for initiating a proceeding under this section must be available from the Justice of the Peace Court’s office and the Superior Court Prothonotary’s office.
- (d) All forms and instructions developed for use by the parties to a proceeding under this chapter must contain simple, understandable language.

**§ 7703. Emergency hearings.**

- (a) A law-enforcement officer may request an emergency lethal violence protective order by filing an affidavit or verified petition in Justice of the Peace Court that does both of the following:
  - (1) Alleges that respondent poses an immediate and present danger of causing physical injury to self or others by controlling, purchasing, owning, possessing, controlling, purchasing, having access to, or receiving a firearm.

(2) Identifies the location of any firearms it is believed that the respondent currently owns, possesses, has access to, or controls.

**(b)** The following procedures govern an emergency proceeding:

(1) The Justice of the Peace Court shall hear a request for an order under this section within 24 hours of the filing of the affidavit or verified petition.

(2) The law-enforcement officer has the burden of demonstrating by a preponderance of the evidence that a respondent poses an immediate and present danger of causing physical injury to self or others by owning, possessing, controlling, purchasing, having access to, or receiving a firearm.

(3) The respondent does not have the right to be heard or to notice that the law-enforcement officer has sought an order under this section.

**(c)** The Justice of the Peace Court may adopt additional rules governing proceedings under this section.

**(d)** If the Justice of the Peace Court finds by a preponderance of the evidence that the respondent poses an immediate and present danger of causing physical injury to self or others by owning, possessing, controlling, purchasing, having access to, or receiving a firearm, the Court shall issue an emergency lethal violence protective order requiring the respondent to relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possess, or controlled by the respondent. The Court may also do any of the following through its order:

(1) Prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair the rights, under the Second Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the Court's order.

(2) Direct a law-enforcement agency having jurisdiction where the respondent resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the respondent.

**(e)** The Justice of the Peace Court shall direct that an emergency lethal violence protective order issued under this section be served immediately upon the respondent by personal service, any form of mail, or in any manner directed by the Court, including publication, if other methods of service have failed or deemed to have been inadequate. The Court shall give a certified copy of the order to the law-enforcement officer after the hearing and before the petitioner leaves the courthouse.

**(f)** If the Justice of the Peace Court issues an emergency lethal violence protective order under this section, the Superior Court must hold a full hearing in compliance with § 7704 of this title within 15 days. The Justice of the Peace Court or the Superior Court may extend an emergency order as needed to effectuate service of the order or where necessary to ensure the protection of the respondent or others, but the duration of the order may not exceed 45 days.

#### **§ 7704. Nonemergency hearings.**

**(a)** A petitioner may request a lethal violence protective order by filing an affidavit or verified petition in the Superior Court that does both of the following:

(1) Alleges that the respondent poses a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to, or receiving a firearm.

(2) Identifies the location of any firearms it is believed that the respondent currently owns, possesses, has access to, or controls.

**(b)** The following procedures govern a nonemergency proceeding:

(1) The respondent has the right to be heard.

(2) If a hearing is requested, it must be held within 15 days of the filing of an affidavit or verified petition under subsection (a) of this section, unless extended by the Court for good cause shown.

(3) If a hearing is held, the respondent has the right to notice of the hearing, to present evidence, and to cross-examine adverse witnesses.

(4) The petitioner has the burden of proving by clear and convincing evidence that the respondent poses a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to, or receiving a firearm.

(c) The Superior Court may adopt additional rules governing proceedings under this section.

(d) If the Superior Court finds by a clear and convincing evidence that the respondent poses an immediate and present danger of causing physical injury to self or others by owning, possessing, controlling, purchasing, having access to, or receiving a firearm, the Court shall issue a lethal violence protective order requiring the respondent to relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possess, or controlled by the respondent. The Court may also do any of the following through its order:

(1) Allow the respondent to voluntarily relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possessed, or controlled by the respondent.

(2) Allow the respondent to relinquish firearms or ammunition owned, possessed, or controlled by the respondent to a designee of the respondent. A designee of the respondent must not reside with the respondent and must not be a person prohibited under § 1448 of Title 11. The designee must affirm to the Court and the Court must find that the designee of the respondent will keep firearms or ammunition owned, possessed, or controlled by the respondent out of the possession of the respondent.

(3) Prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair the rights, under the Second Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the Court's order.

(4) Direct a law-enforcement agency having jurisdiction where the respondent resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the respondent.

(5) Prohibit the respondent from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or Article I, § 20 of the Delaware Constitution, of an individual who is not subject to the Court's order.

(6) Direct a law-enforcement agency having jurisdiction where the respondent resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the respondent,

(e) If the Superior Court finds that there is not clear and convincing evidence to support the issuance of a lethal violence protective order, the Court shall not issue a lethal violence protective order, and shall vacate any emergency lethal violence protective order then in effect.

(f) If the Superior Court issues a lethal violence protective order under this section, the Court shall inform the respondent that the respondent is entitled to 1 hearing to request a termination of the order under § 7705 of this title, and shall provide the respondent with a form to request such a hearing.

(g) If a respondent is not present for a hearing under this section, the Superior Court shall direct that a lethal

violence protective order issued be served immediately upon the respondent by personal service, any form of mail, or in any manner directed by the Court, including publication if other methods of service have failed or deemed to have failed or deemed to have been inadequate.

**(h)** The Superior Court shall give a certified copy of the order to the petitioner and respondent after the hearing and before the petitioner and respondent leave the courthouse.

**(i)** Any party in interest aggrieved by a decision of the Superior Court under this section may appeal the decision to the Supreme Court.

**(j)** Relief granted under this section shall be for a fixed period of time not to exceed 1 year.

#### **§ 7705. Termination and renewal.**

**(a)** A respondent subject to a lethal violence protective order issued under § 7704 of this title, or renewed under subsection (b) of this section, may submit 1 written request at any time during the effective period of the order for a hearing to terminate the order.

**(1)** The Superior Court must provide notice to all parties and a hearing before the Court may terminate the order.

**(2)** The respondent must prove by clear and convincing evidence that the respondent does not pose a danger of causing physical injury to self or others by controlling, owning, purchasing, possessing, having access to, or receiving a firearm.

**(3)** If the Superior Court finds after a hearing that the respondent has met the burden imposed by paragraph (a)(2) of this section, the Court shall terminate the order.

**(b)** A petitioner may request a renewal of a lethal violence protective order at any time within 3 months before the expiration of a lethal violence protective order issued under § 7704 of this title or this subsection.

**(1)** The Superior Court must provide notice to all parties and a hearing before the Court may renew an order issued under § 7704 of this title or this subsection.

**(2)** The petitioner must prove by clear and convincing evidence that the respondent continues to pose a danger of causing physical injury to self or others in the near future by controlling, owning, purchasing, possessing, having access to, or receiving a firearm.

**(3)** If the Superior Court finds after a hearing that the respondent has met the burden imposed by paragraph (b)(2) of this section, the Court shall renew the lethal violence protective order.

**(4)** The Superior Court is to set the duration of the renewed lethal violence protective order, up to 1 year. The order remains in effect unless terminated under subsection **(a)** of this section, renewed under this subsection, or expired and not renewed.

#### **§ 7706. Return and disposal of firearms.**

If an order issued under this chapter is vacated under § 7704 (e) of this title, terminated under § 7705(a) of this title, or expired and is not renewed, the law-enforcement agency shall return to the respondent any firearms or ammunition taken from the respondent under this chapter unless otherwise prohibited under § 1448 of Title 11.

#### **§ 7707. Limitation on liability.**

**(a)** Nothing in this chapter precludes a petitioner or law-enforcement officer from removing firearms under other authority or filing criminal charges when probable cause exists.

**(b)** A law-enforcement officer, who in good faith does not seek a lethal violence protective order under this chapter, is immune from civil liability.



(c) A law-enforcement agency is immune from civil or criminal liability for any damage or deterioration of firearms stored or transported under this section. This subsection does not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law-enforcement agency or federally-licensed firearms dealer.

**§ 7708. Sanctions.**

(a) Any person who violates a lethal violence protection order may be guilty of criminal contempt under § 1271A of Title 11.

(b) Any person who swears falsely, as defined by § 1224 of Title 11, in an affidavit or verified pleading under § 7702, § 7703, or § 7704 of this title, a written request to terminate or renew a lethal violence protective order under § 7705 of this title, or in any court hearing under § 7703, § 7704, or § 7705 may be guilty of perjury under § 1221, § 1222 or § 1223 of Title 11.

**§ 7709. Rules and regulations.**

The Supreme Court, Superior Court, Justice of the Peace Court, State Police, State Bureau of Identification, and Delaware Criminal Justice Information System Board of Managers may promulgate rules and regulations to carry out the purposes of this chapter.

# District of Columbia

**Types of Order:** Ex parte extreme risk protection order, Final extreme risk protection order

**Citation:** D.C. Code §§ 7-2510.01 - 7-2510.12

## Highlighted Provisions

### **Persons eligible to petition:**

Family/household/dating or sexual partner, A sworn member of the Metropolitan Police Department, A mental health professional

### **Standard of proof:**

Ex parte ERPO: probable cause

Final ERPO: preponderance of the evidence

### **Evidence required:**

Respondent poses a significant danger of causing bodily injury to self or others by having possession or control of, purchasing, or receiving any firearm or ammunition

### **Length of order:**

Ex parte ERPO: 14 days & can be extended in 14-day increments for good cause shown

Final ERPO: 1 year

### **Service on respondent:**

Must be personally served by a sworn member of the Metropolitan Police Department. If the respondent was personally served in the court when the motion to terminate an extreme risk protection order was granted, personal service requirement will be waived.

### **Notification of persons at risk:**

At least 120 days before the expiration of the final extreme risk protection order, the court must notify the petitioner of the date that the order is to expire and advise the petitioner of the procedures to renew the order. If the Metropolitan Police Department cannot complete personal service upon the respondent within 7 days after receiving an order from the court under [D.C. Code § 7-2510.05(2)], of this subsection, the Metropolitan Police Department shall notify the petitioner.

### **Filing fees:**

Statute is silent.

### **Renewal/Termination:**

Termination: Once per period the order is in effect, respondent may file a motion to the Superior Court requesting that the order be terminated, upon which the Court will set a date for a hearing. The Court will terminate a final extreme risk protection order of the respondent, by a preponderance of the evidence, does not pose a significant danger of causing bodily injury to self or others by having possession or control of, purchasing, or receiving any firearm or ammunition.

Renewal: petitioner may request a renewal up to 120 days before it expires.

Extension: the court may extend a renewed risk protection order in 14 day increments for good cause shown.

### **Firearm prohibitions:**

Prohibits the respondent from having possession of, control of, purchasing, or receiving any firearm, ammunition, registration certificate, license to carry a concealed pistol, or dealer's license.

**Firearm relinquishment process:**

If the court issues an extreme risk protection order, a Metropolitan police officer serving an extreme risk protection order shall request for the surrender of all firearms, ammunition, registration certificates, licenses to carry a concealed pistol, and dealer's license.

The court may issue a warrant that authorizes the seizure of any firearms, ammunition, registration certificates, licenses to carry a concealed pistol, and dealer's licenses discovered pursuant to such a search.

**Firearm disposal process:**

If the respondent who lawfully possessed the firearm does not wish to have the firearm returned, or the respondent is no longer eligible to own or possess firearms or ammunition, the respondent may transfer the title or sell the firearm or ammunition in accordance with applicable law. If the respondent does not request the return of the firearm or ammunition, or sell or transfer the firearm or ammunition from the respondent to dealer, the Metropolitan Police Department will treat the firearm or ammunition as surrendered and it will be subject to § 7-2507.05(b).

**Limitations on liability:**

Statute is silent

**Return/transfer of firearms:**

If the extreme risk protection order is terminated, expires without renewal, the Metropolitan police must notify the respondent that he or she may request the return of the firearm or ammunition removed (provided that the firearm or ammunition was lawfully possessed). Metropolitan police, before returning the firearm or ammunition, must confirm that the respondent is eligible to own or possess the firearms and ammunition, the firearm was lawfully possessed, and the respondent has paid any applicable fee charged against the respondent by the Metropolitan Police Department pursuant to subsection 1007(e).

**Warrant authority:**

If the court issues or renews an extreme risk protection order, the court may issue a search warrant that describes the number and types of firearms and ammunition to be seized, describes any registration certificates, licenses to carry a concealed pistol, and dealer's licenses are believed to be located, and authorizes the seizure of any firearm, ammunition, registration certificates, licenses to carry a concealed pistol, and dealer's licenses discovered pursuant to such a search.

**Venue:**

Superior Court for the District of Columbia

**Penalties:**

A person convicted of violating an extreme risk protection order shall be:

- (1) Fined no more than the amount set forth in [§ 22-3571.01](#), or incarcerated for no more than 180 days, or both; and
- (2) Prohibited from having possession or control of, purchasing, or receiving a firearm or ammunition for a period of 5 years after the date of conviction.

**Entry Registry/NCIC POF:**

(a) The Metropolitan Police Department shall:

- (1) Maintain a searchable database of extreme risk protection orders issued, terminated, and renewed pursuant to this subchapter; and
- (2) Make the information maintained in paragraph (1) of this subsection available to the Superior Court of the District of Columbia, the Office of the Attorney General, and any other relevant law enforcement, pretrial, corrections, or community supervision agency upon request

(b) The Mayor, or the Mayor’s designee, shall immediately submit information about extreme risk protection orders issued, renewed, or terminated pursuant to this subchapter to the National Instant Criminal Background Check System for the purposes of firearm purchaser background checks.

## Statutes

### § 7-2510.01. Definitions.

For the purposes of this subchapter, the term:

- (1) “Extreme risk protection order” means an order issued, pursuant to this subchapter, by a judge of the Superior Court of the District of Columbia prohibiting a respondent from having possession or control of, purchasing, or receiving any firearm, ammunition, registration certificate, license to carry a concealed pistol, or dealer’s license.
- (2) “Petitioner” means a person who petitions the Superior Court of the District of Columbia for an extreme risk protection order under this subchapter and is:
  - (A) Related to the respondent by blood, adoption, guardianship, marriage, domestic partnership, having a child in common, cohabitating, or maintaining a romantic, dating, or sexual relationship;
  - (B) A sworn member of the Metropolitan Police Department; or
  - (C) A mental health professional, as that term is defined in § 7-1201.01(11).
- (3) “Respondent” means a person against whom an extreme risk protection order is sought.

### § 7-1201.01. Definitions

(11) “Mental health professional” means any of the following persons engaged in the provision of professional services:

- (A) A person licensed to practice medicine;
- (B) A person licensed to practice psychology;
- (C) A licensed social worker;
- (D) A professional marriage, family, or child counselor;
- (E) A sexual assault counselor, as that term is defined in D.C. Official Code § 23- 1907(10), who is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist;
- (F) A licensed nurse who is a professional psychiatric nurse; or
- (G) Any person reasonably believed by the client to be a mental health professional within the meaning of subparagraphs (A) through (F) of this paragraph.

### § 7-2510.02. Petitions for extreme risk protection orders.

(a) A petitioner may petition the Superior Court for the District of Columbia for a final extreme risk protection order. A petition filed under this section shall:

- (1) Be in writing;
- (2) State facts in support of the claim that the respondent poses a significant danger of causing bodily injury to self or others by having possession or control of, purchasing, or receiving any firearm or ammunition;

(3) To the best of the petitioner’s knowledge, identify the number, types, and locations of any firearms or ammunition the petitioner believes to be in the respondent’s possession, control, or ownership; and

(4) Repealed.

(5) Be served on the Office of the Attorney General.

(b) A petitioner may file a petition under this section regardless of whether there is any other pending suit, complaint, petition, or other action between the parties.

(c)

(1) The Office of Attorney General may:

(A) Intervene in the case and represent the interests of the District of Columbia; or

(B) At the request of the petitioner, provide individual legal representation to the petitioner in proceedings under this subchapter.

(2) If the Office of the Attorney General intervenes in a case under paragraph (1)(A) of this subsection, the intervention shall continue until:

(A) The court denies the petition for a final extreme risk protection order pursuant to § 7-2510.03;

(B) The court terminates a final extreme risk protection order pursuant to § 7-2510.08; or

(C) The Office of the Attorney General withdraws from the intervention.

(d) The court may place any record or part of a proceeding related to the issuance, renewal, or termination of an extreme risk protection order under seal for good cause shown.

(e) When computing a time period specified in this subchapter, or in an order issued under this subchapter:

(1) Stated in days or a longer unit of time:

(A) Exclude the day of the event that triggers the time period;

(B) Count every day, including intermediate Saturdays, Sundays and legal holidays; and

(C) Include the last day of the time period, but if the last day of the time period specified falls on a Saturday, Sunday, a legal holiday, or a day on which weather or other conditions cause the court to be closed, the time period specified shall continue to run until the end of the next day that is not a Saturday, Sunday, legal holiday, or a day on which weather or other conditions cause the court to be closed.

(2) Stated in hours:

(A) Begin counting immediately on the occurrence of the event that triggers the time period;

(B) Count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) If the time period would end on a Saturday, Sunday, legal holiday, or a day on which weather or other conditions cause the court to be closed, the time period shall continue to run until the same time on the next day that is not a Saturday, Sunday, legal holiday, or a day on which weather or other conditions cause the court to be closed.

### **§ 7-2510.03. Final extreme risk protection orders.**

(a)

(1) Upon receipt of a petition filed pursuant § 7-2510.02, the court shall order that a hearing be held to

determine whether to issue a final extreme risk protection order against the respondent.

**(2)** The hearing shall be held within 14 days after the date the petition was filed.

**(b)**

**(1)** Personal service of the notice of hearing and petition shall be made upon the respondent by a Metropolitan Police Department officer not fewer than 7 business days before the hearing.

**(2)** If the respondent is unable to be personally served, the court shall set a new hearing date and require additional attempts to accomplish personal service.

**(3)** If the respondent is unable to be personally served after the court has set a new hearing date and required new attempts at service pursuant to paragraph (2) of this subsection, the court may dismiss the petition without prejudice.

**(c)** If the court issues an ex parte extreme risk protection order pursuant to § 7-2510.04, the ex parte extreme risk protection order shall be served concurrently with the notice of hearing and petition described in subsection (b)(1) of this section.

**(d)** Upon receipt of a petition filed under § 7-2510.02, and for good cause shown, the court shall issue such orders as may be necessary to obtain any mental health records and other information relevant for the purposes of the petition. The order shall require the disclosure of records to the Office of the Attorney General so that it can conduct a search of the respondent's mental health records and report its findings to the court as required by this subsection. Before the hearing for a final extreme risk protection order, the court shall order that the Office of the Attorney General:

**(1)** Conduct a reasonable search of all available records to determine whether the respondent owns any firearms or ammunition;

**(2)** Conduct a reasonable search of all available records of the petitioner's mental health;

**(3)** Perform a national criminal history background check; and

**(4)** Submit its findings under this subsection to the court.

**(e)** In determining whether to issue a final extreme risk protection order pursuant to this section, the court shall consider all relevant evidence, including:

**(1)** Any history or pattern of threats of violence, or acts of violence, by the respondent directed toward themselves or others;

**(2)** Any recent threats of violence, or acts of violence, by the respondent directed toward themselves or others;

**(3)** The respondent's acquisition of any firearms, ammunition, or other deadly or dangerous weapons within one year before the filing of the petition;

**(4)** The unlawful or reckless use, display, or brandishing of a firearm or other weapon by the respondent;

**(5)** Respondent's criminal history;

**(6)** Respondent's violation of a court order;

**(7)** Evidence of the respondent experiencing a mental health crisis, or other dangerous mental health issues; and

**(8)** Respondent's use of a controlled substance, as that term is defined in § 48-901.02(4).

**(f)** The court shall, before issuing a final extreme risk protection order, examine any witnesses under oath.

(g) The court shall issue a final extreme risk protection order if the petitioner establishes by a preponderance of the evidence that the respondent poses a significant danger of causing bodily injury to self or others by having possession or control of, purchasing, or receiving any firearm or ammunition.

(h) A final extreme risk protection order issued under this section shall state:

(1) That the respondent is prohibited from having possession or control of, purchasing, or receiving any firearm, ammunition, registration certificate, license to carry a concealed pistol, or dealer's license for one year after the date and time the order was issued;

(2) The date and time the order was issued;

(3) The date and time the order will expire;

(4) The grounds upon which the order was issued;

(5) The procedures for the:

(A) Renewal of a final extreme risk protection order pursuant to § 7-2510.06;

(B) Surrender of firearms, ammunition, registration certificates, licenses to carry a concealed pistol, or dealer's licenses in the respondent's possession, control, or ownership pursuant to § 7-2510.07; and

(C) Termination of a final extreme risk protection order pursuant to § 7-2510.08; and

(6) That the respondent may seek the advice of an attorney as to any matter connected with a petition filed under this subchapter.

(i) A final extreme risk protection order issued pursuant to this section shall expire one year after the issuance of the order, unless the order is terminated pursuant to § 7-2510.08 before its expiration.

#### **§ 7-2510.04. Ex parte extreme risk protection orders.**

(a) When filing a petition for a final extreme risk protection order, a petitioner may also request that an ex parte extreme risk protection order be issued without notice to the respondent.

(b) The court may hold a hearing on any request for an ex parte extreme risk protection order filed under this section.

(c) In determining whether to issue an ex parte extreme risk protection order pursuant to this section, the court shall consider any exhibits, affidavits, supporting documents, and all other relevant evidence, including:

(1) Any history or pattern of threats of violence, or acts of violence, by the respondent directed toward themselves or others;

(2) Any recent threats of violence, or acts of violence, by the respondent directed toward themselves or others;

(3) The respondent's acquisition of any firearms, ammunition, or other deadly or dangerous weapons within one year before the filing of the petition;

(4) The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

(5) Respondent's criminal history;

(6) Respondent's violation of a court order;

(7) Evidence of the respondent experiencing a mental health crisis, or other dangerous mental health issues; and

(8) Respondent's use of a controlled substance, as that term is defined in § 48-901.02.

(d) The court may grant a request under this section based solely on an affidavit or sworn testimony of the petitioner.

(e) The court shall issue an ex parte extreme risk protection order if the petitioner establishes that there is probable cause to believe that the respondent poses a significant danger of causing bodily injury to self or others by having possession or control of, purchasing, or receiving any firearm or ammunition.

(f) If the petitioner requests that the court issue an ex parte extreme risk protection order pursuant to section, the court shall grant or deny the request on the same day that the request was made, unless the request is filed too late in the day to permit effective review, in which case the court shall grant or deny the request the next day the court is open.

(g) An ex parte extreme risk protection order shall state:

(1) That the respondent is prohibited from having possession or control of, purchasing, or receiving any firearm, ammunition, registration certificate, license to carry a concealed pistol, or dealer's license while the order is in effect;

(2) The date and time the order was issued;

(3) The date and time the order will expire;

(4) The grounds upon which the order was issued;

(5) The time and place of the hearing to determine whether to issue a final extreme risk protection order;

(6) That following the hearing, the court may issue a final extreme risk protection order that will be in effect for up to one year;

(7) The procedures for the surrender of firearms, ammunition, registration certificates, licenses to carry a concealed pistol, or dealer's licenses in the respondent's possession, control, or ownership pursuant to § 7-2510.07; and

(8) That the respondent may seek the advice of an attorney as to any matter connected with this subchapter, and that the attorney should be consulted promptly so that the attorney may assist the respondent in any matter connected with the ex parte extreme risk protection order.

(h) An ex parte extreme risk protection order issued pursuant to this section shall remain in effect for an initial period not to exceed 14 days. The court may extend an ex parte extreme risk protection order in additional 14-day increments for good cause shown.

(i) The court shall terminate an ex parte extreme risk protection order in effect against the respondent at the time the court grants or denies the petition for a final extreme risk protection order.

#### **§ 7-2510.05. Service of extreme risk protection orders.**

(a)

(1) Except as provided in subsection (b) of this section, an extreme risk protection order issued pursuant to § 7-2510.03 or § 7-2510.04, or renewed pursuant to § 7-2510.06, shall be personally served upon the respondent by a sworn member of the Metropolitan Police Department.

(2) The court shall submit a copy of extreme risk protection order to the Metropolitan Police Department on or before the next business day after the issuance of the order for service upon the respondent. Service of an extreme risk protection order shall take precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(3) If the Metropolitan Police Department cannot complete personal service upon the respondent within 7 days after receiving an order from the court under paragraph (2) of this subsection, the Metropolitan Police



Department shall notify the petitioner.

**(4)** Within 24 hours after service, the Metropolitan Police Department shall submit proof of service to the court.

**(b)** If the respondent was personally served in court when the extreme risk protection order was issued, the requirements of subsection **(a)** of this section shall be waived.

**§ 7-2510.06. Renewal of final extreme risk protection orders.**

**(a)** At least 120 days before the expiration of a final extreme risk protection order, the court shall notify the petitioner of the date that the order is set to expire and advise the petitioner of the procedures for seeking a renewal of the order.

**(b)** A petitioner may request a renewal of a final extreme risk protection order, including an order previously renewed under this section, at any time within the 120-day period immediately preceding the expiration of the order.

**(c)** Personal service of the notice of hearing and request for renewal shall be made upon the respondent by a Metropolitan Police Department officer not fewer than 21 business days before the hearing.

**(d)** In determining whether to renew an extreme risk protection order pursuant to this section, the court shall consider all relevant evidence, including:

**(1)** Any history or pattern of threats of violence, or acts of violence, by the respondent directed toward themselves or others;

**(2)** Any recent threats of violence, or acts of violence, by the respondent directed toward themselves or others;

**(3)** The respondent's acquisition of any firearms, ammunition, or other deadly or dangerous weapons within one year before the filing of the petition;

**(4)** The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

**(5)** Respondent's criminal history;

**(6)** Respondent's violation of a court order;

**(7)** Evidence of the respondent experiencing a mental health crisis, or other dangerous mental health issues; and

**(8)** Respondent's use of a controlled substance, as that term is defined in § 48-901.02.

**(e)** The court shall, before renewing a final extreme risk protection order, examine any witnesses under oath.

**(f)** The court shall, after notice and a hearing, renew a final extreme risk protection order if the court finds, by a preponderance of the evidence, that the respondent continues to pose a significant danger of causing bodily injury to self or others by having possession or control of, purchasing, or receiving any firearm or ammunition.

**(g)** A final extreme risk protection order renewed pursuant to this section, shall state:

**(1)** That the respondent is prohibited from having possession or control of, purchasing, or receiving any firearm, ammunition, registration certificate, license to carry a concealed pistol, or dealer's license for one year after the date and time the order was renewed;

**(2)** The date and time the order was renewed;

**(3)** The date and time the order will expire;

- (4) The grounds upon which the order was renewed;
- (5) The procedures for the:
  - (A) Renewal of a final extreme risk protection order pursuant to this section;
  - (B) Surrender of firearms, ammunition, registration certificates, licenses to carry a concealed pistol, or dealer's licenses in the respondent's possession, control, or ownership pursuant to § 7-2510.07; and
  - (C) Termination of a final extreme risk protection order pursuant to § 7-2510.08; and
- (6) That the petitioner may seek the advice of an attorney as to any matter connected with this subchapter.
- (h) An extreme risk protection order renewed pursuant to this section shall expire one year after the issuance of the order, unless that order is terminated pursuant to § 7-2510.08 before its expiration.

**§ 7-2510.07. Surrender of firearms, ammunition, registration certificates, licenses to carry a concealed pistol, and dealer's licenses.**

- (a) Repealed.
- (b) A Metropolitan Police Department officer serving an extreme risk protection order shall:
  - (1) Request that all firearms, ammunition, registration certificates, licenses to carry a concealed pistol, and dealer's licenses be immediately surrendered; and
  - (2) Take possession of all firearms, ammunition, registration certificates, licenses to carry a concealed pistol, and dealer's licenses in the respondent's possession, control, or ownership that are surrendered or discovered pursuant to a lawful search.
- (c) A Metropolitan Police Department officer serving an extreme risk protection order shall:
  - (1) At the time of surrender or removal, the Metropolitan Police Department officer taking possession of a firearm, ammunition, registration certificate, license to carry a concealed pistol, or dealer's license pursuant to an extreme risk protection order shall make a record identifying all firearms, ammunition, registration certificates, licenses to carry a concealed pistol, and dealer's licenses that have been surrendered or removed and provide a receipt to the respondent.
  - (2) Within 72 hours after serving an extreme risk protection order, the officer shall file a copy of the receipt provided to the respondent pursuant to paragraph (1) of this subsection with the court and the Chief of Police.
- (d) If a person other than the respondent claims title to any firearm or ammunition surrendered or removed pursuant to this section, and he or she is determined by the Metropolitan Police Department to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to him or her; provided, that the firearm or ammunition is removed from the respondent's possession or control, and the lawful owner agrees to store the firearm or ammunition in a manner such that the respondent does not have possession or control of the firearm or ammunition.
- (e) The Metropolitan Police Department may charge the respondent a fee not to exceed the actual costs incurred by the Metropolitan Police Department for storing any firearms or ammunition surrendered or removed pursuant to this section for the duration of the extreme risk protection order, including a renewal of the extreme risk protection order, and up to 6 months after the date the order expires or is terminated.
- (f) A Metropolitan Police Department officer serving an extreme risk protection order shall:
  - (1) At the time of surrender or removal, the Metropolitan Police Department officer taking possession of a firearm, ammunition, registration certificate, license to carry a concealed pistol, or dealer's license pursuant

to an extreme risk protection order shall make a record identifying all firearms, ammunition, registration certificates, licenses to carry a concealed pistol, and dealer's licenses that have been surrendered or removed and provide a receipt to the respondent. If a respondent peaceably surrenders any firearms or ammunition pursuant to this section, such surrender shall preclude the arrest and prosecution of the respondent for violating, with respect to the firearms or ammunition surrendered:

(A) Section 7-2506.01; and

(B) Sections 22-4503 and 22-4504(a) and (a-1).

(2) The surrender of any firearm or ammunition pursuant to this section shall not constitute a voluntary surrender for the purposes § 7-2507.05.

#### **§ 7-2510.07a. Nature and issuance of search warrants.**

(a) If the court issues a final extreme risk protection order pursuant to § 7-2510.03, issues an ex parte extreme risk protection order pursuant to § 7-2510.04, or renews a final extreme risk protection order pursuant to § 7-2510.06, the court may issue an accompanying search warrant. The search warrant may authorize a search to be conducted anywhere in the District of Columbia and shall be executed pursuant to its terms.

(b) A search warrant issued under this section may direct a search of any or all of the following:

(1) One or more designated or described places or premises;

(2) One or more designated or described vehicles;

(3) One or more designated or described physical objects; or

(4) The respondent.

(c) The search warrant shall authorize the search for, and seizure of, any firearms, ammunition, registration certificates, licenses to carry a concealed pistol, or dealer's licenses that the respondent is prohibited from having possession or control of, purchasing, or receiving pursuant to the terms of an extreme risk protection order issued or renewed under this subchapter.

(d) A search warrant issued under this section may be addressed to a specific law enforcement officer or to any classification of officers of the Metropolitan Police Department of the District of Columbia or other agency authorized to make arrests or execute process in the District of Columbia.

(e) A search warrant issued under this section shall contain:

(1) The name of the issuing court, the name and signature of the issuing judge, and the date of issuance;

(2) If the search warrant is addressed to a specific officer, the name of that officer, otherwise, the classifications of officers to whom the warrant is addressed;

(3) A designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) A description of the property whose seizure is the object of the search warrant;

(5) A direction that the search warrant be executed between 6 a.m. and 9:00 p.m. or, where the court has found cause therefor, including one of the grounds set forth in § 7-2510.07b(c), an authorization for execution at any time of day or night; and

(6) A direction that the search warrant and an inventory of any property seized pursuant thereto be returned to the court within 72 hours after its execution.

#### **§ 7-2510.07b. Time of execution of search warrants.**

(a) A search warrant issued under § 7-2510.07a shall not be executed after the expiration of the extreme risk protection order it accompanies, or after 10 days from the date the warrant was issued, whichever is earlier.

(b) The search warrant shall be returned to the court after its execution or expiration in accordance with § 7-2510.07a(e)(6).

(c) A search warrant issued under § 7-2510.07a may be executed on any day of the week and, in the absence of express authorization in the warrant pursuant to subsection (c) of this section, shall be executed only between 6 a.m. and 9:00 p.m.

(d) If the court finds that there is probable cause to believe that the search warrant cannot be executed between 6 a.m. and 9:00 p.m., the property sought is likely to be removed or destroyed if not seized forthwith, or the property sought is not likely to be found except at certain times or in certain circumstances, the court may include in the search warrant an authorization for execution at any time of day or night.

#### **§ 7-2510.07c. Execution of search warrants.**

(a) An officer executing a search warrant issued under § 7-2510.07a directing a search of a dwelling house or other building or a vehicle shall execute that search warrant in accordance with 18 U.S.C. § 3109.

(b) An officer executing a search warrant issued under § 7-2510.07a directing a search of a person shall give, or make reasonable effort to give, notice of his identity and purpose to the person, and, if such person thereafter resists or refuses to permit the search, such person shall be subject to arrest by such officer pursuant to § 23-581(a) for violation of § 22-405.01 or other applicable provision of law.

(c)

(1) An officer or agent executing a search warrant issued under § 7-2510.07a shall write and subscribe an inventory setting forth the time of the execution of the search warrant and the property seized under it.

(2) If the search is of a person, a copy of the search warrant and of the return shall be given to that person.

(3) If the search is of a place, vehicle, or object, a copy of the search warrant and of the return shall be given to the owner thereof or, if the owner is not present, to an occupant, custodian, or other person present. If no person is present, the officer shall post a copy of the warrant and of the return upon the premises, vehicle, or object searched.

(d) A copy of the search warrant shall be filed with the court on the next court day after its execution, together with a copy of the return.

(e) An officer executing a search warrant issued under § 7-2510.07a directing a search of premises or a vehicle may search any person therein to the extent reasonably necessary to:

(1) Protect himself or others from the use of any weapon which may be concealed upon the person; or

(2) Find property enumerated in the warrant which may be concealed upon the person.

#### **§ 7-2510.07d. Disposition of property.**

(a) A law enforcement officer or a designated civilian employee of the Metropolitan Police Department who seizes property in the execution of a search warrant issued under § 7-2510.07a shall cause it to be safely kept until the property is returned to:

(1) The respondent, upon the expiration of the extreme risk protection order that the search warrant accompanied; or

(2) A lawful owner, other than the respondent, claiming title to the property pursuant to § 7-2510.07(d).

**(b)** Nothing in subsection (a) of this section shall be construed to require the Metropolitan Police Department to release property seized pursuant to a warrant to a person who did not legally possess the property at the time it was taken.

**(c)** No property seized shall be released or destroyed except in accordance with law and upon order of a court or of the United States Attorney for the District of Columbia or the Office of the Attorney General.

**§ 7-2510.08. Termination of extreme risk protection orders.**

**(a)** Any respondent against whom a final extreme risk protection order, including a renewal of the extreme risk protection order, was issued may, on one occasion during the one-year period the order is in effect, submit a written motion to the Superior Court for the District of Columbia requesting that the order be terminated.

**(b)** Upon receipt of the motion for termination, the court shall set a date for a hearing, and notice of the request shall be served on the petitioner. The hearing shall occur at least 14 days after the date of service of the motion upon the petitioner.

**(c)** In determining whether terminate a final extreme risk protection order pursuant to this section, the court shall consider all relevant evidence, including:

**(1)** Any history or pattern of threats of violence, or acts of violence, by the respondent directed toward themselves or others;

**(2)** Any recent threats of violence, or acts of violence, by the respondent directed toward themselves or others;

**(3)** The respondent's acquisition of any firearms, ammunition, or other deadly or dangerous weapons within one year before the filing of the petition;

**(4)** The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

**(5)** Respondent's criminal history;

**(6)** Respondent's violation of a court order;

**(7)** Evidence of the respondent experiencing a mental health crisis, or other dangerous mental health issues; and

**(8)** Respondent's use of a controlled substance, as that term is defined in § 48-901.02.

**(d)** The court shall, before terminating a final extreme risk protection order, examine any witnesses under oath.

**(e)** The court shall terminate a final extreme risk protection order if the respondent establishes by a preponderance of the evidence that the respondent does not pose a significant danger of causing bodily injury to self or others by having possession or control of, purchasing, or receiving any firearm or ammunition.

**(f)**

**(1)** If the court grants a motion to terminate pursuant to this section, notice of the termination shall be personally served upon the petitioner by a sworn member of the Metropolitan Police Department and sent to the petitioner by electronic mail.

**(1A)** If the petitioner or respondent was personally served in court when the motion to terminate an extreme risk protection order was granted, the personal service requirement of paragraph (1) of this subsection shall be waived with respect to the party served in court.

**(2)** The court shall submit a copy of the order issued under this section to the Metropolitan Police Department

on or before the next business day for service upon the respondent. Service of a notice of termination shall take precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(3) If the Metropolitan Police Department cannot complete personal service upon the petitioner within 7 days after receiving an order from the court under paragraph (2) of this subsection, the Metropolitan Police Department shall notify the court.

(4) Within one business day after service, the Metropolitan Police Department shall submit proof of service to the court.

#### **§ 7-2510.09. Return or disposal of firearms or ammunition.**

(a)

(1) If an extreme risk protection order is terminated, or expires and is not renewed, the Metropolitan Police Department shall notify the respondent that he or she may request the return of any firearm or ammunition surrendered or removed if that firearm or ammunition had been lawfully possessed.

(2) The Metropolitan Police Department shall return any surrendered or removed firearm or ammunition requested by a respondent only after confirming that:

(A) The respondent is eligible to own or possess the firearms and ammunition;

(B) The firearm or ammunition was lawfully possessed; and

(C) The respondent has paid any applicable fee charged against the respondent by the Metropolitan Police Department pursuant to § 7-2510.07(e).

(b)

(1) If a respondent who lawfully possessed a firearm or ammunition does not wish to have the firearm or ammunition returned, or the respondent is no longer eligible to own or possess firearms or ammunition, the respondent may sell or transfer title of the firearm or ammunition in accordance with applicable law.

(2) The Metropolitan Police Department shall transfer possession of a firearm or ammunition through a licensed firearm dealer to a purchaser or recipient, but only after the licensed firearms dealer has displayed written proof of the sale or transfer of the firearm or ammunition from the respondent to the dealer, and the Metropolitan Police Department has verified the transfer with the respondent.

(c) If the respondent does not request return of a firearm or ammunition under subsection (a) of this section, or sell or transfer a firearm or ammunition under subsection (b) of this section, within 6 months after the date the extreme risk protection order is terminated, or expires and is not renewed, the Metropolitan Police Department shall treat the firearm or ammunition as surrendered and the firearm or ammunition shall be subject to § 7-2507.05(b).

#### **§ 7-2510.10. Recording requirements.**

(a) The Metropolitan Police Department shall:

(1) Maintain a searchable database of extreme risk protection orders issued, terminated, and renewed pursuant to this subchapter; and

(2) Make the information maintained in paragraph (1) of this subsection available to any other relevant law enforcement, pretrial, corrections, or community supervision agency upon request.

(b) The Mayor, or the Mayor's designee, shall immediately submit information about extreme risk protection orders issued, renewed, or terminated pursuant to this subchapter to the National Instant Criminal Background

Check System for the purposes of firearm purchaser background checks.

**§ 7-2510.011. Violation of an extreme risk protection order.**

(a) A person violates an extreme risk protection order if, after receiving actual notice of being subject to an extreme risk protection order, the person knowingly has possession or control of, purchases, or receives a firearm or ammunition.

(b) A person convicted of violating an extreme risk protection order shall be:

- (1) Fined no more than the amount set forth in § 22-3571.01, or incarcerated for no more than 180 days, or both; and
- (2) Prohibited from having possession or control of, purchasing, or receiving a firearm or ammunition for a period of 5 years after the date of conviction.

(c) A violation of an extreme risk protection order shall not be considered a:

- (1) Weapons offense; or
- (2) Gun offense, as that term is defined in § 7-2508.01(3).

**§ 7-2510.12. Law enforcement to retain other authority.**

Nothing in this subchapter shall be construed to affect the ability of a law enforcement officer, as that term is defined in § 7-2509.01(3), to remove firearms or ammunition from any person pursuant to other lawful authority.

**§ 7-2510.13. Extreme Risk Protection Order Implementation Working Group.**

(a) There is established an Extreme Risk Protection Order Implementation Working Group (“Working Group”), which shall be composed of the following individuals:

(1) District government members, or their designees:

- (A) The Chairperson of the Council’s Committee on the Judiciary and Public Safety;
- (B) The Deputy Mayor for Public Safety and Justice;
- (C) The Deputy Mayor for Health and Human Services;
- (D) The Attorney General for the District of Columbia;
- (E) The Chief of the Metropolitan Police Department;
- (F) The Gun Violence Prevention Director in the Office of the City Administrator;
- (G) The Executive Director of the Office of Neighborhood Safety and Engagement;
- (H) The Director of the Department of Youth Rehabilitation Services;
- (I) The Chief Medical Examiner;
- (J) The Director of the Department of Forensic Sciences;
- (K) The Director of the Office of Victim Services and Justice Grants;
- (L) The Executive Director of the Criminal Justice Coordinating Council; and
- (M) The Director of the Department of Behavioral Health; and

(2) Community members and organizations, or their designees:

- (A) Everytown for Gun Safety;

- (B)** Moms Demand Action for Gun Sense in America, D.C. Chapter;
- (C)** The Giffords Law Center to Prevent Gun Violence;
- (D)** The Coalition to Stop Gun Violence;
- (E)** Brady: United Against Gun Violence;
- (F)** The D.C. Appleseed Center for Law & Justice;
- (G)** The D.C. Coalition Against Domestic Violence;
- (H)** The D.C. Behavioral Health Association;
- (I)** The Council for Court Excellence;
- (J)** The American Foundation for Suicide Prevention, National Capital Area Chapter; and
- (K)** One representative from each of the District’s violence interruption contractors with the Office of Neighborhood Safety and Engagement and the Office of the Attorney General’s Cure the Streets program.

**(b)** The Working Group may also request the participation of other subject matter experts, as well as designees of the following:

- (1)** The Chief Judge of the Superior Court of the District of Columbia; and
- (2)** The United States Attorney for the District of Columbia.

**(c)** The Chairperson of the Council’s Committee on the Judiciary and Public Safety and the Deputy Mayor for Public Safety and Justice shall serve as the co-chairs of the Working Group.

**(d)** The duties of the Working Group shall include:

- (1)** Improving public awareness of extreme risk protection orders;
- (2)** Improving the coordination of District and federal agencies regarding the filing, adjudication, and execution of extreme risk protection orders;
- (3)** Facilitating the education of behavioral and mental health professionals about extreme risk protection orders;
- (4)** Advancing the development of District government policies and procedures to govern extreme risk protection orders, such as written directives of the Metropolitan Police Department; and
- (5)** Reviewing and incorporating best practices from other jurisdictions concerning extreme risk protection order laws, policies, and procedures.

**(e)** This section shall expire on January 1, 2023.



# Florida

**Types of orders:** Temporary ex parte risk protection order, Risk protection order

**Citation:** Fla. Stat. Ann. § 790.40

## Highlighted Provisions

### **Persons eligible to petition:**

Law enforcement officer or law enforcement agency.

### **Standard of proof:**

Temporary ex parte risk: reasonable cause

Final: clear and convincing evidence

### **Findings required:**

Temporary Ex Parte: the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition

Final: Respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition

### **Duration of order:**

Temporary ex parte: until a hearing is held (which is no later than 14 days after court issues order)

Final: a period the court deems appropriate, up to and including but not exceeding 12 months

### **Service on respondent:**

For a temporary ex parte order or a risk protection order, respondent can be served by the local sheriff of the county where the respondent resides or another law enforcement agent if authorized by the circuit court. Service must be completed as soon as possible, and it can be performed on any day of the week and at any time of day or night.

### **Notification of persons at risk:**

Petitioner must make a good faith effort to provide notice to a family or household member of the respondent and to any known 3rd party who may be at risk of violence.

The court must notify the petitioner of the impending end of a risk protection order (at least 30 days before the date the order ends).

### **Filing fees:**

A court or a public agency may not charge fees for filing or for service of process to a petitioner seeking relief under this section and must provide the necessary number of certified copies, forms, and instructional brochures free of charge.

### **Renewal/Termination:**

Termination: respondent may submit one written request for a hearing to vacate a risk protection order after the initial order and each extension. Respondent must prove clear and convincing evidence that he or she does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition.

Renewal: petitioner may motion to request an extension of a risk protection order at any time within 30 days before the end of the order.

**Firearm prohibitions:**

Respondent may not have in their custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition.

**Firearm relinquishment process:**

The respondent must comply with the court's order to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in the respondent's custody, control, or possession except as provided in subsection (9), and any license to carry a concealed weapon or firearm issued to the respondent under s. 790.06.

Law enforcement may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned by the respondent if the officer has probable cause to believe that there are firearms or ammunition owned by the respondent in the respondent's custody, control, or possession which have not been surrendered.

**Firearm disposal process:**

Any firearm surrendered by the respondent that remains unclaimed for 1 year after an order to vacate the risk protection order will be disposed of according to the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

**Limitations on liability:**

This section does not impose criminal or civil liability on any persons or entity for acts or omissions related to obtaining a risk protection order or temporary risk protection order (except as provided in subsection (8) and subsection (11)).

**Return/transfer of firearms:**

Return: if the risk protection order is vacated or ends without extension, the firearm/ammunition owned by the respondent or license to carry a concealed weapon/firearm that was surrendered or seized must be returned as requested by respondent. The law enforcement agency must confirm with the court that the risk protection order has vacated or ended without extension and that the respondent is eligible to own or possess firearms and ammunition under federal and state law.

Transfer: Respondent may elect to transfer all firearms and ammunition owned by the respondent that has been surrendered and seized to another person to receive the firearms and ammunition. The local law enforcement agency may allow the transfer only if the recipient is currently eligible to own or possess firearms and ammunition under federal and state law through a background check, attests to storing the firearms and ammunition in a manner in which the respondent does not have access to the firearms and ammunition for the duration of the risk protection order, and the recipient attests not to transfer the firearms or ammunition back to the respondent for the duration of the risk protection order.

**Warrant authority:**

Law enforcement may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned by the respondent if the officer has probable cause to believe that there are firearms or ammunition owned by the respondent in the respondent's custody, control, or possession which have not been surrendered.

**Venue:**

An action for a risk protection order must be filed in the county where the petitioner's law enforcement office is located or the county where the respondent resides.

**Penalties:**

A felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Entry Registry/NCIC POF:**

(Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary

ex parte risk protection order issued under this section into the uniform case reporting system.

**(b)** Within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the Florida Crime Information Center and National Crime Information Center. The order must remain in each system for the period stated in the order, and the law enforcement agency may only remove an order from the systems which has ended or been vacated. Entry of the order into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

**(c)** The issuing court shall, within 3 business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.

## Statutes

### § 790.401. Risk protection orders.

**(1) Definitions.** — As used in this section, the term:

**(a)** “Petitioner” means a law enforcement officer or a law enforcement agency that petitions a court for a risk protection order under this section.

**(b)** “Respondent” means the individual who is identified as the respondent in a petition filed under this section.

**(c)** “Risk protection order” means a temporary ex parte order or a final order granted under this section.

**(2) Petition for a risk protection order.** — There is created an action known as a petition for a risk protection order.

**(a)** A petition for a risk protection order may be filed by a law enforcement officer or law enforcement agency.

**(b)** An action under this section must be filed in the county where the petitioner’s law enforcement office is located or the county where the respondent resides.

**(c)** Such petition for a risk protection order does not require either party to be represented by an attorney.

**(d)** Notwithstanding any other law, attorney fees may not be awarded in any proceeding under this section.

**(e)** A petition must:

**1.** Allege that the respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition, and must be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;

**2.** Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent’s current ownership, possession, custody, or control; and

**3.** Identify whether there is a known existing protection order governing the respondent under s. 741.30, s. 784.046, or s. 784.0485 or under any other applicable statute.

**(f)** The petitioner must make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a risk protection order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice.

**(g)** The petitioner must list the address of record on the petition as being where the appropriate law enforcement agency is located.

**(h)** A court or a public agency may not charge fees for filing or for service of process to a petitioner seeking relief under this section and must provide the necessary number of certified copies, forms, and instructional brochures free of charge.

**(i)** A person is not required to post a bond to obtain relief in any proceeding under this section.

**(j)** The circuit courts of this state have jurisdiction over proceedings under this section.

### **(3) Risk protection order hearings and issuance. —**

**(a)** Upon receipt of a petition, the court must order a hearing to be held no later than 14 days after the date of the order and must issue a notice of hearing to the respondent for the same.

**1.** The clerk of the court shall cause a copy of the notice of hearing and petition to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent as provided in subsection (5).

**2.** The court may, as provided in subsection (4), issue a temporary ex parte risk protection order pending the hearing ordered under this subsection. Such temporary ex parte order must be served concurrently with the notice of hearing and petition as provided in subsection (5).

**3.** The court may conduct a hearing by telephone pursuant to a local court rule to reasonably accommodate a disability or exceptional circumstances. The court must receive assurances of the petitioner's identity before conducting a telephonic hearing.

**(b)** Upon notice and a hearing on the matter, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court must issue a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months.

**(c)** In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

**1.** A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm.

**2.** An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others.

**3.** Evidence of the respondent being seriously mentally ill or having recurring mental health issues.

**4.** A violation by the respondent of a risk protection order or a no contact order issued under s. 741.30, s. 784.046, or s. 784.0485.

**5.** A previous or existing risk protection order issued against the respondent.

**6.** A violation of a previous or existing risk protection order issued against the respondent.

7. Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28.
8. Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons.
9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.
10. The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.
11. Whether the respondent, in this state or any other state, has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence.
12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.
13. Evidence of recent acquisition of firearms or ammunition by the respondent.
14. Any relevant information from family and household members concerning the respondent.
15. Witness testimony, taken while the witness is under oath, relating to the matter before the court.

**(d)** A person, including an officer of the court, who offers evidence or recommendations relating to the cause of action either must present the evidence or recommendations in writing to the court with copies to each party and his or her attorney, if one is retained, or must present the evidence under oath at a hearing at which all parties are present.

**(e)** In a hearing under this section, the rules of evidence apply to the same extent as in a domestic violence injunction proceeding under s. 741.30.

**(f)** During the hearing, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and, if such determination is made, may order such evaluations, if appropriate.

**(g)** A risk protection order must include all of the following:

1. A statement of the grounds supporting the issuance of the order;
2. The date the order was issued;
3. The date the order ends;
4. Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;
5. The address of the court in which any responsive pleading should be filed;
6. A description of the requirements for the surrender of all firearms and ammunition that the respondent owns, under subsection (7); and
7. The following statement:

“To the subject of this protection order: This order will last until the date noted above. If you have not done so already, you must surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition that you own in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You have the right to request one hearing to vacate this order, starting after the date of the issuance of this order, and to request another hearing after every extension of the order, if any. You may seek the advice of an attorney as to any matter connected with this order.”

**(h)** If the court issues a risk protection order, the court must inform the respondent that he or she is entitled to request a hearing to vacate the order in the manner provided by subsection (6). The court shall provide the respondent with a form to request a hearing to vacate.

**(i)** If the court denies the petitioner’s request for a risk protection order, the court must state the particular reasons for the denial.

**(4)** Temporary ex parte risk protection orders. —

**(a)** A petitioner may request that a temporary ex parte risk protection order be issued before a hearing for a risk protection order, without notice to the respondent, by including in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.

**(b)** In considering whether to issue a temporary ex parte risk protection order under this section, the court shall consider all relevant evidence, including the evidence described in paragraph (3)(c).

**(c)** If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition, the court must issue a temporary ex parte risk protection order.

**(d)** The court must hold a temporary ex parte risk protection order hearing in person or by telephone on the day the petition is filed or on the business day immediately following the day the petition is filed.

**(e)** A temporary ex parte risk protection order must include all of the following:

1. A statement of the grounds asserted for the order;
2. The date the order was issued;
3. The address of the court in which any responsive pleading may be filed;
4. The date and time of the scheduled hearing;
5. A description of the requirements for the surrender of all firearms and ammunition that the respondent owns, under subsection (7); and
6. The following statement:

“To the subject of this protection order: This order is valid until the date noted above. You are required to surrender all firearms and ammunition that you own in your custody, control, or possession. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You must surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes. A hearing will be held on the date and at the time noted above to determine if a risk protection order should be issued. Failure to appear at that hearing may result in a court issuing an order against you which is valid for 1 year. You may seek the advice of an attorney as to any matter connected with this order.”

**(f)** A temporary ex parte risk protection order ends upon the hearing on the risk protection order.

**(g)** A temporary ex parte risk protection order must be served by a law enforcement officer in the same manner as provided for in subsection (5) for service of the notice of hearing and petition and must be served concurrently with the notice of hearing and petition.

**(h)** If the court denies the petitioner’s request for a temporary ex parte risk protection order, the court must

state the particular reasons for the denial.

**(5) Service. —**

**(a)** The clerk of the court shall furnish a copy of the notice of hearing, petition, and temporary ex parte risk protection order or risk protection order, as applicable, to the sheriff of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of a temporary ex parte risk protection order or a risk protection order that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. The clerk of the court shall be responsible for furnishing to the sheriff information on the respondent's physical description and location. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency effecting service pursuant to this section shall use service and verification procedures consistent with those of the sheriff. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

**(b)** All orders issued, changed, continued, extended, or vacated after the original service of documents specified in paragraph (a) must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

**(6) Termination and extension of orders. —**

**(a)** The respondent may submit one written request for a hearing to vacate a risk protection order issued under this section, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.

**1.** Upon receipt of the request for a hearing to vacate a risk protection order, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance with subsection (5). The hearing must occur no sooner than 14 days and no later than 30 days after the date of service of the request upon the petitioner.

**2.** The respondent shall have the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition. The court may consider any relevant evidence, including evidence of the considerations listed in paragraph (3)(c).

**3.** If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.

**4.** The law enforcement agency holding any firearm or ammunition or license to carry a concealed weapon or firearm that has been surrendered pursuant to this section shall be notified of the court order to vacate the risk protection order.

**(b)** The court must notify the petitioner of the impending end of a risk protection order. Notice must be received by the petitioner at least 30 days before the date the order ends.

**(c)** The petitioner may, by motion, request an extension of a risk protection order at any time within 30 days before the end of the order.

**1.** Upon receipt of the motion to extend, the court shall order that a hearing be held no later than 14 days after the date the order is issued and shall schedule such hearing.

**a.** The court may schedule a hearing by telephone in the manner provided by subparagraph (3)(a)3.

**b.** The respondent must be personally serviced in the same manner provided by subsection (5).

**2.** In determining whether to extend a risk protection order issued under this section, the court may consider all relevant evidence, including evidence of the considerations listed in paragraph (3)(c).

**3.** If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order as provided in subsection (3) continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension.

**4.** The court may extend a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate as provided in paragraph (a) or to another extension order by the court.

**(7) Surrender of firearms and ammunition. —**

**(a)** Upon issuance of a risk protection order under this section, including a temporary ex parte risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in the respondent's custody, control, or possession except as provided in subsection (9), and any license to carry a concealed weapon or firearm issued under s. 790.06, held by the respondent.

**(b)** The law enforcement officer serving a risk protection order under this section, including a temporary ex parte risk protection order, shall request that the respondent immediately surrender all firearms and ammunition owned by the respondent in his or her custody, control, or possession and any license to carry a concealed weapon or firearm issued under s. 790.06, held by the respondent. The law enforcement officer shall take possession of all firearms and ammunition owned by the respondent and any license to carry a concealed weapon or firearm issued under s. 790.06, held by the respondent, which are surrendered. Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent must surrender any firearms and ammunition owned by the respondent and any license to carry a concealed weapon or firearm issued under s. 790.06, held by the respondent, in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present. Notwithstanding ss. 933.02 and 933.18, a law enforcement officer may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned by the respondent if the officer has probable cause to believe that there are firearms or ammunition owned by the respondent in the respondent's custody, control, or possession which have not been surrendered.

**(c)** At the time of surrender, a law enforcement officer taking possession of any firearm or ammunition owned by the respondent, or a license to carry a concealed weapon or firearm issued under s. 790.06, held by the respondent shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered, and any license surrendered and shall provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

**(d)** Notwithstanding ss. 933.02 and 933.18, upon the sworn statement or testimony of any person alleging that



the respondent has failed to comply with the surrender of firearms or ammunition owned by the respondent, as required by an order issued under this section, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition owned by the respondent in the respondent's custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant describing the firearms or ammunition owned by the respondent and authorizing a search of the locations where the firearms or ammunition owned by the respondent are reasonably believed to be found and the seizure of any firearms or ammunition owned by the respondent discovered pursuant to such search.

**(e)** If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to this section and he or she is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to him or her, if:

- 1.** The lawful owner agrees to store the firearm or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition.
- 2.** The firearm or ammunition is not otherwise unlawfully possessed by the owner.

**(f)** Upon the issuance of a risk protection order, the court shall order a new hearing date and require the respondent to appear no later than 3 business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition owned by the respondent in the respondent's custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.

**(g)** All law enforcement agencies must develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition, or licenses required to be surrendered under this section.

**(8)** Return and disposal of firearms and ammunition. —

**(a)** If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition owned by the respondent or a license to carry a concealed weapon or firearm issued under s. 790.06, held by the respondent, that has been surrendered or seized pursuant to this section must return such surrendered firearm, ammunition, or license to carry a concealed weapon or firearm issued under s. 790.06, as requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.

**(b)** If a risk protection order is vacated or ends without extension, the Department of Agriculture and Consumer Services, if it has suspended a license to carry a concealed weapon or firearm pursuant to this section, must reinstate such license only after confirming that the respondent is currently eligible to have a license to carry a concealed weapon or firearm pursuant to s. 790.06.

**(c)** A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition owned by the respondent.

**(d)** Any firearm and ammunition surrendered by a respondent pursuant to subsection (7) which remains unclaimed for 1 year by the lawful owner after an order to vacate the risk protection order shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

**(9)** Transfer of firearms and ammunition. — A respondent may elect to transfer all firearms and ammunition owned by the respondent that have been surrendered to or seized by a local law enforcement agency pursuant to subsection (7) to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency must allow such a transfer only if it is determined that the chosen recipient:

- (a) Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
- (b) Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and
- (c) Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.

**(10) Reporting of orders. —**

- (a) Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.
- (b) Within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the Florida Crime Information Center and National Crime Information Center. The order must remain in each system for the period stated in the order, and the law enforcement agency may only remove an order from the systems which has ended or been vacated. Entry of the order into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.
- (c) The issuing court shall, within 3 business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.
- (d) If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to paragraph (b).

**(11) Penalties. —**

- (a) A person who makes a false statement, which he or she does not believe to be true, under oath in a hearing under this section in regard to any material matter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (b) A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by an order issued under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**(12) Law enforcement retains other authority. —** This section does not affect the ability of a law enforcement officer to remove a firearm or ammunition or license to carry a concealed weapon or concealed firearm from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.

**(13) Liability. —** Except as provided in subsection (8) or subsection (11), this section does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a risk protection order or temporary ex parte risk protection order, including, but not limited to, providing notice to the petitioner, a family or household member of the respondent, and any known third party who may be at risk of violence or

failure to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing, or declining to file, a petition under this section.

**(14)** Instructional and informational material. —

**(a)** The Office of the State Courts Administrator shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the risk protection order process. The standard petition and order forms must be used after January 1, 2019, for all petitions filed and orders issued pursuant to this section. The office shall determine the significant non-English-speaking or limited English-speaking populations in the state and prepare the instructions and informational brochures and standard petitions and risk protection order forms in such languages. The instructions, brochures, forms, and handbook must be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and must be available online to the public.

**1.** The instructions must be designed to assist petitioners in completing the petition and must include a sample of a standard petition and order for protection forms.

**2.** The instructions and standard petition must include a means for the petitioner to identify, with only layman’s knowledge, the firearms or ammunition the respondent may own, possess, receive, or have in his or her custody or control. The instructions must provide pictures of types of firearms and ammunition that the petitioner may choose from to identify the relevant firearms or ammunition, or must provide an equivalent means to allow petitioners to identify firearms or ammunition without requiring specific or technical knowledge regarding the firearms or ammunition.

**3.** The informational brochure must describe the use of and the process for obtaining, extending, and vacating a risk protection order under this section and must provide relevant forms.

**4.** The risk protection order form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order and the following statement: “You have the sole responsibility to avoid or refrain from violating this order’s provisions. Only the court can change the order and only upon written request.”

**5.** The court staff handbook must allow for the addition of a community resource list by the clerk of the court.

**(b)** Any clerk of court may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in paragraph (a).

**(c)** The Office of the State Courts Administrator shall distribute a master copy of the petition and order forms, instructions, and informational brochures to the clerks of court. Distribution of all documents shall, at a minimum, be in an electronic format or formats accessible to all courts and clerks of court in the state.

**(d)** Within 90 days after receipt of the master copy from the Office of the State Courts Administrator, the clerk of the court shall make available the standardized forms, instructions, and informational brochures required by this subsection.

**(e)** The Office of the State Courts Administrator shall update the instructions, brochures, standard petition and risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

# Hawaii

**Types of Orders:** Ex parte Gun Violence Protective Order (GVPO), One-year GVPO

**Citation:** Haw. Rev. Stat. Ann. §§ 134-61 to 134-72

## Highlighted Provisions

### **Persons eligible to petition:**

Law enforcement officer, family or household member, medical professional, educator, or co-worker / colleague.

### **Standard of proof & Findings Necessary:**

Ex parte: Probable cause to believe that the respondent poses an imminent danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

One-Year Order: Preponderance of the evidence respondent poses a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition,

### **Duration of order:**

Ex parte: Until hearing that should be held within 14 days of granting of Petition (hearing time can be extended by Respondent)

One-year: 1 year

### **Service procedures:**

Ex parte: An ex parte gun violence protective order issued pursuant to this section shall be personally served on the respondent by an officer of the appropriate county police department. The officer shall file the proof of service with the court within one business day of service. Notice of the hearing shall be personally served on the respondent by an officer of the appropriate county police department.

### **One-year Gun Violence protective order:**

A statement that the respondent's presence in court shall constitute proof of service of notice of the terms of the order.

If the respondent fails to appear at the hearing, a one-year gun violence protective order shall be personally served on the respondent by an officer of the appropriate county police department. The officer shall file the proof of service with the court within one business day of service

### **Notification procedures for people at risk:**

Statute is silent

### **Filing fees:**

Statute silent on filing fees.

### **Renewal/Termination:**

The respondent named in a one-year gun violence protective order issued under section 134-E may submit a written request at any time during the effective period of the order for a hearing to terminate the order.

The respondent seeking termination of the order shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

If the court finds after the hearing that the respondent has met the respondent's burden, the court shall terminate the order.

A petitioner may submit a written request for a renewal of a one-year gun violence protective order within three months prior to the expiration of the order. Upon receipt of the written request for renewal, the court:

**(1)** In determining whether to renew a one-year gun violence protective order, after notice to the respondent, shall consider all relevant evidence presented by the petitioner and the respondent and may also consider other relevant evidence, including evidence of the facts identified in section 134-D(d); and

**(2)** May renew a one-year gun violence protective order if the court finds by a preponderance of the evidence that the respondent continues to pose a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

A one-year gun violence protective order renewed pursuant to this section shall expire after one year, subject to termination by further order of the court at a hearing held pursuant to subsection **(a)** and further renewal by order of the court pursuant to this subsection.

**Firearm prohibitions:**

Respondent shall not own, purchase, possess, receive, transfer ownership of, or have in the respondent's custody or control, or attempt to purchase, receive, or transfer ownership of, any firearm or ammunition while the order is in effect

**Firearms relinquishment process:**

The court shall order the respondent to voluntarily surrender or dispose of all firearms and ammunition that the respondent owns or possesses, or has in the respondent's custody or control, in accordance with section 134-7.3(b).

At the time of serving notice of a petition, an ex parte gun violence protective order, a one-year gun violence protective order, or a domestic abuse protective order, a police officer shall take custody of any and all firearms and ammunition in accordance with the procedure described in section 134-7(f). Alternatively, if personal service by a police officer is not possible, the respondent shall surrender the firearms and ammunition in a safe manner to the control of the chief of police where the respondent resides within forty-eight hours of being served with the order.

At the time of surrender or removal, a police officer taking possession of a firearm or ammunition pursuant to an ex parte gun violence protective order, a one-year gun violence protective order, or domestic abuse protective order shall issue a receipt identifying all firearms and ammunition that have been surrendered or removed and provide a copy of the receipt to the respondent. Within seventy-two hours after being served with the order, the officer serving the order shall file the original receipt with the court that issued the ex parte gun violence protective order or one-year gun violence protective order, and shall ensure that the appropriate county police department retains a copy of the receipt.

**Firearms disposal process:**

§ A county police department holding any firearm or ammunition that was surrendered by or removed from a respondent pursuant to section 134-G may dispose of the firearm or ammunition only after six months from the date of proper notice to the respondent of the department's intent to dispose of the firearm or ammunition, unless the firearm or ammunition has been claimed by the lawful owner. If the firearm or ammunition remain unclaimed after six months from the date of notice, then no party shall thereafter have the right to assert ownership thereof and the department may dispose of the firearm or ammunition.

**Limitations on liability:**

No criminal or civil liability on any person who chooses not to seek an ex parte gun violence protective order or a one-year gun violence protective order

**Return/Transfer of firearms:**

§ A county police department shall return any surrendered or removed firearm or ammunition

requested by a respondent only after confirming, through a criminal history background check, that the respondent is currently eligible to own or possess firearms and ammunition.

§ A respondent who has surrendered or had removed any firearm or ammunition to or by a county police department who does not wish to have the firearm or ammunition returned, or who is no longer eligible to own or possess firearms or ammunition, may sell or transfer title of the firearm or ammunition to a firearms dealer licensed. The department shall transfer possession of the firearm or ammunition to a firearms dealer licensed only after the dealer has provided written proof of transfer of the firearm or ammunition from the respondent to the dealer and the department has verified the transfer with the respondent.

§ If a person other than the respondent claims title to any firearm or ammunition surrendered or removed and that person is determined by the appropriate county police department to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to the lawful owner.

**Warrant authority:**

A court that has probable cause to believe a respondent to a protective order owns, possesses, or has in the respondent’s custody or control any firearms or ammunition that the respondent has failed to surrender or has received or purchased a firearm or ammunition while subject to the order, shall issue a warrant describing the firearm or ammunition and authorizing a search of any location where the firearm or ammunition is reasonably believed to be and the seizure of any firearm or ammunition discovered pursuant to the search.

**Venue:**

A petition for relief under this part may be filed in any family court in the circuit in which the petitioner resides.

**Penalties:**

(For complainant) A person who files a petition for an ex parte gun violence protective order or a one-year gun violence protective order under this part, knowing the information in the petition to be materially false or with an intent to harass the respondent, is guilty of a misdemeanor.

**Entry Registry/NCIC POF:**

(a) The court shall notify the Hawaii criminal justice data center no later than one business day after issuing, serving, renewing, dissolving, or terminating an ex parte gun violence protective order or a one-year gun violence protective order under this part and after receiving notice of such an order.

(b) The information required to be submitted to the Hawaii criminal justice data center pursuant to this section shall include identifying information about the petitioner and respondent and the date the order was issued, served, renewed, dissolved, or terminated. In the case of a one-year gun violence protective order, the court shall include the date the order is set to expire.

(c) The Hawaii criminal justice data center shall maintain a searchable database of the information it receives under this section and make the information available to law enforcement agencies upon request.

(d) The Hawaii criminal justice data center shall within one business day make information about an ex parte gun violence protective order or a one-year gun violence protective order issued, served, renewed, dissolved, or terminated pursuant to this part available to the National Instant Criminal Background Check System for the purposes of firearm purchaser background checks.

**Statutes**

**Part IV. Gun Violence Protective Orders**  
**§ 134-61. Definitions.**

For the purposes of this part:

“Bodily injury” has the same meaning as in section 707-700.

“Business day” has the same meaning as in section 709-906.

“Colleague” means a person employed or working at the same place of business or employment as the respondent.

“Educator” means a person employed at an institution of learning at which the respondent may have a connection.

“Ex parte gun violence protective order” means an order issued by the family court, pursuant to section 134-64, prohibiting the respondent from owning, purchasing, possessing, receiving, or having in the respondent’s custody or control any firearm or ammunition until the court-scheduled hearing for a one-year gun violence protective order.

“Family or household member” means any spouse or reciprocal beneficiary, former spouse or former reciprocal beneficiary, person with whom the respondent has a child in common, parent, child, person related by consanguinity, person related by adoption, person jointly residing or who formerly jointly resided with a respondent in the same dwelling unit as the respondent, person who has or has had a dating relationship, or person who is or has acted as the respondent’s legal guardian. “Family or household member” includes a person who is an adult roommate or a co-habitant of a respondent.

“Medical professional” means a licensed physician, advanced practice registered nurse, psychologist, or psychiatrist who has examined the respondent.

“One-year gun violence protective order” means an order issued by the family court, pursuant to section 134-65, prohibiting the respondent from owning, purchasing, possessing, receiving, or having in the respondent’s custody or control any firearm or ammunition for a period of one year.

“Petitioner” means a law enforcement officer, family or household member of the respondent, medical professional, educator, or colleague, who files a petition pursuant to section 134-64 or section 134-65.

“Respondent” means the person identified in the petition filed pursuant to section 134-64 or section 134-65.

### **§ 134-62. Court jurisdiction.**

A petition for relief under this part may be filed in any family court in the circuit in which the petitioner resides. A petition under this part shall be given docket priority by the court.

### **§ 134-63. Commencement of action; forms.**

**(a)** In order to seek an ex parte gun violence protective order or a one-year gun violence protective order, the petitioner shall file a written petition for relief on forms provided by the court. The court shall designate an employee or appropriate non-judicial agency to assist the petitioner in completing the petition.

**(b)** The petition shall allege, under penalty of perjury, the grounds for issuance of the order and shall be accompanied by an affidavit made under oath or a statement made under penalty of perjury containing detailed allegations based on personal knowledge that the respondent poses a danger of causing bodily injury to the respondent’s self or another person by owning, purchasing, possessing, receiving, or having in the respondent’s custody or control any firearm or ammunition, and specific facts and circumstances in support thereof, as well as the number, types, and locations of any firearms or ammunition presently believed by the petitioner to be possessed or controlled by the respondent. The petition shall also state, if known to the petitioner, whether there is an existing restraining order or protective order in effect governing the respondent and whether there is any pending lawsuit, complaint, petition, or other action between the parties under the laws of this State. The judiciary shall verify the terms of any existing order governing the parties. The court shall not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A petition for an ex parte gun violence protective order or a one-year gun violence protective order may be granted regardless of whether there is a pending action between the parties.

**(c)** All health records and other health information provided in a petition or considered as evidence in a proceeding under this part shall be sealed by the court, except that the identities of the petitioner and

respondent may be provided to law enforcement agencies as set forth in section 134-69. Aggregate statistical data about the numbers of ex parte gun violence protective orders and one-year gun violence protective orders issued, renewed, denied, dissolved, or terminated shall be made available to the public upon request.

**(d)** Upon receipt of the petition, the court shall set a date for hearing on the petition within fourteen days, regardless of whether the court issues an ex parte gun violence protective order pursuant to section 134-64. If the court issues an ex parte gun violence protective order pursuant to section 134-64, notice of the hearing shall be served on the respondent with the ex parte order. Notice of the hearing shall be personally served on the respondent by an officer of the appropriate county police department.

#### **§ 134-64. Ex parte gun violence protective order.**

**(a)** A petitioner may request that an ex parte gun violence protective order be issued before a hearing for a one-year gun violence protective order, without notice to the respondent.

**(b)** The court shall issue or deny an ex parte gun violence protective order on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective adjudication, in which case the order shall be issued or denied on the next business day.

**(c)** Before issuing an ex parte gun violence protective order, the court may examine under oath the petitioner and any witnesses the petitioner may produce.

**(d)** In determining whether sufficient grounds for an ex parte gun violence protective order exist, the court shall consider all relevant evidence presented by the petitioner, and may also consider other relevant evidence, including evidence of facts relating to the respondent's:

**(1)** Unlawful, reckless, or negligent use, display, storage, possession, or brandishing of a firearm;

**(2)** Act or threat of violence against the respondent's self or another person, regardless of whether the violence involves a firearm;

**(3)** Violation of a protective order or restraining order issued pursuant to chapter 586 or section 604-10.5, or a similar law in another state;

**(4)** Abuse of controlled substances or alcohol or commission of any criminal offense that involves controlled substances or alcohol; and

**(5)** Recent acquisition of any firearms, ammunition, or other deadly weapons.

**(e)** The court shall also consider the time that has elapsed since the events described in subsection **(d)**.

**(f)** If the court finds probable cause to believe that the respondent poses an imminent danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition, the court shall issue an ex parte gun violence protective order.

**(g)** An ex parte gun violence protective order issued pursuant to this section shall include:

**(1)** A statement that the respondent shall not own, purchase, possess, receive, transfer ownership of, or have in the respondent's custody or control, or attempt to purchase, receive, or transfer ownership of, any firearm or ammunition while the order is in effect;

**(2)** A description of the requirements for relinquishment of firearms and ammunition under section 134-67;

**(3)** A statement of the grounds asserted for the order;

**(4)** A notice of the hearing under section 134-63**(d)** to determine whether to issue a one-year gun violence protective order, including the address of the court and the date and time when the hearing is scheduled;



(5) A statement that at the hearing, the court may extend the order for one year; and

(6) A statement that the respondent may seek the advice of an attorney as to any matter connected with the order, and that the attorney should be consulted promptly so that the attorney may assist the respondent in any matter connected with the order.

(h) An ex parte gun violence protective order issued pursuant to this section shall be personally served on the respondent by an officer of the appropriate county police department. The officer shall file the proof of service with the court within one business day of service.

(i) In accordance with section 134-63(d), the court shall schedule a hearing within fourteen days of the granting of the petition for an ex parte gun violence protective order to determine if a one-year gun violence protective order shall be issued. A respondent may seek an extension of time before the hearing. The court shall dissolve any ex parte gun violence protective order in effect against the respondent if the court subsequently holds the hearing and issues or denies a one-year gun violence protective order.

**§ 134-65. One-year gun violence protective order issued after notice and hearing.**

(a) A petitioner requesting a one-year gun violence protective order shall include in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing a self-inflicted bodily injury or an injury to another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

(b) In determining whether to issue a one-year gun violence protective order under this section, the court shall consider all relevant evidence presented by the petitioner and the respondent, and may also consider other relevant evidence, including but not limited to evidence of the facts identified in section 134-64(d).

(c) If the court finds by a preponderance of the evidence at the hearing that the respondent poses a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition, the court shall issue a one-year gun violence protective order.

(d) A one-year gun violence protective order issued pursuant to this section shall include all of the following:

(1) A statement that the respondent shall not own, purchase, possess, receive, transfer ownership of, or have in the respondent's custody or control, or attempt to purchase, receive, or transfer ownership of, any firearm or ammunition while the order is in effect;

(2) A description of the requirements for relinquishment of firearms and ammunition under section 134-67;

(3) A statement of the grounds supporting the issuance of the order;

(4) The date and time the order expires;

(5) The address of the court that issued the order;

(6) A statement that the respondent may request a hearing to terminate the order at any time during its effective period;

(7) A statement that the respondent may seek the advice of an attorney as to any matter connected to the order;

(8) A statement of whether the respondent was present in court to be advised of the contents of the order or whether the respondent failed to appear; and

(9) A statement that if the respondent was present in court, the respondent's presence shall constitute proof of service of notice of the terms of the order.

(e) If the respondent fails to appear at the hearing, a one-year gun violence protective order issued pursuant

to this section shall be personally served on the respondent by an officer of the appropriate county police department. The officer shall file the proof of service with the court within one business day of service.

#### **§ 134-66. Termination and renewal.**

**(a)** The respondent named in a one-year gun violence protective order issued under section 134-65 may submit a written request at any time during the effective period of the order for a hearing to terminate the order. Upon receipt of the written request for termination:

**(1)** The court shall set a date for a hearing. Notice of the request shall be personally served on the petitioner by any person authorized by section 634-21. The hearing shall occur no sooner than fourteen days from the date of service of the request upon the petitioner; and

**(2)** The respondent seeking termination of the order shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

If the court finds after the hearing that the respondent has met the respondent's burden, the court shall terminate the order.

**(b)** A petitioner may submit a written request for a renewal of a one-year gun violence protective order within three months prior to the expiration of the order. Upon receipt of the written request for renewal, the court:

**(1)** In determining whether to renew a one-year gun violence protective order, after notice to the respondent, shall consider all relevant evidence presented by the petitioner and the respondent and may also consider other relevant evidence, including evidence of the facts identified in section 134-64(d); and

**(2)** May renew a one-year gun violence protective order if the court finds by a preponderance of the evidence that the respondent continues to pose a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

A one-year gun violence protective order renewed pursuant to this section shall expire after one year, subject to termination by further order of the court at a hearing held pursuant to subsection **(a)** and further renewal by order of the court pursuant to this subsection.

#### **§ 134-67. Relinquishment of firearms and ammunition.**

**(a)** Upon issuance of an ex parte gun violence protective order, a one-year gun violence protective order, or a domestic abuse protective order, the court shall order the respondent to voluntarily surrender or dispose of all firearms and ammunition that the respondent owns or possesses, or has in the respondent's custody or control, in accordance with section 134-7.3(b).

**(b)** At the time of serving notice of a petition, an ex parte gun violence protective order, a one-year gun violence protective order, or a domestic abuse protective order, a police officer shall take custody of any and all firearms and ammunition in accordance with the procedure described in section 134-7(f). **Alternatively**, if personal service by a police officer is not possible, the respondent shall surrender the firearms and ammunition in a safe manner to the control of the chief of police where the respondent resides within forty-eight hours of being served with the order.

**(c)** At the time of surrender or removal, a police officer taking possession of a firearm or ammunition pursuant to an ex parte gun violence protective order, a one-year gun violence protective order, or domestic abuse protective order shall issue a receipt identifying all firearms and ammunition that have been surrendered or removed and provide a copy of the receipt to the respondent. Within seventy-two hours after being served with the order, the officer serving the order shall file the original receipt with the court that issued the ex parte

gun violence protective order or one-year gun violence protective order, and shall ensure that the appropriate county police department retains a copy of the receipt.

**(d)** A court that has probable cause to believe a respondent to a protective order owns, possesses, or has in the respondent's custody or control any firearms or ammunition that the respondent has failed to surrender pursuant to this section, or has received or purchased a firearm or ammunition while subject to the order, shall issue a warrant describing the firearm or ammunition and authorizing a search of any location where the firearm or ammunition is reasonably believed to be and the seizure of any firearm or ammunition discovered pursuant to the search.

**(e)** The appropriate county police department may charge the respondent a fee not to exceed the reasonable and actual costs incurred by the department for storing a firearm or ammunition surrendered or removed pursuant to this section for the duration of the ex parte gun violence protective order, one-year gun violence protective order, or domestic abuse protective order and any additional periods necessary under section 134-68.

#### **§ 134-68. Return and disposal of firearms or ammunition.**

**(a)** A county police department shall return any surrendered or removed firearm or ammunition requested by a respondent only after confirming, through a criminal history background check, that the respondent is currently eligible to own or possess firearms and ammunition.

**(b)** A respondent who has surrendered or had removed any firearm or ammunition to or by a county police department pursuant to section 134-67 and who does not wish to have the firearm or ammunition returned, or who is no longer eligible to own or possess firearms or ammunition, may sell or transfer title of the firearm or ammunition to a firearms dealer licensed under section 134-31. The department shall transfer possession of the firearm or ammunition to a firearms dealer licensed under section 134-31 only after the dealer has provided written proof of transfer of the firearm or ammunition from the respondent to the dealer and the department has verified the transfer with the respondent.

**(c)** If a person other than the respondent claims title to any firearm or ammunition surrendered or removed pursuant to section 134-67, and that person is determined by the appropriate county police department to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to the lawful owner.

**(d)** A county police department holding any firearm or ammunition that was surrendered by or removed from a respondent pursuant to section 134-67 may dispose of the firearm or ammunition only after six months from the date of proper notice to the respondent of the department's intent to dispose of the firearm or ammunition, unless the firearm or ammunition has been claimed by the lawful owner. If the firearm or ammunition remain unclaimed after six months from the date of notice, then no party shall thereafter have the right to assert ownership thereof and the department may dispose of the firearm or ammunition.

**(e)** For the purposes of this section, "dispose" means selling the firearm or ammunition to a firearms dealer licensed under section 134-31, or destroying the firearm or ammunition.

#### **§ 134-69. Reporting of order to Hawaii criminal justice data center.**

**(a)** The court shall notify the Hawaii criminal justice data center no later than one business day after issuing, serving, renewing, dissolving, or terminating an ex parte gun violence protective order or a one-year gun violence protective order under this part and after receiving notice of such an order.

**(b)** The information required to be submitted to the Hawaii criminal justice data center pursuant to this section shall include identifying information about the petitioner and respondent and the date the order was issued, served, renewed, dissolved, or terminated. In the case of a one-year gun violence protective order, the court shall include the date the order is set to expire.

(c) The Hawaii criminal justice data center shall maintain a searchable database of the information it receives under this section and make the information available to law enforcement agencies upon request.

(d) The Hawaii criminal justice data center shall within one business day make information about an ex parte gun violence protective order or a one-year gun violence protective order issued, served, renewed, dissolved, or terminated pursuant to this part available to the National Instant Criminal Background Check System for the purposes of firearm purchaser background checks.

**§ 134-70. Penalties**

A person who files a petition for an ex parte gun violence protective order or a one-year gun violence protective order under this part, knowing the information in the petition to be materially false or with an intent to harass the respondent, is guilty of a misdemeanor.

**§ 134-71. Law enforcement to retain other authority.**

The provisions of this part shall not affect the ability of a law enforcement officer to remove firearms or ammunition from any person pursuant to other lawful authority.

**§ 134-72. Lack of liability for failure to seek order.**

This part shall not be construed to impose criminal or civil liability on any person who chooses not to seek an ex parte gun violence protective order or a one-year gun violence protective order pursuant to this part.

# Illinois

**Types of order:** Ex Parte/Emergency Firearms Restraining Order, Plenary Firearms Restraining Order

**Citation:** 430 Ill. Comp. Stat. Ann. 67/1 – 67/85

## Highlighted Provisions

### **Persons eligible to petition:**

Family or Law enforcement

### **Standard of proof:**

Ex parte/emergency: probable cause

Plenary: clear and convincing evidence

### **Evidence required:**

Ex parte/Emergency: respondent poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm.

Plenary: respondent poses a significant danger of personal injury to himself, herself, or another by having his or her custody or control, purchasing, possessing, or receiving a firearm.

### **Duration of order:**

Ex parte firearms restraining order: up to 14 days or until there is a hearing

Firearms restraining order: Up to 1 year but not less than 6 months

### **Service on respondent:**

Respondent may be served electronically. If the court specifies a different form of service or if extraordinary circumstances prevent timely electronic service, respondent may be served personally or by mail.

### **Notification of persons at risk:**

If the respondent is alleged to pose an immediate and present danger of causing personal injury to an intimate partner (spouse, former spouse, a person whom the respondent has or allegedly has a child in common, or a person with whom the respondent has or has had a dating or engagement relationship), petitioner shall make a good faith effort to provide notice to any and all intimate partners of the respondent.

If a respondent petitioned the court to transfer the firearm to a third party, notice of the petition shall be served upon the person protected by the emergency firearms restraining order.

### **Filing fees:**

No fee shall be charged by the clerk for filing, amending, vacating, certifying, or photocopying petitions or orders; or for issuing alias summons; or for any related filing service. No fee shall be charged by the sheriff or other law enforcement for service by the sheriff or other law enforcement of a petition, rule, motion, or order in an action commenced under this Section.

### **Renewal/Termination:**

Termination: Respondent may submit up to one written request for a hearing to terminate the order. The respondent must prove by a preponderance of the evidence that the respondent does not pose a danger of causing personal injury to himself/herself or another in the near future by having in his/her custody or control, purchasing, possessing, or receiving a firearm, then the court. If the respondent satisfies this burden, the court will terminate the order.

Renewal: petitioner may request a renewal of the order at any time within 3 months before the expiration of the firearms restraining order. Petitioner must prove with clear and convincing evidence that the respondent continues to pose a danger.

**Firearm prohibitions:**

The respondent must refrain from having custody or control, purchasing, possessing, or receiving additional firearms for the duration of the order for both Ex parte and six-month orders.

**Firearm relinquishment process:**

Ex parte order: respondent must turn over to the local law enforcement agency any Firearm Owner's Identification Card and concealed carry license in his or her possession

Six month order: respondent to turn over to the local law enforcement agency any firearm or Firearm Owner's Identification Card and concealed carry license in his or her possession.

When making a firearms restraining order, if the court finds probable cause that respondent possesses firearms, the court will issue a search warrant to search for and seize all firearms.

**Firearm disposal process:**

If the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm or Firearm Owner's Identification Card cannot be returned to the respondent due to them being unlocatable, unresponsive, or ineligible to possess them, the court may authorize local law enforcement to either destroy, use for training or repurpose the items as deemed appropriate by local law enforcement.

**Limitations on liability:**

Any act or omission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Act shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of willful or wanton misconduct.

**Return/transfer of firearms:**

The firearm or Firearm Owner's Identification Card shall be returned to the respondent after the order is expired or terminated.

A respondent whose Firearm Owner's Identification Card has been revoked or suspended may petition the court to transfer the respondent's firearm to a person who is lawfully able to possess the firearm if the person does not reside at the same address as the respondent.

While the order is in effect, the transferee who receives respondent's firearms must swear or affirm by affidavit that he or she shall not transfer the firearm to the respondent or to anyone residing in the same residence as the respondent.

If a person other than the respondent claims title to any firearms surrendered under this Section, he or she may petition the court, if the petitioner is present in court or has notice of the petition, to have the firearm returned to him or her. If the court determines that person to be the lawful owner of the firearm, the firearm shall be returned to him or her, provided that: (1) the firearm is removed from the respondent's custody, control, or possession and the lawful owner agrees to store the firearm in a manner such that the respondent does not have access to or control of the firearm; and (2) the firearm is not otherwise unlawfully possessed by the owner.

**Warrant authority:**

If the court finds there is probable cause that the respondent possesses firearms, the court may issue a search warrant directing a local law enforcement agency to seize the respondent's firearms. As part of the warrant, the court may direct the law enforcement agency to search the respondent's residence or other places the court finds there is probable cause to believe he or she is likely to possess the firearms.

**Venue:**

A petition for a firearms restraining order may be filed: (1) in any county where the respondent resides or (2) any county where an incident occurred that involved the respondent posing an immediate and present danger of causing personal injury to the respondent or another by having in his or her custody or control, or purchasing, possessing, or receiving, a firearm, ammunition, or firearm parts that could be assembled to make an operable firearm.

**Penalties:**

A respondent who knowingly violates a firearms restraining order is guilty of a Class A misdemeanor.

**Entry Registry/NCIC POF:**

Each firearms restraining order shall be entered in the Law Enforcement Agencies Data System (LEADS) on the same day it is issued by the court. If an emergency firearms restraining order was issued in accordance with Section 35 of this Act [430 ILCS 67/35], the order shall be entered in the Law Enforcement Agencies Data System (LEADS) as soon as possible after receipt from the clerk.

**(b)** The Illinois State Police shall maintain a complete and systematic record and index of all valid and recorded firearms restraining orders issued or filed under this Act.

## Statutes

**430 ILCS 67/1 Short title.**

This Act may be cited as the Firearms Restraining Order Act.

**430 ILCS 67/5 Definitions**

As used in this Act:

“Family member of the respondent” means a spouse, former spouse, person with whom the respondent has a minor child in common, parent, child, or step-child of the respondent, any other person related by blood or present marriage to the respondent, or a person who shares a common dwelling with the respondent.

“Firearms restraining order” means an order issued by the court, prohibiting and enjoining a named person from having in his or her custody or control, purchasing, possessing, or receiving any firearms or ammunition, or removing firearm parts that could be assembled to make an operable firearm.

“Intimate partner” means a spouse, former spouse, a person with whom the respondent has or allegedly has a child in common, or a person with whom the respondent has or has had a dating or engagement relationship.

“Petitioner” means:

- (1)** a family member of the respondent as defined in this Act; or
- (2)** a law enforcement officer who files a petition alleging that the respondent poses a danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, or firearm parts that could be assembled to make an operable firearm or removing firearm parts that could be assembled to make an operable firearm.

“Respondent” means the person alleged in the petition to pose a danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, or firearm parts that could be assembled to make an operable firearm or removing firearm parts that could be assembled to make an operable firearm.

**430 ILCS 67/10 Commencement of action; procedure.**

**(a)** An action for a firearms restraining order is commenced by filing a verified petition for a firearms restraining order in any circuit court.

**(b)** A petition for a firearms restraining order may be filed: (1) in any county where the respondent resides or (2) any county where an incident occurred that involved the respondent posing an immediate and present danger of causing personal injury to the respondent or another by having in his or her custody or control, or purchasing, possessing, or receiving, a firearm, ammunition, or firearm parts that could be assembled to make an operable firearm.

**(c)** No fee shall be charged by the clerk for filing, amending, vacating, certifying, or photocopying petitions or orders; or for issuing alias summons; or for any related filing service. No fee shall be charged by the sheriff or other law enforcement for service by the sheriff or other law enforcement of a petition, rule, motion, or order in an action commenced under this Section.

**(d)** The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to help with the writing and filing of a petition under this Section by any person not represented by counsel. In addition, that assistance may be provided by the State's Attorney.

#### **430 ILCS 67/15 Subject matter jurisdiction.**

Each of the circuit courts shall have the power to issue firearms restraining orders.

#### **430 ILCS 67/20 Jurisdiction over persons**

The circuit courts of this State have jurisdiction to bind (1) State residents and (2) non-residents having minimum contacts with this State, to the extent permitted by Section 2-209 of the Code of Civil Procedure [735 ILCS 5/2-209].

#### **430 ILCS 67/25 Process**

The summons shall be in the form prescribed by Supreme Court Rule 101(d), except that it shall require respondent to answer or appear within 7 days. Attachments to the summons or notice shall include the petition for the firearms restraining order and supporting affidavits, if any, and any emergency firearms restraining order that has been issued. The enforcement of an order under Section 35 [430 ILCS 67/35] shall not be affected by the lack of service, delivery, or notice, provided the requirements of subsection (f) of that Section are otherwise met.

#### **430 ILCS 67/30 Service of notice of hearings**

Except as provided in Section 25 [430 ILCS 67/25], notice of hearings on petitions or motions shall be served in accordance with Supreme Court Rules 11 and 12, unless notice is excused by Section 35 of this Act [430 ILCS 67/35], or by the Code of Civil Procedure, Supreme Court Rules, or local rules.

Ill. Sup. Ct., R11. Manner of Serving Documents Other Than Process and Complaint on Parties Not in Default in the Trial and Reviewing Courts

**(a)** On Whom Made. If a party is represented by an attorney of record, service shall be made upon the attorney. Otherwise service shall be made upon the party.

**(b)** E-mail Address. An attorney must include on the appearance and on all pleadings filed in court an e-mail address to which documents and notices will be served in conformance with Rule 131(d). A self-represented litigant who has an e-mail address must also include the e-mail address on the appearance and on all pleadings filed in court to which documents and notices will be served in conformance with Rule 131(d).

**(c)** Method. Unless otherwise specified by rule or order of court, documents shall be served electronically.

**(1)** Electronic service may be made

**(i)** through an approved electronic filing service provider (EFSP) or

**(ii)** to the e-mail address(es) identified by the party's appearance in the matter.

If service is made by e-mail, the documents may be transmitted via attachment or by providing a link within the body of the e-mail that will allow the party to download the document.

**(2)** If a self-represented party does not have an e-mail address, or if service other than electronic service is specified by rule or order of court, or if extraordinary circumstances prevent timely electronic service in a particular instance, service of documents may be made by one of the following alternative methods:

**(i)** Personal Service. Delivering the document to the attorney or party personally;



**(ii)** Delivery to Attorney’s Office or Self-Represented Party’s Residence Delivery of the document to an authorized person at the attorney’s office or in a reasonable receptacle or location at or within the attorney’s office. If a party is not represented by counsel, by leaving the document at the party’s residence with a family member of the age of 13 years or older;

**(iii)** United States Mail. Depositing the document in a United States post office or post office box, enclosed in an envelope to the party’s address, as identified by the party’s appearance in the matter, with postage fully prepaid; or

**(iv)** Third-Party Commercial Carrier. Delivery of the document through a third-party commercial carrier or courier, to the party’s address, as identified by the party’s appearance in the matter, with delivery charge fully prepaid.

**(d)** Multiple Parties or Attorneys. In cases in which there are two or more plaintiffs or defendants who appear by different attorneys, service of all documents shall be made on the attorney for each of the parties. When more than one attorney appears for a party, service upon one of them is sufficient.

**(e)** Notice of E-mail Rejection. If a party serving a document via e-mail receives a rejection message or similar notification suggesting that transmission was not successful, the party serving the document shall make a good-faith effort to alert the intended recipient of a potential transmission problem and take reasonable steps to ensure actual service of the document.

**(f)** Limited Scope Appearance. After an attorney files a Notice of Limited Scope Appearance in accordance with Rule 13(c)(6), service of all documents shall be made on both the attorney and the party represented on a limited scope basis until: (1) the court enters an order allowing the attorney to withdraw under Rule 13(c) or (2) the attorney’s representation automatically terminates under Rule 13(c)(7)(ii).

#### **430 ILCS 67/35 Ex parte orders and emergency hearings.**

**(a)** A petitioner may request an emergency firearms restraining order by filing an affidavit or verified pleading alleging that the respondent poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, or firearm parts that could be assembled to make an operable firearm. The petition shall also describe the type and location of any firearm or firearms, ammunition, or firearm parts that could be assembled to make an operable firearm presently believed by the petitioner to be possessed or controlled by the respondent.

**(b)** If the respondent is alleged to pose an immediate and present danger of causing personal injury to an intimate partner, or an intimate partner is alleged to have been the target of a threat or act of violence by the respondent, the petitioner shall make a good faith effort to provide notice to any and all intimate partners of the respondent. The notice must include that the petitioner intends to petition the court for an emergency firearms restraining order, and, if the petitioner is a law enforcement officer, referral to relevant domestic violence or stalking advocacy or counseling resources, if appropriate. The petitioner shall attest to having provided the notice in the filed affidavit or verified pleading. If, after making a good faith effort, the petitioner is unable to provide notice to any or all intimate partners, the affidavit or verified pleading should describe what efforts were made.

**(c)** Every person who files a petition for an emergency firearms restraining order, knowing the information provided to the court at any hearing or in the affidavit or verified pleading to be false, is guilty of perjury under Section 32-2 of the Criminal Code of 2012.

**(d)** An emergency firearms restraining order shall be issued on an ex parte basis, that is, without notice to the respondent.

**(e)** An emergency hearing held on an ex parte basis shall be held the same day that the petition is filed or the

next day that the court is in session.

**(f)** If a circuit or associate judge finds probable cause to believe that the respondent poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, or firearm parts that could be assembled to make an operable firearm, the circuit or associate judge shall issue an emergency order.

**(f-5)** If the court issues an emergency firearms restraining order, it shall, upon a finding of probable cause that the respondent possesses firearms, ammunition, or firearm parts that could be assembled to make an operable firearm, issue a search warrant directing a law enforcement agency to seize the respondent's firearms, ammunition, and firearm parts that could be assembled to make an operable firearm. The court may, as part of that warrant, direct the law enforcement agency to search the respondent's residence and other places where the court finds there is probable cause to believe he or she is likely to possess the firearms, ammunition, or firearm parts that could be assembled to make an operable firearm. A return of the search warrant shall be filed by the law enforcement agency within 4 days thereafter, setting forth the time, date, and location that the search warrant was executed and what items, if any, were seized.

**(g)** An emergency firearms restraining order shall require:

**(1)** the respondent to refrain from having in his or her custody or control, purchasing, possessing, or receiving additional firearms, ammunition, or firearm parts that could be assembled to make an operable firearm, or removing firearm parts that could be assembled to make an operable firearm for the duration of the order under Section 8.2 of the Firearm Owners Identification Card Act; and

**(2)** the respondent to turn over to the local law enforcement agency any Firearm Owner's Identification Card and concealed carry license in his or her possession. The local law enforcement agency shall immediately mail the card and concealed carry license to the Department of State Police Firearm Services Bureau for safekeeping. The firearm or firearms, ammunition, and firearm parts that could be assembled to make an operable firearm and Firearm Owner's Identification Card and concealed carry license, if unexpired, shall be returned to the respondent after the firearms restraining order is terminated or expired.

**(h)** Except as otherwise provided in subsection (h-5) of this Section, upon expiration of the period of safekeeping, if the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm or Firearm Owner's Identification Card and concealed carry license cannot be returned to the respondent because the respondent cannot be located, fails to respond to requests to retrieve the firearms, or is not lawfully eligible to possess a firearm, ammunition, or firearm parts that could be assembled to make an operable firearm, upon petition from the local law enforcement agency, the court may order the local law enforcement agency to destroy the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm, use the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm for training purposes, or use the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm for any other application as deemed appropriate by the local law enforcement agency.

**(h-5)** On or before January 1, 2022, a respondent whose Firearm Owner's Identification Card has been revoked or suspended may petition the court, if the petitioner is present in court or has notice of the respondent's petition, to transfer the respondent's firearm, ammunition, and firearm parts that could be assembled to make an operable firearm to a person who is lawfully able to possess the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm if the person does not reside at the same address as the respondent. Notice of the petition shall be served upon the person protected by the emergency firearms restraining order. While the order is in effect, the transferee who receives the respondent's firearms, ammunition, and firearm parts that could be assembled to make an operable firearm must swear or affirm by affidavit that he or she shall not transfer the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm to the respondent or to anyone residing in the same residence as the respondent.

**(h-6)** If a person other than the respondent claims title to any firearms, ammunition, and firearm parts that

could be assembled to make an operable firearm surrendered under this Section, he or she may petition the court, if the petitioner is present in court or has notice of the petition, to have the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm returned to him or her. If the court determines that person to be the lawful owner of the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm, the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm shall be returned to him or her, provided that:

- (1)** the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm are removed from the respondent's custody, control, or possession and the lawful owner agrees to store the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm in a manner such that the respondent does not have access to or control of the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm; and
- (2)** the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm are not otherwise unlawfully possessed by the owner.

The person petitioning for the return of his or her firearm, ammunition, and firearm parts that could be assembled to make an operable firearm must swear or affirm by affidavit that he or she: (i) is the lawful owner of the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm; (ii) shall not transfer the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm to the respondent; and (iii) will store the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm in a manner that the respondent does not have access to or control of the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm.

**(i)** In accordance with subsection (e) of this Section, the court shall schedule a full hearing as soon as possible, but no longer than 14 days from the issuance of an ex parte firearms restraining order, to determine if a 6-month firearms restraining order shall be issued. The court may extend an ex parte order as needed, but not to exceed 14 days, to effectuate service of the order or if necessary to continue protection. The court may extend the order for a greater length of time by mutual agreement of the parties..

#### **430 ILCS 67/40 Plenary orders.**

**(a)** A petitioner may request a firearms restraining order for up to one year by filing an affidavit or verified pleading alleging that the respondent poses a significant danger of causing personal injury to himself, herself, or another in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm. The petition shall also describe the number, types, and locations of any firearms, ammunition, and firearm parts that could be assembled to make an operable firearm presently believed by the petitioner to be possessed or controlled by the respondent. The firearms restraining order may be renewed for an additional period of up to one year in accordance with Section 45 of this Act [430 ILCS 67/45].

**(b)** If the respondent is alleged to pose a significant danger of causing personal injury to an intimate partner, or an intimate partner is alleged to have been the target of a threat or act of violence by the respondent, the petitioner shall make a good faith effort to provide notice to any and all intimate partners of the respondent. The notice must include the duration of time that the petitioner intends to petition the court for a firearms restraining order, and, if the petitioner is a law enforcement officer, referral to relevant domestic violence or stalking advocacy or counseling resources, if appropriate. The petitioner shall attest to having provided the notice in the filed affidavit or verified pleading. If, after making a good faith effort, the petitioner is unable to provide notice to any or all intimate partners, the affidavit or verified pleading should describe what efforts were made.

**(c)** Every person who files a petition for a plenary firearms restraining order, knowing the information provided to the court at any hearing or in the affidavit or verified pleading to be false, is guilty of perjury under Section 32-2 of the Criminal Code of 2012 [720 ILCS 5/32-2].

- (d)** Upon receipt of a petition for a plenary firearms restraining order, the court shall order a hearing within 30 days.
- (e)** In determining whether to issue a firearms restraining order under this Section, the court shall consider evidence including, but not limited to, the following:
- (1)** The unlawful and reckless use, display, or brandishing of a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm by the respondent.
  - (2)** The history of use, attempted use, or threatened use of physical force by the respondent against another person.
  - (3)** Any prior arrest of the respondent for a felony offense.
  - (4)** Evidence of the abuse of controlled substances or alcohol by the respondent.
  - (5)** A recent threat of violence or act of violence by the respondent directed toward himself, herself, or another.
  - (6)** A violation of an emergency order of protection issued under Section 217 of the Illinois Domestic Violence Act of 1986 or Section 112A-17 of the Code of Criminal Procedure of 1963 [750 ILCS 60/217 or 725 ILCS 5/112A-17] or of an order of protection issued under Section 214 of the Illinois Domestic Violence Act of 1986 or Section 112A-14 of the Code of Criminal Procedure of 1963 [750 ILCS 60/214 or 725 ILCS 5/112A-14].
  - (7)** A pattern of violent acts or violent threats, including, but not limited to, threats of violence or acts of violence by the respondent directed toward himself, herself, or another.
- (f)** At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that the respondent poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm.
- (g)** If the court finds that there is clear and convincing evidence to issue a plenary firearms restraining order, the court shall issue a firearms restraining order that shall be in effect for up to one year, but not less than 6 months, subject to renewal under Section 45 of this Act or termination under that Section.
- (g-5)** If the court issues a plenary firearms restraining order, it shall, upon a finding of probable cause that the respondent possesses firearms, ammunition, and firearm parts that could be assembled to make an operable firearm, issue a search warrant directing a law enforcement agency to seize the respondent's firearms, ammunition, and firearm parts that could be assembled to make an operable firearm. The court may, as part of that warrant, direct the law enforcement agency to search the respondent's residence and other places where the court finds there is probable cause to believe he or she is likely to possess the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm. A return of the search warrant shall be filed by the law enforcement agency within 4 days thereafter, setting forth the time, date, and location that the search warrant was executed and what items, if any, were seized.
- (h)** A plenary firearms restraining order shall require:
- (1)** the respondent to refrain from having in his or her custody or control, purchasing, possessing, or receiving additional firearms, ammunition, and firearm parts that could be assembled to make an operable firearm for the duration of the order under Section 8.2 of the Firearm Owners Identification Card Act [430 ILCS 65/8.2]; and
  - (2)** the respondent to comply with Section 9.5 of the Firearm Owners Identification Card Act and subsection (g) of Section 70 of the Firearm Concealed Carry Act [430 ILCS 65/9.5 and 430 ILCS 66/70].
- (i)** Except as otherwise provided in subsection (i-5) of this Section, upon expiration of the period of safekeeping,

if the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm or Firearm Owner's Identification Card cannot be returned to the respondent because the respondent cannot be located, fails to respond to requests to retrieve the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm, or is not lawfully eligible to possess a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm, upon petition from the local law enforcement agency, the court may order the local law enforcement agency to destroy the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm, use the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm for training purposes, or use the firearms, ammunition, and firearm parts that could be assembled to make an operable firearm for any other application as deemed appropriate by the local law enforcement agency.

**(i-5)** A respondent whose Firearm Owner's Identification Card has been revoked or suspended may petition the court, if the petitioner is present in court or has notice of the respondent's petition, to transfer the respondent's firearm, ammunition, and firearm parts that could be assembled to make an operable firearm to a person who is lawfully able to possess the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm if the person does not reside at the same address as the respondent. Notice of the petition shall be served upon the person protected by the emergency firearms restraining order. While the order is in effect, the transferee who receives the respondent's firearms, ammunition, and firearm parts that could be assembled to make an operable firearm must swear or affirm by affidavit that he or she shall not transfer the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm to the respondent or to anyone residing in the same residence as the respondent.

**(i-6)** If a person other than the respondent claims title to any firearms, ammunition, and firearm parts that could be assembled to make an operable firearm surrendered under this Section, he or she may petition the court, if the petitioner is present in court or has notice of the petition, to have the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm returned to him or her. If the court determines that person to be the lawful owner of the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm, the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm shall be returned to him or her, provided that:

**(1)** the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm are removed from the respondent's custody, control, or possession and the lawful owner agrees to store the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm in a manner such that the respondent does not have access to or control of the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm; and

**(2)** the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm are not otherwise unlawfully possessed by the owner.

The person petitioning for the return of his or her firearm, ammunition, and firearm parts that could be assembled to make an operable firearm must swear or affirm by affidavit that he or she: (i) is the lawful owner of the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm; (ii) shall not transfer the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm to the respondent; and (iii) will store the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm in a manner that the respondent does not have access to or control of the firearm, ammunition, and firearm parts that could be assembled to make an operable firearm.

**(j)** If the court does not issue a firearms restraining order at the hearing, the court shall dissolve any emergency firearms restraining order then in effect.

**(k)** When the court issues a firearms restraining order under this Section, the court shall inform the respondent that he or she is entitled to one hearing during the period of the order to request a termination of the order,

under Section 45 of this Act, and shall provide the respondent with a form to request a hearing.

#### **430 ILCS 67/45 Termination and renewal.**

**(a)** A person subject to a firearms restraining order issued under this Act may submit one written request at any time during the effective period of the order for a hearing to terminate the order.

**(1)** The respondent shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a danger of causing personal injury to himself, herself, or another in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm.

**(2)** If the court finds after the hearing that the respondent has met his or her burden, the court shall terminate the order.

**(b)** A petitioner may request a renewal of a firearms restraining order at any time within the 3 months before the expiration of a firearms restraining order.

**(1)** A court shall, after notice and a hearing, renew a firearms restraining order issued under this part if the petitioner proves, by clear and convincing evidence, that the respondent continues to pose a danger of causing personal injury to himself, herself, or another in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm.

**(2)** In determining whether to renew a firearms restraining order issued under this Act, the court shall consider evidence of the facts identified in subsection (e) of Section 40 of this Act [430 ILCS 67/40] and any other evidence of an increased risk for violence.

**(3)** At the hearing, the petitioner shall have the burden of proving by clear and convincing evidence that the respondent continues to pose a danger of causing personal injury to himself, herself, or another in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm.

**(4)** The renewal of a firearms restraining order issued under this Section shall be in effect for up to one year and may be renewed for an additional period of up to one year, subject to termination by further order of the court at a hearing held under this Section and further renewal by further order of the court under this Section.

#### **430 ILCS 67/50 Notice of orders.**

**(a)** Entry and issuance. Upon issuance of any firearms restraining order, the clerk shall immediately, or on the next court day if an emergency firearms restraining order is issued in accordance with Section 35 of this Act [430 ILCS 67/35] (emergency firearms restraining order): (i) enter the order on the record and file it in accordance with the circuit court procedures and (ii) provide a file stamped copy of the order to the respondent, if present, and to the petitioner.

**(b)** Filing with sheriff. The clerk of the issuing judge shall, or the petitioner may, on the same day that a firearms restraining order is issued, file a certified copy of that order with the sheriff or other law enforcement officials charged with maintaining Department of State Police records or charged with serving the order upon the respondent. If the order was issued in accordance with Section 35 of this Act (emergency firearms restraining order), the clerk shall, on the next court day, file a certified copy of the order with the sheriff or other law enforcement officials charged with maintaining Department of State Police records.

**(c)** Service by sheriff. Unless the respondent was present in court when the order was issued, the sheriff or other law enforcement official shall promptly serve that order upon respondent and file proof of the service, in the manner provided for service of process in civil proceedings. Instead of serving the order upon the respondent,

however, the sheriff, other law enforcement official, or other persons defined in Section 112A-22.10 of the Code of Criminal Procedure of 1963 [725 ILCS 5/112A-22.10] may serve the respondent with a short form notification as provided in that Section. If process has not yet been served upon the respondent, it shall be served with the order or short form notification if the service is made by the sheriff, or other law enforcement official.

**(d)** Any order renewing or terminating any firearms restraining order shall be promptly recorded, issued, and served as provided in this Section.

#### **430 ILCS 67/55 Data maintenance by law enforcement agencies**

**(a)** All sheriffs shall furnish to the Department of State Police, daily, in the form and detail the Department requires, copies of any recorded firearms restraining order issued by the court, and any foreign orders of protection filed by the clerk of the court, and transmitted to the sheriff by the clerk of the court under Section 50 [430 ILCS 67/50]. Each firearms restraining order shall be entered in the Law Enforcement Agencies Data System (LEADS) on the same day it is issued by the court. If an emergency firearms restraining order was issued in accordance with Section 35 of this Act [430 ILCS 67/35], the order shall be entered in the Law Enforcement Agencies Data System (LEADS) as soon as possible after receipt from the clerk.

**(b)** The Department of State Police shall maintain a complete and systematic record and index of all valid and recorded firearms restraining orders issued or filed under this Act. The data shall be used to inform all dispatchers and law enforcement officers at the scene of a violation of a firearms restraining order of the effective dates and terms of any recorded order of protection.

**(c)** The data, records, and transmittals required under this Section shall pertain to any valid emergency or plenary firearms restraining order, whether issued in a civil or criminal proceeding or authorized under the laws of another state, tribe, or United States territory.

#### **430 ILCS 67/60 Filing of a firearms restraining order issued by another state.**

**(a)** A person who has sought a firearms restraining order or similar order issued by the court of another state, tribe, or United States territory may file a certified copy of the firearms restraining order with the clerk of the court in a judicial circuit in which the person believes that enforcement may be necessary.

**(b)** The clerk shall:

**(1)** treat the foreign firearms restraining order in the same manner as a judgment of the circuit court for any county of this State in accordance with the provisions of the Uniform Enforcement of Foreign Judgments Act, except that the clerk shall not mail notice of the filing of the foreign order to the respondent named in the order; and

**(2)** on the same day that a foreign firearms restraining order is filed, file a certified copy of that order with the sheriff or other law enforcement officials charged with maintaining Department of State Police records as set forth in Section 55 of this Act [430 ILCS 67/55].

**(c)** Neither residence in this State nor filing of a foreign firearms restraining order shall be required for enforcement of the order by this State. Failure to file the foreign order shall not be an impediment to its treatment in all respects as an Illinois firearms restraining order.

**(d)** The clerk shall not charge a fee to file a foreign order of protection under this Section.

#### **430 ILCS 67/65 Enforcement; sanctions for violation of order**

A respondent who knowingly violates a firearms restraining order is guilty of a Class A misdemeanor. Prosecution for a violation of a firearms restraining order shall not bar concurrent prosecution for any other crime, including any crime that may have been committed at the time of the violation of the firearms restraining order.

#### **430 ILCS 67/70 Non-preclusion of remedies**

Nothing in this Act shall preclude a petitioner or law-enforcement officer from removing weapons under other authority, or filing criminal charges when probable cause exists.

#### **430 ILCS 67/75 Limited law enforcement liability.**

Any act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Act shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of willful or wanton misconduct.

#### **430 ILCS 67/80 Expungement or sealing of order.**

If the court denies issuance of a firearms restraining order against the respondent, all records of the proceeding shall be immediately expunged from the court records. If the firearms restraining order is granted, all records of the proceeding shall, 3 years after the expiration of the order, be sealed.

#### **430 ILCS 67/85 Report to the General Assembly.**

The Illinois State Police shall submit a yearly report to the General Assembly or make available on its website the number of petitions entered into the Law Enforcement Agencies Data System.



# Indiana

**Types of seizures:** Warrant for search and seizure of a firearm, Seizure without warrant, Retention of Firearm Order:

**Citation:** Ind. Code Ann. §§ 35-47-14-1 to 35-47-14-13

## Highlighted Provisions

**Persons eligible to petition:**

Law enforcement officer

**Standard of proof:**

Seizure without Warrant: Probable cause

Warrant: Probable cause

Retention of Firearm Order: Clear & Convincing

**Evidence required:**

(1) that respondent possesses a firearm and (2) that respondent is dangerous, as defined below:

**“Dangerous individual” defined:**

A person is dangerous if either (1) the person presents an imminent risk of injury to themselves or another, or (2) it is probable that the person will present a risk of injury to themselves or another and the person either (a) has a mental illness that may be controlled by medication and has not demonstrated a pattern of voluntarily and consistently taking the individual’s medication while not under supervision or (b) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or suicidal conduct.

**Duration of order:**

Seizure without a warrant or with a warrant: Until hearing date, which should be scheduled within 14 days, or is there is a request for continuance of hearing for a period of not more than 60 days after seizure

Retention of a Firearm Order: Indefinite or at least in 180-day increments if respondent petitions court to terminate

**Service on respondent:**

N/A

**Notification of persons at risk:**

Statute is silent

**Filing fees:**

Statute is silent

**Renewal/Termination:**

180 days or more after the hearing, respondent can petition the court for return of the firearm. Respondent has the burden of proving by a preponderance of the evidence that they no longer meet the elements of being dangerous. If they succeed, the court will order the return of the firearm. If they fail, then they have to wait another 180 days before petitioning again.

If the petitioner for return was made before a year since the prohibition was issued, the petitioner must show by a preponderance of the evidence that they are no longer dangerous. If the petition was made after a year was passed, the state must show with clear and convincing evidence that the individual is still dangerous.

**Firearm prohibitions:**

Once the court has found through clear and convincing evidence that the individual is dangerous, the individual's license to carry a handgun is suspended, and they are enjoined from renting, receiving transfer of, owning, or possessing a firearm.

**Firearm relinquishment process:**

Law enforcement may seize a firearm from an individual with or without a warrant. If a seizure was done without a warrant, a court will review an affidavit submitted by the law enforcement officer to determine if there was probable cause that the individual was dangerous.

**Firearm disposal process:**

If law enforcement still has a firearm 5 years after the first hearing in which they were ordered to retain it, the court may order them to destroy it or sell it.

**Limitations on liability:**

Statute is silent

**Return/transfer of firearms:**

If the court determines that the individual from whom the firearm was seized is dangerous and that they are not the owner of the firearm, the court can order that it be returned to its owner.

After 180 days, the person it was seized from can petition for its return.

**Venue:**

Seizure with a warrant: the statute is silent on which circuit or superior court can issue the warrant.

Seizure without a warrant: the statement describing basis for probable cause must be submitted to a circuit or superior court that has jurisdiction over respondent.

**Penalties:**

Silent

**Entry Registry/NCIC POF:**

Silent

## Statutes

**§ 35-47-14-1. "Dangerous individual" defined.**

(a) For the purposes of this chapter, an individual is "dangerous" if:

- (1) the individual presents an imminent risk of personal injury to the individual or to another individual; or
- (2) It is probable that the individual will present a risk of personal injury to the individual or to another individual in the future and the individual:
  - (A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or
  - (B) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or suicidal conduct.

(b) The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the individual is dangerous for the purposes of this chapter.

### **§ 35-47-14-1.5. Responsible third party.**

For the purposes of this chapter, an individual is a “responsible third party” if:

- (1) the individual does not cohabit with the person found to be dangerous in the hearing conducted under section 6 [IC 35-47-14-6] of this chapter;
- (2) the individual is a proper person (as defined under IC 35-47-1-7) who may lawfully possess a firearm; and
- (3) the individual is willing to enter into a written court agreement to accept the transfer of the firearm as a responsible third party under section 10 [IC 35-47-14-10] of this chapter.

### **§ 35-47-14-2. Issuance of warrant.**

(a) A circuit or superior court may issue a warrant to search for and seize a firearm in the possession of an individual who is dangerous if:

(1) a law enforcement officer provides the court a sworn affidavit that:

(A) states why the law enforcement officer believes that the individual is dangerous and in possession of a firearm; and

(B) describes the law enforcement officer’s interactions and conversations with:

(i) the individual who is alleged to be dangerous; or

(ii) another individual, if the law enforcement officer believes that information obtained from this individual is credible and reliable;

that have led the law enforcement officer to believe that the individual is dangerous and in possession of a firearm;

(2) the affidavit specifically describes the location of the firearm; and

(3) the circuit or superior court determines that probable cause exists to believe that the individual is:

(A) dangerous; and

(B) in possession of a firearm.

(b) A law enforcement agency responsible for the seizure of the firearm under this section shall file a search warrant return with the court setting forth the:

(1) quantity; and

(2) type;

of each firearm seized from an individual under this section. The court shall provide information described under this subsection to the office of judicial administration in a manner required by the office.

### **§ 35-47-14-3. Seizure without warrant — Submission of affidavit by law enforcement officer.**

(a) If a law enforcement officer seizes a firearm from an individual whom the law enforcement officer believes to be dangerous without obtaining a warrant, the law enforcement officer shall submit to the circuit or superior court having jurisdiction over the individual believed to be dangerous an affidavit describing the basis for the law enforcement officer’s belief that the individual is dangerous.

(b) An affidavit described in subsection (a) shall:

(1) set forth the quantity and type of each firearm seized from the individual under this section; and

(2) be submitted to a circuit or superior court having jurisdiction over the individual believed to be dangerous not later than forty-eight (48) hours after the seizure of the firearm.

(c) The court shall review the affidavit described in subsection (a) as soon as possible.

(d) If the court finds that probable cause exists to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to retain the firearm. The court shall provide information described under this subsection and subsection (b)(1) to the office of judicial administration in a manner required by the office.

(e) If the court finds that there is no probable cause to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual as quickly as practicable, but not later than five (5) days after the date of the order.

#### **§ 35-47-14-4. Filing of return of warrant.**

If a court issued a warrant to seize a firearm under this chapter, the law enforcement officer who served the warrant shall, not later than forty-eight (48) hours after the warrant was served, file a return with the court that:

(1) states that the warrant was served; and

(2) sets forth:

(A) the time and date on which the warrant was served;

(B) the name and address of the individual named in the warrant; and

(C) the quantity and identity of any firearms seized by the law enforcement officer.

#### **§ 35-47-14-5. Hearing.**

(a) After the filing of a search warrant return under section 2 [IC 35-47-14-2] of this chapter or a filing of an affidavit under section 3 [IC 35-47-14-3] of this chapter, the court shall conduct a hearing.

(b) The court shall make a good faith effort to conduct the hearing not later than fourteen (14) days after the filing of a search warrant return under section 2 of this chapter or the filing of an affidavit under section 3 of this chapter. If the hearing cannot be conducted within fourteen (14) days after the filing of the search warrant return or affidavit, the court shall conduct the hearing as soon as possible. However, a request for a continuance of the hearing described in this subsection for a period of not more than sixty (60) days from the individual from whom the firearm was seized shall be liberally granted. The court shall inform:

(1) the prosecuting attorney; and

(2) the individual from whom the firearm was seized;

of the date, time, and location of the hearing. The court may conduct the hearing at a facility or other suitable place not likely to have a harmful effect upon the individual's health or well-being.

#### **§ 35-47-14-6. Burden of proof in hearing — Retention of firearm by law enforcement agency — Written order — Return of firearm.**

(a) The court shall conduct a hearing as required under this chapter.

(b) The state has the burden of proving all material facts by clear and convincing evidence.

(c) If the court determines that the state has proved by clear and convincing evidence that the individual is dangerous, the court shall issue a written order:

(1) finding that individual is dangerous (as defined in section 1 [IC 34-47-14-1] of this chapter);

- (2) ordering the law enforcement agency having custody of the seized firearm to retain the firearm;
- (3) ordering the individual's license to carry a handgun, if applicable, suspended; and
- (4) enjoining the individual from:
  - (A) renting;
  - (B) receiving transfer of;
  - (C) owning; or
  - (D) possessing;

a firearm; and

determine whether the individual should be referred to further proceedings to consider whether the individual should be involuntarily detained or committed under IC 12-26-6-2(a)(2)(B).

(d) If the court finds that the individual is dangerous under subsection (c), the clerk shall transmit the order of the court to the office of judicial administration:

- (1) for transmission to NICS (as defined in IC 35-47-2.5-2.5); and
- (2) for the collection of certain data related to the confiscation and retention of firearms taken from dangerous individuals; in accordance with IC 33-24-6-3.

(e) If the court orders a law enforcement agency to retain a firearm, the law enforcement agency shall retain the firearm until the court orders the firearm returned or otherwise disposed of.

(f) If the court determines that the state has failed to prove by clear and convincing evidence that the individual is dangerous, the court shall issue a written order that:

- (1) the individual is not dangerous (as defined in section 1 of this chapter); and
- (2) the law enforcement agency having custody of the firearm shall return the firearm as quickly as practicable, but not later than five (5) days after the date of the order, to the individual from whom it was seized.

#### **§ 35-47-14-7. Return of firearm to owner.**

If the court, in a hearing conducted under section 5 [IC 35-47-14-5] of this chapter, determines that:

- (1) the individual from whom a firearm was seized is dangerous; and
- (2) the firearm seized from the individual is owned by another individual;

the court may order the law enforcement agency having custody of the firearm to return the firearm to the owner of the firearm.

#### **§ 35-47-14-8. Petition for return of firearm after hearing.**

(a) At least one hundred eighty (180) days after the date on which a court orders a law enforcement agency to retain an individual's firearm under section 6(c) [IC 35-47-14-6(c)] of this chapter, the individual may petition the court for a finding that the individual is no longer dangerous.

(b) Upon receipt of a petition described in subsection (a), the court shall:

- (1) enter an order setting a date for a hearing on the petition; and
- (2) inform the prosecuting attorney of the date, time, and location of the hearing.

(c) The prosecuting attorney shall represent the state at the hearing on a petition under this section.

(d) In a hearing on a petition under this section, the individual may be represented by an attorney.

(e) In a hearing on a petition under this section filed:

(1) not later than one (1) year after the date of the order issued under section 6(c) of this chapter, the individual must prove by a preponderance of the evidence that the individual is no longer dangerous; and

(2) later than one (1) year after the date of the order issued under section 6(c) of this chapter, the state must prove by clear and convincing evidence that the individual is still dangerous.

(f) If, upon the completion of the hearing and consideration of the record, the court finds that the individual is not dangerous, the court shall:

(1) issue a court order that finds that the individual is no longer dangerous;

(2) order the law enforcement agency having custody of any firearm to return the firearm as quickly as practicable, but not later than five (5) days after the date of the order, to the individual;

(3) terminate any injunction issued under section 6 of this chapter; and

(4) terminate the suspension of the individual's license to carry a handgun so that the individual may reapply for a license.

(g) If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) days after the date on which the court denied the petition.

(h) If a court issues an order described under subsection (f), the court's order shall be transmitted, as soon as practicable, to the office of judicial administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) and, for the collection of certain data related to the confiscation and retention of firearms taken from dangerous individuals in accordance with IC 33-24-6-3.

#### **§ 35-47-14-9. Destruction or permanent disposal of firearm.**

If at least five (5) years have passed since a court conducted the first hearing to retain a firearm under this chapter, the court, after giving notice to the parties and conducting a hearing, may order the law enforcement agency having custody of the firearm to dispose of the firearm in accordance with IC 35-47-3.

#### **§ 35-47-14-10. Transfer or sale of firearms retained under court order.**

(a) If a court has ordered a law enforcement agency to retain an individual's firearm under section 6 [IC 35-47-14-6] of this chapter, the individual or the rightful owner of the firearm, as applicable, may petition the court to order the law enforcement agency to:

(1) transfer the firearm to a responsible third party as described under section 1.5 [IC 35-47-14-1.5] of this chapter;

(2) transfer the firearm to an individual who possesses a valid federal firearms license issued under 18 U.S.C. 923 for storage or an eventual lawful sale whose terms are mutually agreed upon between the licensee and the individual or rightful owner, as applicable; or

(3) sell the firearm at auction under IC 35-47-3-2 and return the proceeds to the individual or the rightful owner of the firearm, as applicable.

The responsible third party who accepts transfer of the firearm from the law enforcement agency under a court order under this section shall enter into a written court agreement that obligates the responsible third party to the reasonable care and storage of the firearm, including not providing access or transferring the

firearm to the individual found to be dangerous in a hearing under section 6 of this chapter.

**(b)** An individual or rightful owner of the firearm may petition the court as described in subsection (a):

**(1)** at the hearing described in section 6 or 9 [IC 35-47-14-6 or IC 35-47-14-9] of this chapter; or

**(2)** at any time before the hearing described in section 6 or 9 of this chapter is held.

**(c)** If an individual or rightful owner timely requests a sale of a firearm under subsection (a), the court shall order the law enforcement agency having custody of the firearm to transfer the firearm or sell the firearm at auction under IC 35-47-3-2, unless:

**(1)** the serial number of the firearm has been obliterated;

**(2)** the transfer of the firearm would be unlawful; or

**(3)** the requirements of subsection (a) have not been met.

**(d)** If the court issues an order under subsection (c), the court's order must require:

**(1)** that the firearm be sold not more than one (1) year after receipt of the order; and

**(2)** that the proceeds of the sale be returned to the individual or rightful owner of the firearm.

**(e)** A law enforcement agency may retain not more than eight percent (8%) of the sale price to pay the costs of the sale, including administrative costs and the auctioneer's fee.

**§ 35-47-14-11. Sale, disposal, or transfer of firearm retained under this chapter — Effect on individual's designation as dangerous person.**

The sale, disposal, or transfer of a firearm retained under this chapter does not:

**(1)** alter or terminate an individual's designation as a dangerous person by a court; or

**(2)** constitute prima facie evidence that an individual is no longer dangerous.

**§ 35-47-14-12. Law enforcement agency storing firearm — Damage or loss.**

**(a)** A law enforcement agency storing a firearm seized under this chapter shall use reasonable care to ensure that the firearm is not lost or damaged, and the law enforcement agency is prohibited from marking the firearm for identification or other purposes.

**(b)** A law enforcement agency shall be liable for any damage to or loss of the firearm that results from the law enforcement agency's negligence in the storage or handling of the firearm.

**§ 35-47-14-13. Construction of chapter.**

Nothing in this chapter may be construed to authorize a warrantless search or seizure by a law enforcement officer if a warrant would otherwise be required.

# Maryland

**Types of orders:** Interim Extreme Risk Protective Order (ERPO), Temporary ERPO, Final ERPO

**Citation:** Md. Code Ann., Pub. Safety §§ 5-601 - 5-610

## Highlighted Provisions

### **Persons eligible to petition:**

Health professionals, Law enforcement officer, family members

### **Standard of proof:**

Interim ERPO: reasonable grounds

Temporary ERPO: reasonable grounds

Final ERPO: clear and convincing evidence

### **Finding required:**

Interim & Temporary ERPOs: respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm

Final ERPO: respondent poses a danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm

### **Duration of order:**

Interim ERPO: until the temporary order hearing (which should occur on the 1st or 2nd day on which a District Court judge is sitting after interim order issued) or the end of the second business day in which the Office of the District Court Clerk is open

Temporary ERPO: normally up to 7 days; can be extended up to 6 months if necessary to complete service; if court is closed on the day on which the temporary order is due to expire, the temporary order shall be effective until the 2nd day on which the court is open

Final ERPO: up to 1 year

### **Service on respondent:**

Interim ERPO: must be immediately served on respondent by a law enforcement officer

Temporary ERPO: If respondent was not served with the interim order, they must be immediately served by a law enforcement officer. If respondent was served with the interim order, then if they were present at the hearing they can be served in open court, and if they were not present at the hearing then they can be served by first class mail.

Final ERPO: If respondent is present at the hearing, then they can be served in open court. If not, they can be served by first class mail.

### **Notification of persons at risk:**

A copy of a final order must be delivered to any person the judge determines is appropriate.

The court must also notify all affected persons before modifying or rescinding a final order.

### **Filing fees:**

Statute is silent.

### **Renewal/Termination of the order:**

Modification and termination: the court may modify or rescind a final order after giving notice to all affected persons and holding a hearing.



Extension: if good cause is shown, the court may extend a final order for 6 months after giving notice to all affected persons and holding a hearing.

Appeal: if a petition is granted or denied, respondent or petitioner may appeal that decision to the circuit court.

**Firearm prohibitions:**

Respondent is prohibited from purchasing or possessing any firearm or ammunition for the duration of the order.

**Firearm relinquishment process:**

Respondent must surrender all firearms and ammunition to law enforcement.

Law enforcement can apply for a warrant if they have probable cause to believe respondent is violating an order. Law enforcement can also arrest respondent if there is probable cause to believe they are violating an order, even if there is no warrant.

**Firearm termination process:**

Respondent can request that the agency holding the firearm destroy it.

If no one claims the firearm 6 months after notice is given to respondent that the order has ended, then no party shall have the right to assert ownership of the firearm or ammunition, and then the agency may destroy it.

**Limitations on liability:**

There is no civil or criminal liability for a petitioner who files in good faith.

**Return/transfer of firearms:**

When an order expires or is terminated, the law enforcement agency holding the firearm notifies the respondent. If respondent requests return of the firearm, the agency must return it within the following times: 14 days after the expiration of an interim or temporary ERPO; 14 days after the court terminates a final ERPO; or 48 hours after the expiration of a final ERPO.

If respondent does not want to reclaim the firearm, they can sell it to a licensed firearms dealer or a 3rd party who does not live with respondent and is not otherwise prohibited from purchasing it.

**Warrant authority:**

A State's Attorney or law enforcement officer may apply for a search warrant if there is probable cause to believe that the subject of an ERPO possesses a firearm and failed to surrender it to law enforcement.

**Venue:**

Statute is silent

**Penalties:**

A violation of the order may result in:

(1) criminal prosecution; and

(2) imprisonment or fine or both.

(b) A temporary extreme risk protective order and final extreme risk protective order issued under this subtitle shall state that a violation of the order may result in a finding of contempt.

A person who fails to comply with the provisions of an interim extreme risk protective order, a temporary extreme risk protective order, or a final extreme risk protective order under this subtitle is guilty of a misdemeanor and on conviction is subject to:

(1) for a first offense, a fine not exceeding \$1,000 or imprisonment not exceeding 90 days or both; and

(2) for a second or subsequent offense, a fine not exceeding \$2,500 or imprisonment not exceeding 1 year or both.

**Entry Registry/NCIC POF:**

Silent

### § 5-601. Definitions

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Ammunition” has the meaning stated in § 5-133.1 of this title.
- (c) “Extreme risk protective order” means a civil interim, temporary, or final protective order issued in accordance with this subtitle.
- (d) “Firearm” has the meaning stated in § 5-101 of this title.
- (e) Petitioner. --
- (1) “Petitioner” means an individual who files a petition for an extreme risk protective order under this subtitle.
- (2) “Petitioner” includes:
- (i) a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage or family therapist, or health officer or designee of a health officer who has examined the individual;
  - (ii) a law enforcement officer;
  - (iii) the spouse of the respondent;
  - (iv) a cohabitant of the respondent;
  - (v) a person related to the respondent by blood, marriage, or adoption;
  - (vi) an individual who has a child in common with the respondent;
  - (vii) a current dating or intimate partner of the respondent; or
  - (viii) a current or former legal guardian of the respondent.
- (f) “Respondent” means a person against whom a petition for an extreme risk protective order is filed.

### § 5-602. Petition

- (a) Requirements. --
- (1) A petition for an extreme risk protective order shall:
- (i) be signed and sworn to by the petitioner under the penalty of perjury;
  - (ii) include any information known to the petitioner that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm;
  - (iii) set forth specific facts in support of the information described in item (ii) of this paragraph;
  - (iv) explain the basis for the petitioner’s knowledge of the supporting facts, including a description of the behavior and statements of the respondent or any other information that led the petitioner to believe that the respondent presents an immediate and present danger of causing personal injury to the respondent or others;
  - (v) describe the number, types, and location of any known firearms believed to be possessed by the respondent; and
  - (vi) include any supporting documents or information regarding:

1. any unlawful, reckless, or negligent use, display, storage, possession, or brandishing of a firearm by the respondent;
2. any act or threat of violence the respondent made against the respondent or against another, whether or not the threat of violence involved a firearm;
3. any violation by the respondent of a protective order under Title 4, Subtitle 5 of the Family Law Article;
4. any violation by the respondent of a peace order under Title 3, Subtitle 15 of the Courts Article; and
5. any abuse of a controlled dangerous substance or alcohol by the respondent, including any conviction for a criminal offense involving a controlled dangerous substance or alcohol.

(2) A petition for an extreme risk protective order may include, to the extent disclosure is not otherwise prohibited, health records or other health information concerning the respondent.

(b) Filing. -- A petitioner seeking an extreme risk protective order under this subtitle may file a petition with:

- (1) the District Court; or
- (2) when the Office of the District Court Clerk is closed, a District Court commissioner.

(c) Confidentiality of court records. --

(1) All court records relating to a petition for an extreme risk protective order made under this subtitle are confidential and the contents may not be divulged, by subpoena or otherwise, except by order of the court on good cause shown.

(2) This subsection does not prohibit review of a court record relating to a petition by:

- (i) personnel of the court;
- (ii) the respondent or counsel for the respondent;
- (iii) authorized personnel of the Maryland Department of Health;
- (iv) authorized personnel of a local core service agency or local behavioral health authority;
- (v) a law enforcement agency; or
- (vi) a person authorized by a court order on good cause shown.

(d) Immunity from liability. -- A petitioner who, in good faith, files a petition under this subtitle is not civilly or criminally liable for filing the petition.

(e) Subtitle not applicable to health records or information. -- Nothing in this subtitle may be interpreted to require a health care provider to disclose health records or other health information concerning a respondent except:

- (1) in accordance with a subpoena directing delivery of the records or information to the court under seal; or
- (2) by order of the court.

### **§ 5-603. Interim extreme risk protective order**

(a) Findings and factors. --

(1) When a petition is filed with a District Court commissioner under § 5-602(b)(2) of this subtitle, the commissioner may enter an interim extreme risk protective order to prohibit the respondent from possessing a firearm if the commissioner finds that there are reasonable grounds to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by

possessing a firearm.

**(2)** In determining whether to enter an interim extreme risk protective order under this section, the commissioner shall consider:

- (i)** all relevant evidence presented by the petitioner; and
- (ii)** the amount of time that has elapsed since any of the events described in the petition.

**(3)** The interim extreme risk protective order shall:

- (i)** order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and
- (ii)** prohibit the respondent from purchasing or possessing any firearm or ammunition for the duration of the interim extreme risk protective order.

**(4)** If, based on the petition, the commissioner finds probable cause to believe that the respondent meets the requirements for emergency evaluation under Title 10, Subtitle 6 of the Health - General Article, the commissioner shall refer the respondent to law enforcement for a determination of whether the respondent should be taken for an emergency evaluation.

**(b)** Contents. --

**(1)**

- (i)** An interim extreme risk protective order shall state the date, time, and location for a temporary extreme risk protective order hearing and a tentative date, time, and location for a final extreme risk protective order hearing.
- (ii)** Except as provided in subsection (e) of this section, or unless the judge continues the hearing for good cause, a temporary extreme risk protective order hearing shall be held on the first or second day on which a District Court judge is sitting after issuance of the interim extreme risk protective order.

**(2)** An interim extreme risk protective order shall include in at least 10 point bold type:

**(i)** notice to the respondent that:

- 1.** the respondent must give the court written notice of each change of address;
- 2.** if the respondent fails to appear at the temporary extreme risk protective order hearing or any later hearing, the respondent may be served with any orders or notices in the case by first-class mail at the respondent's last known address;
- 3.** the date, time, and location of the final extreme risk protective order hearing is tentative only and subject to change;
- 4.** if the respondent does not attend the temporary extreme risk protective order hearing, the respondent may call the Office of the District Court Clerk at the number provided in the order to find out the actual date, time, and location of any final extreme risk protective order hearing; and
- 5.** if the respondent fails to appear at the final extreme risk protective order hearing, a final extreme risk protective order may be entered in the respondent's absence and served on the respondent by first-class mail;

**(ii)** a statement that the respondent may consult an attorney regarding any matter related to the order, and that an attorney should be contacted promptly so that the attorney may assist the respondent;

**(iii)** a statement specifying the contents and duration of a temporary extreme risk protective order;

(iv) notice to the petitioner and respondent that, at the hearing, a judge may issue a temporary extreme risk protective order prohibiting the respondent from possessing a firearm or may deny the petition, whether or not the respondent is in court;

(v) notice of:

1. the requirements for surrendering firearms and ammunition in the respondent's possession to law enforcement authorities; and

2. the process for reclaiming firearms and ammunition on the expiration or termination of the order;

(vi) a warning to the respondent that violation of an interim extreme risk protective order is a crime and that a law enforcement officer will arrest the respondent, with or without a warrant, and take the respondent into custody if the officer has probable cause to believe that the respondent has violated a provision of the interim extreme risk protective order; and

(vii) the phone number of the Office of the District Court Clerk.

(c) Forward of copy of petition and order to law enforcement for service; transfer of case file to court. -- Whenever a commissioner issues an interim extreme risk protective order, the commissioner shall:

(1) immediately forward a copy of the petition and interim extreme risk protective order to the appropriate law enforcement agency for service on the respondent; and

(2) before the hearing scheduled for the temporary extreme risk protective order, transfer the case file to the clerk of court.

(d) A law enforcement officer shall:

(1) immediately on receipt of an interim extreme risk protective order, serve it on the respondent named in the order;

(2) make a return of service to the clerk of court; and

(3) within 2 hours after service of the order on the respondent, electronically notify the Department of Public Safety and Correctional Services of the service using an electronic system approved and provided by the Department of Public Safety and Correctional Services.

(e) Effective period. --

(1) Except as provided in paragraph (2) of this subsection, an interim extreme risk protective order shall be effective until the earlier of:

(i) the temporary extreme risk protective order hearing under § 5-604 of this subtitle; or

(ii) the end of the second business day the Office of the District Court Clerk is open following the issuance of the interim extreme risk protective order.

(2) If the court is closed on the day on which the interim extreme risk protective order is due to expire, the interim extreme risk protective order shall be effective until the next day on which the court is open, at which time the court shall hold a temporary extreme risk protective order hearing.

#### **§ 5-604. Temporary extreme risk protective order.**

(a) Findings and factors. --

(1) After a hearing on a petition, whether ex parte or otherwise, a judge may enter a temporary extreme risk protective order to prohibit the respondent from possessing a firearm if the judge finds that there are reasonable grounds to believe that the respondent poses an immediate and present danger of causing

personal injury to the respondent, the petitioner, or another by possessing a firearm.

**(2)** In determining whether to enter a temporary extreme risk protective order under this section, the judge shall consider:

- (i)** all relevant evidence presented by the petitioner; and
- (ii)** the amount of time that has elapsed since any of the events described in the petition.

**(3)** The temporary extreme risk protective order shall:

- (i)** order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and
- (ii)** prohibit the respondent from purchasing or possessing any firearm or ammunition for the duration of the temporary extreme risk protective order.

**(4)** If the judge finds probable cause to believe that the respondent meets the requirements for emergency evaluation under Title 10, Subtitle 6 of the Health - General Article, the judge shall refer the respondent for emergency evaluation.

**(b)** Service. --

**(1)** Except as provided in paragraph (2) of this subsection, a law enforcement officer shall:

- (i)** immediately serve the temporary extreme risk protective order on the respondent under this section; and
- (ii)** within 2 hours after service of the order on the respondent, electronically notify the Department of Public Safety and Correctional Services of the service using an electronic system approved and provided by the Department of Public Safety and Correctional Services.

**(2)** A respondent who has been served with an interim extreme risk protective order under § 5-603 of this subtitle shall be served with the temporary extreme risk protective order in open court or, if the respondent is not present at the temporary extreme risk protective order hearing, by first-class mail at the respondent's last known address.

**(3)** There shall be no cost to the petitioner for service of the temporary extreme risk protective order.

**(c)** Effective period. --

**(1)** Except as otherwise provided in this subsection, the temporary extreme risk protective order shall be effective for not more than 7 days after service of the order.

**(2)** The judge may extend the temporary extreme risk protective order as needed, but not to exceed 6 months, to effectuate service of the order where necessary to provide protection or for other good cause.

**(3)** If the court is closed on the day on which the temporary extreme risk protective order is due to expire, the temporary extreme risk protective order shall be effective until the second day on which the court is open, by which time the court shall hold a final extreme risk protective order hearing.

**(d)** Final hearing. -- The judge may proceed with a final extreme risk protective order hearing instead of a temporary extreme risk protective order hearing if:

**(1)**

- (i)** the respondent appears at the hearing;
- (ii)** the respondent has been served with an interim extreme risk protective order; or

- (iii) the court otherwise has personal jurisdiction over the respondent; and
- (2) the petitioner and the respondent expressly consent to waive the temporary extreme risk protective order hearing.

**§ 5-605. Final extreme risk protective order.**

(a) Opportunity to be heard. -- A respondent under § 5-604 of this subtitle shall have an opportunity to be heard on the question of whether the judge should issue a final extreme risk protective order.

(b) Hearing and notice. --

(1)

(i) The temporary extreme risk protective order shall state the date and time of the final extreme risk protective order hearing.

(ii) Except as provided in § 5-604(c) of this subtitle and subparagraph (iii) of this paragraph, or unless continued for good cause, the final extreme risk protective order hearing shall be held not later than 7 days after the temporary extreme risk protective order is served on the respondent.

(iii) On request of the respondent, a final extreme risk protective order hearing may be rescheduled for a date not later than 30 days after the date on which the hearing was initially scheduled.

(2) The temporary extreme risk protective order shall include notice to the respondent:

(i) in at least 10 point bold type, that if the respondent fails to appear at the final extreme risk protective order hearing, a final extreme risk protective order may be entered in the respondent's absence and the respondent may be served by first-class mail at the respondent's last known address with the final extreme risk protective order and all other notices concerning the final extreme risk protective order;

(ii) of the contents of a final extreme risk protective order;

(iii) that the final extreme risk protective order shall be effective for the period stated in the order, not to exceed 1 year, unless the judge extends the term of the order under § 5-606(a)(2) of this subtitle;

(iv) that the respondent may consult an attorney regarding any matter related to the order, and that an attorney should be contacted promptly so that the attorney may assist the respondent;

(v) of the requirements for surrendering firearms and ammunition in the respondent's possession to law enforcement authorities;

(vi) of the process for reclaiming firearms and ammunition on the expiration or termination of the order; and

(vii) in at least 10 point bold type, that the respondent must notify the court in writing of any change of address.

(c) Conducting hearing; considerations; content; emergency evaluation. --

(1) If the respondent appears before the court at a final extreme risk protective order hearing or has been served with an interim or temporary extreme risk protective order or if the court otherwise has personal jurisdiction over the respondent, the judge:

(i) may proceed with the final extreme risk protective order hearing; and

(ii) may enter a final extreme risk protective order to prohibit the respondent from possessing a firearm if the judge finds by clear and convincing evidence that the respondent poses a danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.

**(2)** In determining whether to enter a final extreme risk protective order under this section, the judge shall consider:

- (i)** all relevant evidence presented by the petitioner and respondent; and
- (ii)** the amount of time that has elapsed since any of the events described in the petition.

**(3)** The final extreme risk protective order shall:

- (i)** order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and
- (ii)** prohibit the respondent from purchasing or possessing any firearm or ammunition for the duration of the interim extreme risk protective order.

**(4)** If the judge finds probable cause to believe that the respondent meets the requirements for emergency evaluation under Title 10, Subtitle 6 of the Health - General Article, the judge may refer the respondent for emergency evaluation.

**(d)** Review relevant open and shielded court records. --

**(1)** Before granting, denying, or modifying a final extreme risk protective order under this section, the court may review all relevant open and shielded court records involving the petitioner and the respondent, including records of proceedings under:

- (i)** the Criminal Law Article;
- (ii)** Title 3, Subtitle 15 of the Courts Article;
- (iii)** Title 4, Subtitle 5 of the Family Law Article;
- (iv)** Title 10, Subtitle 6 of the Health - General Article; and
- (v)** this article.

**(2)** The court's failure to review records under this subsection does not affect the validity of an order issued under this section.

**(e)** Service. --

**(1)** A copy of the final extreme risk protective order shall be served on the petitioner, the respondent, the appropriate law enforcement agency, and any other person the judge determines is appropriate in open court or, if the person is not present at the final extreme risk protective order hearing, by first-class mail to the person's last known address.

**(2)**

- (i)** A copy of the final extreme risk protective order served on the respondent in accordance with paragraph (1) of this subsection constitutes actual notice to the respondent of the contents of the final extreme risk protective order.
- (ii)** Service is complete on mailing.

**(f)** Effective period. --

**(1)** Except as provided in paragraph (2) of this subsection, all relief granted in a final extreme risk protective order shall be effective for the period stated in the order, not to exceed 1 year.

**(2)** A subsequent circuit court order pertaining to any of the provisions included in the final extreme risk



protective order shall supersede those provisions in the final extreme risk protective order.

**§ 5-606. Final extreme risk protective order -- Modification and appeal.**

**(a) Modification. --**

**(1)** A final extreme risk protective order may be modified or rescinded during the term of the extreme risk protective order after:

- (i)** giving notice to all affected persons and the respondent; and
- (ii)** a hearing.

**(2)** For good cause shown, a judge may extend the term of a final extreme risk protective order for 6 months beyond the period specified in § 5-605**(f)** of this subtitle after:

- (i)** giving notice to all affected persons and the respondent; and
- (ii)** a hearing.

**(3)**

**(i)** If, during the term of a final extreme risk protective order, a petitioner files a motion to extend the term of the order under paragraph (2) of this subsection, the court shall hold a hearing on the motion within 30 days after the motion is filed.

**(ii)** If the hearing on the motion is scheduled after the original expiration date of the final extreme risk protective order, the court shall extend the order and keep the terms of the order in full force and effect until the hearing on the motion.

**(b) Appeal. --**

**(1)** If a District Court judge grants or denies a petition filed under this subtitle, a respondent or a petitioner may appeal to the circuit court for the county in which the District Court is located.

**(2)** An appeal taken under this subsection to the circuit court shall be heard de novo in the circuit court not later than 60 days after the date the appeal is filed.

**(3)**

**(i)** If an appeal is filed under this subsection, the District Court judgment shall remain in effect until superseded by a judgment of the circuit court.

**(ii)** Unless the circuit court orders otherwise, modification or enforcement of the District Court order shall be by the District Court.

**§ 5-607. Search warrant for removal of firearm.**

In accordance with the provisions of § 1-203 of the Criminal Procedure Article, on application by a State's Attorney or a law enforcement officer with probable cause to believe that a respondent who is subject to an extreme risk protective order possesses a firearm and failed to surrender the firearm in accordance with the order, a court may issue a search warrant for the removal of the firearm at any location identified in the application for the warrant.

**§ 5-608. Firearm or ammunition surrendered or seized.**

**(a) General procedure. --**

**(1)** A law enforcement officer who takes possession of a firearm or ammunition in accordance with an extreme risk protective order shall, at the time the firearm or ammunition is surrendered or seized:

- (i) issue a receipt identifying, by make, model, and serial number, all firearms and ammunition that have been surrendered or seized;
- (ii) provide a copy of the receipt to the respondent;
- (iii) retain a copy of the receipt; and
- (iv) provide information to the respondent on the process for retaking possession of the firearms and ammunition on the expiration or termination of the order.

**(2)** A law enforcement agency shall transport and store any firearm surrendered or seized in accordance with an extreme risk protective order:

- (i) in a protective case, if one is available; and
- (ii) in a manner intended to prevent damage to the firearm during the time the extreme risk protective order is in effect.

**(3)** A law enforcement agency may not place any mark on a seized or surrendered firearm for identification or other purposes.

**(b)** Request for return of firearm or ammunition. --

**(1)** On expiration or termination of an extreme risk protective order, a law enforcement agency that holds any firearm or ammunition surrendered or seized in accordance with the expired or terminated order shall notify the respondent that the respondent may request the return of the firearm or ammunition.

**(2)** A law enforcement agency shall return a firearm or ammunition to a respondent only after the law enforcement agency verifies that the respondent is not otherwise prohibited from possessing the firearm or ammunition.

**(3)** Subject to paragraph (2) of this subsection, on request of the respondent, a law enforcement agency shall return all firearms and ammunition belonging to the respondent not later than:

- (i) 14 days after the expiration of an interim or temporary extreme risk protective order;
- (ii) 14 days after a court terminates a final extreme risk protective order; or
- (iii) 48 hours after the expiration of a final extreme risk protective order.

**(c)** When respondent does not wish to recover firearm or ammunition. --

**(1)** A respondent who does not wish to recover a firearm or ammunition seized or surrendered in accordance with an extreme risk protective order, or who is prohibited from possessing firearms or ammunition under this title, may:

(i) sell or transfer title to the firearm or ammunition to:

1. a licensed firearms dealer; or
2. another person who is not prohibited from possessing the firearm or ammunition under State or federal law and who does not live in the same residence as the respondent; or

(ii) request the destruction of the firearm or ammunition.

**(2)** A law enforcement agency shall transfer possession of a firearm or ammunition to a licensed firearms dealer or a person described in paragraph (1)(i)2 of this subsection only after:

- (i) the licensed firearms dealer or other person provides written proof that the respondent has agreed to transfer the firearm or ammunition to the dealer or person; and

(ii) the law enforcement agency verifies the agreement with the respondent.

(3) On request of the respondent, a law enforcement agency may destroy firearms or ammunition seized or surrendered in accordance with an extreme risk protective order.

(d) When individual who is not respondent claims ownership. -- If an individual other than the respondent claims ownership of a firearm or ammunition seized or surrendered in accordance with an extreme risk protective order, the law enforcement agency shall return the firearm or ammunition to the individual if:

(1) the individual provides proof of ownership of the firearm or ammunition; and

(2) the law enforcement agency determines that the individual is not prohibited from possessing the firearm or ammunition.

(e) Procedure when firearm or ammunition is not reclaimed. -- If a firearm or ammunition is not reclaimed within 6 months after the provision of notice to a respondent under subsection (b) of this section:

(1) no party shall have the right to assert ownership of the firearm or ammunition; and

(2) the law enforcement agency holding the firearm or ammunition may destroy the firearm or ammunition.

#### **§ 5-609. Penalties for violations.**

(a) In general. -- An interim extreme risk protective order, temporary extreme risk protective order, and final extreme risk protective order issued under this subtitle shall state that a violation of the order may result in:

(1) criminal prosecution; and

(2) imprisonment or fine or both.

(b) Contempt. -- A temporary extreme risk protective order and final extreme risk protective order issued under this subtitle shall state that a violation of the order may result in a finding of contempt.

#### **§ 5-610. Penalties for failure to comply.**

(a) In general. -- A person who fails to comply with the provisions of an interim extreme risk protective order, a temporary extreme risk protective order, or a final extreme risk protective order under this subtitle is guilty of a misdemeanor and on conviction is subject to:

(1) for a first offense, a fine not exceeding \$ 1,000 or imprisonment not exceeding 90 days or both; and

(2) for a second or subsequent offense, a fine not exceeding \$ 2,500 or imprisonment not exceeding 1 year or both.

(b) Arrest. -- A law enforcement officer shall arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an interim, temporary, or final extreme risk protective order in effect at the time of the violation.

# Massachusetts

**Types of orders:** Emergency ERPO, Final ERPO

**Citation:** Mass. Ann. Laws ch. 140, §§ 121, 131R - 131Y

## Highlighted Provisions

### **Persons eligible to petition:**

Family or household member or licensing authority

### **Standard of proof:**

Emergency ERPO: reasonable cause

ERPO: preponderance of the evidence

### **Findings required:**

Emergency ERPO: respondent poses a risk of causing bodily injury to self or others by being in possession of a license to carry firearms or a firearm identification card or having in the respondent's control, ownership or possession a firearm, rifle, shotgun, machine gun, weapon or ammunition.

ERPO: respondent poses a risk of causing bodily injury to self or others by having in the respondent's control, ownership or possession a firearm, rifle, shotgun, machine gun, weapon or ammunition.

### **Duration of order:**

Emergency ERPO: up to 10 days or until a hearing is held

ERPO: one year

Service on respondent:

When an order is issued, the clerk-magistrate of the court will transmit the order to the licensing authority of the municipality in which respondent resides. The licensing authority will serve respondent.

### **Notification of persons at risk:**

Not less than 30 calendar days prior to the expiration of an extreme risk protection order, the court shall notify the petitioner.

At least 7 days before an extreme risk protection order expires, the licensing authority must notify the petitioner about the order's end and the impending return of the respondent's firearms license, as well as any surrendered firearms or ammunition.

### **Filing fees:**

None. No fees for filing or service of process may be charged by a court or any public agency to a petitioner filing a petition pursuant.

### **Renewal/Termination of the order:**

Termination: either party may move at any time to modify, suspend, or terminate a final order. If they do so, then a hearing will be held once both parties have notice.

Renewal: the court will notify petitioner at least 30 days before the order is to expire. In that time, petitioner may file another petition to renew the original order.

### **Firearm prohibitions:**

Surrender of all firearms and ammunition in control, ownership, or possession, as well as all firearm identification cards and licenses to carry firearms. Suspension of license to carry firearms and firearm identification cards.

**Firearm relinquishment process:**

Respondent must surrender all firearms, weapons, ammunition, licenses to carry firearms, and firearm identification cards to the licensing authority of the municipality in which respondent resides

**Firearm disposal process:**

If the licensing authority holding the firearms can't determine a lawful owner within 180 days after an order ends, they may destroy the firearms or sell them to a licensed dealer.

**Limitations on liability:**

A person who files a petition for an extreme risk protection order, knowing the information in the petition to be materially false or with an intent to harass the respondent, shall be punished by a fine of not less than \$2,500 and not more than \$5,000 or by imprisonment for not more than 2½ years in the house of correction or by both such fine and imprisonment.

Sections 131R to 131Y, inclusive, shall not impose any duty on a family or household member to file a petition and no family or household member shall be held criminally or civilly liable for failure to petition

Family or household member is who (i) is or was married to the respondent; (ii) is or was residing with the respondent in the same household; (iii) is or was related by blood or marriage to the respondent; (iv) has or is having a child in common with the respondent, regardless of whether they have ever married or lived together; (v) is or has been in a substantive dating relationship with the respondent; or (vi) is or has been engaged to the respondent

**Return/transfer of firearms:**

The licensing authority holding the items may return them after the order ends, but only if they determine the respondent is suitable for them.

**Warrant authority:**

Statute is silent

**Venue:**

Statute is silent

**Penalties:**

(For Complainant) A person who files a petition for an extreme risk protection order, knowing the information in the petition to be materially false or with an intent to harass the respondent, shall be punished by a fine of not less than \$2,500 and not more than \$5,000 or by imprisonment for not more than 2½ years in the house of correction or by both such fine and imprisonment.

**Entry Registry/NCIC POF:**

**(a)** On the same day that an extreme risk protection order is issued pursuant to section 131S or section 131T, the clerk magistrate of the court shall forward a copy of the order to: **(i)** the licensing authority; **(ii)** the commissioner of probation; **(iii)** the department of criminal justice information services, which shall transmit the report, pursuant to paragraph (h) of section 167A of chapter 6, to the Attorney General of the United States to be included in the National Instant Criminal Background Check System; and **(iv)** any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms. Upon the expiration or termination of an extreme risk protection order issued pursuant to said section 131S or said section 131T, the clerk magistrate of the court shall notify: **(i)** the licensing authority; **(ii)** the commissioner of probation; **(iii)** the department of criminal justice information services, which shall transmit the report, pursuant to paragraph (h) of section 167A of chapter 6, to the Attorney General of the United States to be included in the National Instant Criminal Background Check System; and **(iv)** any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms that the order has been terminated or has expired.

### § 121. Firearms.

As used in sections 122 to 131Y, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

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“Extreme risk protection order”, an order by the court ordering the immediate suspension and surrender of any license to carry firearms or firearm identification card which the respondent may hold and ordering the respondent to surrender all firearms, rifles, shotguns, machine guns, weapons or ammunition which the respondent then controls, owns or possesses; provided, however, that an extreme risk protection order shall be in effect for up to 1 year from the date of issuance and may be renewed upon petition.

\*\*\*

“Family or household member”, a person who: (i) is or was married to the respondent; (ii) is or was residing with the respondent in the same household; (iii) is or was related by blood or marriage to the respondent; (iv) has or is having a child in common with the respondent, regardless of whether they have ever married or lived together; (v) is or has been in a substantive dating relationship with the respondent; or (vi) is or has been engaged to the respondent.

\*\*\*

“Licensing authority”, the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.

\*\*\*

“Petitioner”, the family or household member, or the licensing authority of the municipality where the respondent resides, filing a petition.

### § 131R. Firearms — Possession — License to Carry — Petition of Risk of Bodily Injury.

**(a)** A petitioner who believes that a person holding a license to carry firearms or a firearm identification card may pose a risk of causing bodily injury to self or others may, on a form furnished by the court and signed under the pains and penalties of perjury, file a petition in court.

**(b)** A petition filed pursuant to this section shall:

**(i)** state any relevant facts supporting the petition;

**(ii)** identify the reasons why the petitioner believes that the respondent poses a risk of causing bodily injury to self or others by having in the respondent’s control, ownership or possession a firearm, rifle, shotgun, machine gun, weapon or ammunition;

**(iii)** identify the number, types and locations of any firearms, rifles, shotguns, machine guns, weapons or ammunition the petitioner believes to be in the respondent’s current control, ownership or possession;

**(iv)** identify whether there is an abuse prevention order pursuant to chapter 209A, a harassment prevention order pursuant to chapter 258E or an order similar to an abuse prevention or harassment prevention order issued by another jurisdiction in effect against the respondent; and

**(v)** identify whether there is a pending lawsuit, complaint, petition or other legal action between the parties to the petition.

**(c)** No fees for filing or service of process may be charged by a court or any public agency to a petitioner filing a petition pursuant to this section.

(d) The petitioner’s residential address, residential telephone number and workplace name, address and telephone number, contained within the records of the court related to a petition shall be confidential and withheld from public inspection, except by order of the court; provided, however, that the petitioner’s residential address and workplace address shall appear on the court order and shall be accessible to the respondent and the respondent’s attorney unless the petitioner specifically requests, and the court orders, that this information be withheld from the order. All confidential portions of the records shall be accessible at all reasonable times to the petitioner and the petitioner’s attorney, the licensing authority of the municipality where the respondent resides and to law enforcement officers, if such access is necessary in the performance of their official duties. Such confidential portions of the court records shall not be deemed to be public records under the provisions of clause twenty-sixth of section 7 of chapter 4.

(e) The court may order that any information in the petition or case record be impounded in accordance with court rule.

(f) Upon receipt of a petition under this section and if the petitioner is a family or household member as defined in section 121, the clerk of the court shall provide to the petitioner and respondent informational resources about: (i) crisis intervention; (ii) mental health; (iii) substance use disorders; (iv) counseling services; and (v) the process to apply for a temporary commitment under section 12 of chapter 123.

### **§ 131S. Firearms — Possession — License to Carry — Petition of Risk of Bodily Injury — Hearing.**

(a) The court shall, within 10 days of receipt of a petition pursuant to section 131R, conduct a hearing on the petition. Upon receipt of the petition, the court shall issue a summons with the date, time and location of the hearing. The court shall direct a law enforcement officer to personally serve a copy of the petition and the summons on the respondent or, if personal service by a law enforcement officer is not possible, the court may, after a hearing, order that service be made by some other identified means reasonably calculated to reach the respondent. Service shall be made not less than 7 days prior to the hearing.

(b) Notwithstanding the provisions of subsection (a), the court shall, within 2 days of receipt of a petition made pursuant to section 131R, conduct a hearing on the petition if the respondent files an affidavit that a firearm, rifle, shotgun, machine gun, weapon or ammunition is required in the performance of the respondent’s employment.

(c) If after the hearing pursuant to subsection (a) or subsection (b), the court finds by a preponderance of the evidence that the respondent poses a risk of causing bodily injury to self or others by having in the respondent’s control, ownership or possession a firearm, rifle, shotgun, machine gun, weapon or ammunition, the court shall grant the petition. If the respondent does not appear at the hearing pursuant to subsection (a) or subsection (b), the court shall grant the petition upon a determination that the petitioner has demonstrated by a preponderance of the evidence that the respondent poses such a risk.

(d) Upon granting a petition, the court shall issue an extreme risk protection order and shall order the respondent to surrender any licenses to carry firearms, firearms identification cards and all firearms, rifles, shotguns, machine guns, weapons and ammunition which the respondent then controls, owns or possesses, to the licensing authority of the municipality where the respondent resides. The court shall enter written findings as to the basis of its order within 24 hours of granting the order. The court may modify, suspend or terminate its order at any subsequent time upon motion by either party; provided, however, that due notice shall be given to the respondent and petitioner, and the court shall hold a hearing on said motion. When the petitioner’s address is confidential to the respondent as provided in subsection (d) of section 131R and the respondent has filed a motion to modify the court’s order, the court shall be responsible for notifying the petitioner. In no event shall the court disclose any such confidential address.

Not less than 30 calendar days prior to the expiration of an extreme risk protection order, the court shall notify the petitioner at the best known address of the scheduled expiration of the order and that the petitioner may file a petition to renew the order pursuant to section 131R.

**(e)** Upon issuing an extreme risk protection order the clerk-magistrate of the court shall transmit 2 certified copies of the order and 1 copy of the petition and summons forthwith to the licensing authority of the municipality where the respondent resides which, unless otherwise ordered by the court, shall serve a copy of the order and petition upon the respondent. Licensing authorities shall establish adequate procedures to ensure that, when effecting service upon a respondent, a law enforcement officer shall, to the extent practicable: (i) fully inform the respondent of the contents and terms of the order and the available penalties for any violation of an order; and (ii) provide the respondent with informational resources, including, but not limited to, a list of services relating to crisis intervention, mental health, substance use disorders and counseling, and a list of interpreters, as necessary, located within or near the court's jurisdiction. The chief justice of the trial court, in consultation with the executive office of public safety and security, and the department of mental health, shall annually update the informational resource guides required under this section.

Each extreme risk protection order issued by the court shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

**(f)** Upon receipt of service of an extreme risk protection order, the licensing authority of the municipality where the respondent resides shall immediately suspend the respondent's license to carry firearms or a firearm identification card and shall immediately notify the respondent of said suspension.

Upon receipt of service of an extreme risk protection order the respondent shall immediately surrender their license to carry firearms or a firearm identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition in their control, ownership or possession to the local licensing authority serving the order, in accordance with section 129D; provided, however, that nothing in this section or in said section 129D shall allow the respondent to: (i) transfer any firearms, rifles, shotguns, machine guns, weapons or ammunition required to be surrendered, or surrendered, by the respondent to anyone other than a licensed dealer; or (ii) maintain control, ownership or possession of any firearms, rifles, shotguns, machine guns, weapons or ammunition during the pendency of any appeal of an extreme risk protection order; provided, however, that while the surrender of ownership pursuant to an extreme risk protection order shall require the immediate surrender of any license to carry firearms or a firearm identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition in the respondent's control or possession, it shall not require the surrender of permanent ownership rights; and provided further that, notwithstanding section 129D, if the licensing authority cannot reasonably ascertain a lawful owner of firearms, rifles, shotguns, machine guns, weapons or ammunition surrendered pursuant to extreme risk protection order within 180 days of the expiration or termination of the extreme risk protection order, the licensing authority may, in its discretion, trade or dispose of surplus, donated, abandoned or junk firearms, rifles, shotguns, machine guns, weapons or ammunition to properly licensed distributors or firearms dealers and the proceeds of such sale or transfer shall be remitted or credited to the municipality in which the licensing authority presides to be used for violence reduction or suicide prevention. A violation of this subsection shall be punishable by a fine of not more than \$5,000 or by imprisonment for not more than 2½ years in a house of correction or by both such fine and imprisonment.

**(g)** Upon receipt of a license to carry firearms or a firearm identification card and any firearms, rifles, shotguns, machine guns, weapons or ammunition surrendered by a respondent pursuant to subsection (f), the licensing authority taking possession of the license to carry firearms or a firearm identification card and firearms, rifles, shotguns, machine guns, weapons or ammunition shall issue a receipt identifying any license to carry firearms or a firearm identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition surrendered by the respondent and shall provide a copy of the receipt to the respondent. The licensing authority to which the respondent surrendered a license to carry firearms or a firearm identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition shall, within 48 hours of the surrender, file the receipt with the court.

**(h)** If a person other than the respondent claims title to any firearms, rifles, shotguns, machine guns, weapons



or ammunition required to be surrendered or surrendered, pursuant to this section, and is determined by the licensing authority to be the lawful owner of the firearms, rifles, shotguns, machine guns, weapons or ammunition, the firearms, rifles, shotguns, machine guns, weapons or ammunition shall be returned to the person; provided, however, that: (i) the firearms, rifles, shotguns, machine guns, weapons or ammunition are removed from the respondent's control, ownership or possession and the lawful owner agrees to store the firearms, rifles, shotguns, machine guns, weapons or ammunition in a manner such that the respondent does not have access to, or control of, the firearms, rifles, shotguns, machine guns, weapons or ammunition; and (ii) the firearms, rifles, shotguns, machine guns, weapons or ammunition are not otherwise unlawfully possessed by the owner. A violation of this subsection shall be punishable by a fine of not more than \$5,000 or by imprisonment for not more than 2½ years in a house of correction or by both such fine and imprisonment.

**(i)** Upon the expiration or termination of an extreme risk protection order, a licensing authority holding any firearms, rifles, shotguns, machine guns, weapons or ammunition that have been surrendered pursuant to this section shall return any license to carry firearms or firearm identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition requested by a respondent only after the licensing authority of the municipality in which the respondent resides confirms that the respondent is suitable for a license to carry firearms or a firearm identification card and to control, own or possess firearms, rifles, shotguns, machine guns, weapons or ammunition under federal and state law.

Not less than 7 days prior to expiration of an extreme risk protection order, a licensing authority holding any firearms, rifles, shotguns, machine guns, weapons or ammunition that have been surrendered pursuant to this section shall notify the petitioner of the expiration of the extreme risk protection order and the return of a license to carry firearms or firearm identification card and the return of any firearms, rifles, shotguns, machine guns, weapons or ammunition to the respondent.

As soon as reasonably practicable after receiving notice of the termination of an extreme risk protection order by the court, a licensing authority holding any firearms, rifles, shotguns, machine guns, weapons or ammunition that have been surrendered pursuant to this section shall notify the petitioner of the termination of the extreme risk protection order and the return of a license to carry firearms or firearm identification card and the return of any firearms, rifles, shotguns, machine guns, weapons or ammunition to the respondent.

**(j)** A respondent who has surrendered a license to carry firearms or firearm identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition to a licensing authority and who does not wish to have the license to carry firearms or firearm identification card or firearms, rifles, shotguns, machine guns, weapons or ammunition returned or who is no longer eligible to control, own or possess firearms, rifles, shotguns, machine guns, weapons or ammunition pursuant to this chapter or federal law, may sell or transfer title of the firearms, rifles, shotguns, machine guns, weapons or ammunition to a licensed firearms dealer; provided, however, that the respondent shall not take physical possession of the firearms, rifles, shotguns, machine guns, weapons or ammunition. The licensing authority may transfer possession of the firearms, rifles, shotguns, machine guns, weapons or ammunition to a licensed dealer upon the dealer providing the licensing authority with written proof of the sale or transfer of title of the firearms, rifles, shotguns, machine guns, weapons or ammunition from the respondent to the dealer.

**(k)** If the licensing authority cannot reasonably ascertain the lawful owner of any firearms, rifles, shotguns, machine guns, weapons or ammunition surrendered pursuant to this section within 180 days of the expiration or termination of the order to surrender the firearms, rifles, shotguns, machine guns, weapons or ammunition the licensing authority may dispose of the firearms, rifles, shotguns, machine guns, weapons or ammunition pursuant to section 129D.

### **§ 131T. Firearms — Possession — License to Carry — Petition of Risk of Bodily Injury — Emergency Extreme Risk Protection Order**

**(a)** Upon the filing of a petition pursuant to section 131R, the court may issue an emergency extreme risk protection order without notice to the respondent and prior to the hearing required pursuant to subsection

(a) of section 131S if the court finds reasonable cause to conclude that the respondent poses a risk of causing bodily injury to the respondent's self or others by being in possession of a license to carry firearms or a firearm identification card or having in the respondent's control, ownership or possession a firearm, rifle, shotgun, machine gun, weapon or ammunition.

Upon issuance of an emergency extreme risk protection order pursuant to this section, the clerk magistrate of the court shall notify the respondent pursuant to subsection (e) of section 131S. An order issued under this subsection shall expire 10 days after its issuance unless a hearing is scheduled pursuant to subsection (a) or (b) of said section 131S or at the conclusion of a hearing held pursuant to said subsection (a) or (b) of said section 131S unless a permanent order is issued by the court pursuant to subsection (d) of said section 131S.

**(b)** When the court is closed for business, a justice of the court may grant an emergency extreme risk protection order if the court finds reasonable cause to conclude that the respondent poses a risk of causing bodily injury to the respondent's self or others by being in possession of a license to carry firearms or firearm identification card or by having in the respondent's control, ownership or possession of a firearm, rifle, shotgun, machine gun, weapon or ammunition. In the discretion of the justice, such relief may be granted and communicated by telephone to the licensing authority of the municipality where the respondent resides, which shall record such order on a form of order promulgated for such use by the chief justice of the trial court and shall deliver a copy of such order on the next court business day to the clerk-magistrate of the court. If relief has been granted without the filing of a petition pursuant to section 131R, the petitioner shall appear in court on the next available court business day to file a petition. An order issued under this subsection shall expire at the conclusion of the next court business day after the order was issued unless a petitioner has filed a petition with the court pursuant to said section 131R and the court has issued an emergency extreme risk protection order pursuant to subsection (a).

**(c)** Upon receipt of service of an extreme risk protection order pursuant to this section, the respondent shall immediately surrender the respondent's license to carry firearms or firearm identification card and all firearms, rifles, shotguns, machine guns, weapons or ammunition to the local licensing authority serving the order as provided in subsection (f) of section 131S.

**§ 131U. Firearms — Possession — License to Carry — Petition of Risk of Bodily Injury — Notification of Emergency Extreme Risk Protection Order.**

**(a)** On the same day that an extreme risk protection order is issued pursuant to section 131S or section 131T, the clerk magistrate of the court shall forward a copy of the order to: (i) the licensing authority; (ii) the commissioner of probation; (iii) the department of criminal justice information services, which shall transmit the report, pursuant to paragraph (h) of section 167A of chapter 6, to the Attorney General of the United States to be included in the National Instant Criminal Background Check System; and (iv) any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms. Upon the expiration or termination of an extreme risk protection order issued pursuant to said section 131S or said section 131T, the clerk magistrate of the court shall notify: (i) the licensing authority; (ii) the commissioner of probation; (iii) the department of criminal justice information services, which shall transmit the report, pursuant to paragraph (h) of section 167A of chapter 6, to the Attorney General of the United States to be included in the National Instant Criminal Background Check System; and **(iv)** any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms that the order has been terminated or has expired.

**§ 131V. Firearms — Possession — License to Carry — Petition of Risk of Bodily Injury — Notification of Emergency Extreme Risk Protection Order — False Petition , Penalties.**

**(a)** A person who files a petition for an extreme risk protection order, knowing the information in the petition to be materially false or with an intent to harass the respondent, shall be punished by a fine of not less than \$2,500 and not more than \$5,000 or by imprisonment for not more than 2½ years in the house of correction or

by both such fine and imprisonment.

**§ 131W. Firearms — Possession — License to Carry — Petition of Risk of Bodily Injury — Notification of Emergency Extreme Risk Protection Order — Rules, Regulations and Policies.**

The chief justice of the trial court, in consultation with the chief justice of the district court and the chief justice of the Boston municipal court, shall promulgate rules, regulations and policies and shall develop and prepare instructions, brochures, petitions, forms and other material required for the administration and enforcement of sections 131R to 131X, inclusive, which shall be in such form and language to permit a petitioner to prepare and file a petition pro se.

**§ 131X. Firearms — Possession — License to Carry — Petition of Risk of Bodily Injury — Notification of Emergency Extreme Risk Protection Order — Removal of Firearms.**

(a) Sections 131R to 131Y, inclusive, shall not affect the ability of a law enforcement officer to remove firearms, rifles, shotguns, machine guns, weapons or ammunition from any person or conduct any search and seizure for firearms, rifles, shotguns, machine guns, weapons or ammunition pursuant to other lawful authority.

(b) Nothing in sections 131R to 131Y, inclusive, shall supersede or limit a licensing authority's ability to suspend or revoke a license that the licensing authority has issued pursuant to other lawful authority.

(c) Sections 131R to 131Y, inclusive, shall not impose any duty on a family or household member to file a petition and no family or household member shall be held criminally or civilly liable for failure to petition.

(d) The supreme judicial court and the appeals court shall have concurrent jurisdiction to review any proceedings had, determinations made, and orders or judgments entered in the court pursuant to section 131S or section 131T. The supreme judicial court or the appeals court, subject to section 13 of chapter 211A may by rule vary the procedure authorized or required for such review upon a finding that the review by the court will thereby be made more simple, speedy and effective.

**§ 131Y. Firearms — Possession — License to Carry — Petition of Risk of Bodily Injury — Report.**

The court shall annually, not later than December 31, issue a report on the use of extreme risk protective orders. The report shall be submitted to the executive office of public safety and security, the chairs of the joint committee on public safety and homeland security, the chairs of the joint committee on the judiciary, the chairs of the joint committee on mental health substance use and recovery, and clerks of the senate and the house of representatives. The report shall include, but shall not be limited to, the following information:

- (1) the number of extreme risk protective order petitions filed;
- (2) the number of extreme risk protective order petitions that lead to a respondent's surrender pursuant to section 131S;
- (3) the number of extreme risk protective order petitions that are heard but not granted;
- (4) the number of emergency extreme risk protective order petitions filed;
- (5) the number of emergency extreme risk protective order petitions that lead to a respondent's surrender pursuant to 131T;
- (6) the number of emergency extreme risk protective order petitions that are heard but not granted;
- (7) the number of extreme risk protective order or emergency extreme risk protective order petitions filed that are deemed to be fraudulent;
- (8) the race and ethnicity of the petitioner and respondent;
- (9) the gender and gender identity of the petitioner and respondent;

**(10)** the data on the duration of extreme risk protection orders;

**(11)** the number of instances in which an order has been terminated or otherwise modified prior to its original expiration date; and

**(12)** the number of instances in which a fine has been assessed for a filed petition that was deemed to be fraudulent.

# Michigan

(effective early 2024)

**Types of Orders:** Immediate Emergency Extreme Risk Protection Order, Extreme Risk Protection Order

**Citation:** Mich. Comp. Laws Serv. §§ 691.1801-691.1821

## Highlighted Provisions

### Persons eligible to petition:

Immediate Emergency & ERPO: The spouse of the respondent, a former spouse of the respondent, an individual who has a child in common with the respondent, an individual who has or has had a dating relationship with the respondent, an individual who resides or has resided in the same household with the respondent, a family member, a guardian of the respondent, a law enforcement officer, a health care provider.

### Standard of proof:

Immediate Emergency ERPO: Clear and convincing evidence

ERPO: preponderance of the evidence.

### Findings required:

Immediate Emergency ERPO: That immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before an extreme risk protection order can be issued.

ERPO: That the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual by possessing a firearm, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.

### Length of order:

Emergency ERPO: 14 days

ERPO: 1 year after the date of issuance.

### Service on respondent:

ERPO: Must be served on the restrained individual in person, by registered or certified mail, return receipt requested, by delivery to the last known address of the restrained individual, or by any other means allowed under Michigan court rules as decided by the court.

Immediate Emergency ERPO: If the court has ordered the immediate surrender of the individual's firearms, the order must be served personally by a law enforcement officer.

### Notification of persons at risk:

Statute is silent.

### Renewal/Termination of the order:

Termination

ERPO: The restrained individual may request, a hearing to be held within 14 days after the restrained individual is served with or receives actual notice of the order and that the restrained individual may appear at the hearing and request the court to modify or rescind the order.

Immediate Emergency ERPO: The restrained individual may request, a hearing to be held within 5 days after the restrained individual is served with or receives actual notice of the order and that the restrained individual may appear at the hearing and request the court to modify or rescind the order.

## Extension

The petitioner may move the court to issue, or the court on its own motion may issue, 1 or more extended extreme risk protection orders, each effective for 1 year after the expiration of the preceding order.

### **Filing fees:**

The statute is silent.

### **Firearm prohibitions:**

Respondent is prohibited from purchasing or possessing a firearm.

### **Firearm relinquishment process:**

The Respondent shall, within 24 hours or, at the court's discretion, immediately after being served with the order, surrender any firearms in the individual's possession or control to the law enforcement agency designated under subdivision or, if allowed as ordered by the court, to a licensed firearm dealer on the list prepared under section 18.

### **Firearm disposal process:**

If a restrained individual fails to reclaim a firearm within 90 days after the extreme risk protection order expires or is ordered terminated, the law enforcement agency storing the firearm shall proceed as for a firearm subject to disposal OR follow the procedures for property.

### **Limitations on liability:**

A law enforcement agency that seizes and stores a firearm under this act is not liable for damage to or a change in condition of the firearm unless the damage or change in condition resulted from a failure to exercise reasonable care in the seizure, transportation, or storage of the firearm.

### **Return/transfer of firearms:**

The restrained person may reclaim the firearm when the extreme risk protection order expires or is terminated, unless the restrained individual is prohibited for another reason from owning or possessing a firearm, or order that the firearm be transferred to a licensed firearm dealer if the restrained individual sells or transfers ownership of the firearm to the dealer.

### **Warrant authority:**

If the restrained individual has failed to comply with the requirements or fails to appear at the compliance hearing, the court shall issue a bench warrant and issue a search warrant to seize any firearms and may hold the restrained individual in contempt.

### **Venue:**

An individual described may file an action in the family division of the circuit court.

### **Penalties:**

**(1)** An individual who refuses or fails to comply with an extreme risk protection order is guilty and subject to penalties as follows, which may be imposed in addition to a penalty imposed for another criminal offense arising from the same conduct:

**(a)** For a first offense under this subsection, guilty of a felony punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

**(b)** For a second offense under this subsection, guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

**(c)** For a third or subsequent offense under this subsection, guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$20,000.00, or both.

**(2)** If a court or a jury finds that the restrained individual has refused or failed to comply with an extreme risk protection order, the court that issued the order shall issue an extended extreme

risk protection order effective for 1 year after the expiration of the preceding order.

**(3)** The court may also enforce an extreme risk protection order by charging the restrained individual with contempt of court under chapter 17 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1701 to 600.1745.

**(4)** A petitioner who knowingly and intentionally makes a false statement to the court in the complaint or in support of the complaint under this act is guilty and subject to penalties as follows:

**(a)** For a first offense under this subsection, guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

**(b)** For a second offense under this subsection, guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

**(c)** For a third or subsequent offense under this subsection, guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$20,000.00, or both.

**(5)** An individual who knowingly places a firearm in the possession of an individual who is restrained under an extreme risk protection order is guilty of a felony punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

**Entry Registry/NCIC POF:**

**(a)** Unless a local entering authority is designated under section 9(1)(h), enter the order into the law enforcement information network as provided by the C.J.I.S. policy council act.

**(b)** Report the entry of the order to the Criminal Justice Information Services Division of the Federal Bureau of Investigation for purposes of the national crime information center.

**(2)** A law enforcement agency that receives information under section 11(2) shall enter the information into the law enforcement information network as provided by the C.J.I.S. policy council act and report the information to the Federal Bureau of Investigation as described in subsection (1)(b).

## Statutes

### § 691.1803. Definitions.

As used in this act:

**(a)**“C.J.I.S. policy council act” means the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

**(b)**“Dating relationship” means a relationship that consists of frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

**(c)**“Extreme risk protection order” means an order issued by a court under section 7.

**(d)**“Family member” means an individual who is related to the respondent as any of the following:

**i.** A parent.

**ii.** A son or daughter

**iii.** A sibling.

**v.** A grandchild.

**vi.** An uncle or aunt.

**vii.** A first cousin.

(a) “Guardian” means that term as defined in section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104.

(b) “Health care provider” means any of the following:

1. A physician, physician’s assistant, nurse practitioner, or certified nurse specialist licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, or a physician, physician’s assistant, nurse practitioner, or certified nurse specialist licensed in another state.
2. A mental health professional as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b, or a mental health professional licensed in another state.

b. “Law enforcement agency” means any of the following:

1. A sheriff’s department.
2. The department of state police.
3. A police department of a township, village, or incorporated city.
4. The public safety department of an institution of higher education created under or described in article VIII of the state constitution of 1963.
5. The public safety department of a community or junior college.
6. The public safety department or office of a private college.

(c) “Law enforcement officer” means a law enforcement officer as that term is defined in section 2 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.602.

(d) “Petitioner” means the individual who requests an extreme risk protection order in an action under section 5.

(e) “Possession or control” includes, but is not limited to, actual possession or constructive possession by which the individual has the right to control the firearm, even though the firearm is in a different location than the individual. Possession or control does not require the individual to own the firearm.

(f) “Respondent” means the individual against whom an extreme risk protection order is requested in an action under section 5.

(g) “Restrained individual” means the individual against whom an extreme risk protection order has been issued and is in effect.

**§ 691.1805. Action for extreme risk protection order; filing; complaint requirements; confidentiality of petitioner; jurisdiction.**

1. An individual described in subsection (2) may file an action in the family division of the circuit court requesting the court to enter an extreme risk protection order.
2. Any of the following may file an action under this section:
  - a. The spouse of the respondent.
  - b. A former spouse of the respondent.
  - c. An individual who has a child in common with the respondent.
  - d. An individual who has or has had a dating relationship with the respondent.
  - e. An individual who resides or has resided in the same household with the respondent.
  - f. A family member.



- g.** A guardian of the respondent.
  - h.** A law enforcement officer.
  - i.** A health care provider, if filing and maintaining the action does not violate requirements of the health insurance portability and accountability act of 1996, Public Law 104-191, or regulations promulgated under that act, 45 CFR parts 160 and 164, or physician-patient confidentiality.
- 3.** An individual who files an action under this section shall do so by filing a summons and complaint on forms approved by the state court administrative office as directed by the supreme court. The complaint must state facts that show that issuance of an extreme risk protection order is necessary because the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual by possessing a firearm, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
  - 4.** An individual may file an action under this section regardless of whether the respondent owns or possesses a firearm.
  - 5.** If the respondent is 1 of the following individuals, and if the petitioner knows the respondent is 1 of the following individuals, the petitioner shall state that in the complaint:

An individual who is required to carry a pistol as a condition of the individual's employment and is issued a license to carry a concealed pistol.

A police officer licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

- a.** A sheriff.
  - b.** A deputy sheriff.
  - c.** A member of the department of state police.
  - d.** A local corrections officer.
  - e.** An employee of the department of corrections.
  - f.** A federal law enforcement officer who carries a pistol during the normal course of the officer's employment or an officer of the Federal Bureau of Prisons.
- 1.** If the petitioner knows or believes that the respondent owns or possesses firearms, the petitioner shall state that in the complaint and, to the extent possible, identify the firearms, giving their location and any additional information that would help a law enforcement officer to find the firearms.
  - 2.** In an action under this section, the address of the petitioner must not be disclosed in any pleading or paper or otherwise. The clerk of the court shall maintain the petitioner's address as confidential in the court file. The clerk shall provide notice of hearing to the petitioner, using the confidential address, for any motion filed by the respondent or any hearing otherwise scheduled by the court.
  - 3.** Any of the following is a proper county in which to file an action under this section:
    - a.** If the respondent is an adult, any county in this state, regardless of the residency or location of any party.
    - b.** If the respondent is a minor, either the petitioner's or respondent's county of residence.
    - c.** If the respondent does not reside in this state, in the petitioner's county of residence.

**§ 691.1806. Expedited hearing for extreme risk protection order; notice; change of venue; use of video conferencing technology.**

1. The court in which an action is filed under section 5 shall expedite and give priority to a hearing on the issuance of an extreme risk protection order and to any other hearings required under this act.
2. Except as provided in section 7(2), the respondent must receive notice of a hearing on the issuance of an extreme risk protection order and give the respondent an opportunity to be heard at the hearing.
3. The court may enter an order to change the venue of an action filed under section 5 for any reason allowed under the Michigan court rules, including, but not limited to, the convenience of the parties and witnesses. The court may consider the location of firearms owned or possessed by the respondent in deciding whether to enter an order under this subsection.
4. The court may allow proceedings in an action filed under section 5 to be conducted using video conferencing technology or communication equipment as allowed under Michigan court rules and administrative orders.

**§ 691.1807. Issuance of extreme risk protection order; determination; preponderance of evidence; considerations; notice exception; hearing requirement; emergency extreme risk protection order; modification or rescission of order; surrendering of firearm.**

1. In an action under section 5, the court shall issue an extreme risk protection order if the court determines by the preponderance of the evidence that the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual by possessing a firearm, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation. In making its determination under this subsection, the court shall consider all of the following:

- a. Any history of use, attempted use, or threatened use of physical force by the respondent against another individual, or against the respondent, regardless of whether the violence or threat of violence involved a firearm.
- b. Any evidence of the respondent having a serious mental illness or a serious emotional disturbance, as those terms are defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d, that makes the respondent dangerous to other individuals or to the respondent.
- c. Any of the following orders against the respondent, whether previously entered or existing:
  - i. An extreme risk protection order.
  - ii. A personal protection order under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.
  - iii. A pretrial release order.
  - iv. A probation order.
  - v. A parole order.
  - vi. Any other injunctive order.
- a. Any violation by the respondent of a previous or existing extreme risk protection order.
- b. Any violation by the respondent of a previous or existing personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.
- c. Any previous conviction of, criminal charges pending against, or previous or pending juvenile delinquency petitions against the respondent for the commission or attempted commission of any of the following offenses:
  - i. A misdemeanor violation of section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81.

- ii.** A violation of section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i, or a similar offense in another jurisdiction.
- iii.** An offense that has assault as an element.
- iv.** An offense that has an element including a threat to person or property.
- v.** An offense that is a crime committed against the person or property of a spouse or intimate partner, as that term is defined in section 2950k of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950k.
- vi.** An offense involving cruelty or abuse of animals.
- vii.** A serious misdemeanor, as that term is defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

- a.** Any evidence of recent unlawful use of controlled substances by the respondent.
- b.** Any recent abuse of alcohol.
- c.** Any previous unlawful possession, use, display, or brandishing of a deadly weapon by the respondent.
- d.** Any evidence of an acquisition or attempted acquisition within the previous 180 days by the respondent of a deadly weapon or ammunition.
- e.** Any additional information the court finds to be reliable, including a statement by the respondent, or relevant information from family and household members concerning the respondent.
- f.** Any other facts that the court believes are relevant.

**2.** The court in an action under section 5 may issue an extreme risk protection order without written or oral notice to the respondent if the court determines by clear and convincing evidence from specific facts shown by a verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before an extreme risk protection order can be issued. If the petitioner requests the court to issue an extreme risk protection order under this subsection, the court shall make its determination on the request not later than 1 business day.

**3.** If a court issues an extreme risk protection order under subsection (2), including an order described in subsection (4), the court shall, if requested by the restrained individual, conduct a hearing on the order under subsection (1) in accordance with Michigan court rules as follows:

- a.** Unless subdivision (b) applies, not later than 14 days after the order is served on the restrained individual or after the restrained individual receives actual notice of the order.
- b.** If the restrained individual is an individual described in section 5(5), not later than 5 days after the order is served on the restrained individual or after the restrained individual receives actual notice of the order.

**4.** A petitioner who is a law enforcement officer may request an immediate emergency extreme risk protection order under subsection (2) if the officer is responding to a complaint involving the respondent and the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure the respondent or another individual by possessing a firearm. The law enforcement officer may request an extreme risk protection order under this subsection verbally over the telephone and the judge or magistrate on duty within that jurisdiction may issue the extreme risk protection order. Within 1 business day after an extreme risk protection order is entered under this subsection, the petitioner shall file with the court a sworn written petition detailing the facts and circumstances presented to the court. The issuing court, if other than the circuit court, shall provide a copy of the petition to the circuit court.

**5.** An individual restrained under an extreme risk protection order may file a motion to modify or rescind

the order at any time and request a hearing under supreme court rules. The restrained individual may file 1 motion to modify or rescind the order during the first 6 months and 1 motion during the second 6 months that the order is in effect under section 9(1)(k), and 1 motion to modify or rescind an extended order during the first 6 months and 1 motion during the second 6 months that the extended order is in effect under section 17 or 19. If the restrained individual files more than 1 motion during a time described in this subsection, the court shall review the motion before a hearing on the motion is held and may summarily dismiss the motion without a response from the petitioner and without a hearing.

**6.** At a hearing on a motion under subsection (5), the restrained individual must prove by a preponderance of the evidence that the restrained individual no longer poses a risk to seriously physically injure another individual or the restrained individual by possessing a firearm.

**7.** If a court issues or refuses to issue an extreme risk protection order under this section, the court shall immediately state in writing the specific reasons for issuing or refusing to issue the order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue the order.

**8.** If a court issues an extreme risk protection order under this section, the court shall also determine whether the respondent must immediately surrender the respondent's firearms or surrender the firearms within a 24-hour period. If the court orders the firearms immediately surrendered, it shall also issue an anticipatory search warrant, subject to and contingent on the failure or refusal of the restrained individual, following the service of the order, to immediately comply with the order and immediately surrender to a law enforcement officer any firearm or concealed pistol license in the individual's possession or control, authorizing a law enforcement agency to search the location or locations where the firearm, or firearms, or concealed pistol license is believed to be and to seize any firearm or concealed pistol license discovered during the search in compliance with 1966 PA 189, MCL 780.651 to 780.659. Unless the petitioner is a law enforcement officer or health care provider, there is a presumption that the respondent will have 24 hours to surrender the firearms.

**9.** If a court decides to issue an extreme risk protection order under this section, the court may, in its discretion, allow the restrained individual to surrender any firearms to a licensed firearm dealer on the list prepared under section 18.

#### **§ 691.1809. Contents of extreme risk protection order; effectiveness and enforceability.**

**1.** If the court determines under section 7 that an extreme risk protection order should be issued, the court shall include all of the following provisions in the order:

**a.** That the restrained individual shall not purchase or possess a firearm. That if the individual has been issued a license under section 2 of 1927 PA 372, MCL 28.422, that the individual has not used and that is not yet void, the individual shall not use it and shall surrender it to the law enforcement agency designated under subdivision (g).

**b.** That the restrained individual shall not apply for a concealed pistol license and, if the restrained individual has been issued a license to carry a concealed pistol, the license will be suspended or revoked under section 8 of 1927 PA 372, MCL 28.428, once the order is entered into the law enforcement information network and that the individual shall surrender the license as required by section 8 of 1927 PA 372, MCL 28.428.

**c.** That the restrained individual shall, within 24 hours or, at the court's discretion, immediately after being served with the order, surrender any firearms in the individual's possession or control to the law enforcement agency designated under subdivision (g) or, if allowed as ordered by the court, to a licensed firearm dealer on the list prepared under section 18.

**d.** If the petitioner has identified any firearms under section 5(6), a specific description of the firearms to be surrendered or seized.

- e. If the order is issued under section 7(2), a statement that, if requested by the restrained individual, a hearing will be held within 14 days or 5 days, as applicable under section 7(3), after the restrained individual is served with or receives actual notice of the order and that the restrained individual may appear at the hearing and request the court to modify or rescind the order.
- f. A statement that the restrained individual may file a motion to modify or rescind the order as allowed under this act and that motion forms and filing instructions are available from the clerk of the court.
- g. A designation of the law enforcement agency that is responsible for forwarding the order to the Federal Bureau of Investigation under section 15(1). The law enforcement agency designated under this subdivision must be an agency within whose jurisdiction the restrained individual resides.
- h. Directions to a local entering authority or the law enforcement agency designated under subdivision (g) to enter the order into the law enforcement information network.
- i. A statement that violation of the order will subject the restrained individual to immediate arrest, the contempt powers of the court, an automatic extension of the order, and criminal penalties, including imprisonment for up to 1 year for an initial violation and up to 5 years for a subsequent violation.
- j. A statement that the restrained individual has a right to seek the advice of an attorney.
- k. An expiration date that is 1 year after the date of issuance.
- l. If the court has ordered the restrained individual to surrender the individual's firearms immediately, a statement that the law enforcement agency designated under subdivision (g) must proceed to seize the restrained individual's firearms after the restrained individual is served with or receives actual notice of the extreme risk protection order, after giving the restrained individual an opportunity to surrender the individual's firearms.

2. An extreme risk protection order is effective and enforceable immediately after it is issued by the court. The order may be enforced anywhere in this state by a law enforcement agency that receives a true copy of the order, is shown a copy of it, or has verified its existence on the law enforcement information network as provided by the C.J.I.S. policy council act or on an information network maintained by the Federal Bureau of Investigation.

**§ 691.1810. Responsibilities of restrained individual; notification to local law enforcement for failure to comply; compliance hearing; warrants.**

1. Not later than 1 business day after the restrained individual has received a copy of the extreme risk protection order, or the restrained individual has actual notice of the order, the restrained individual shall do either of the following:

- a. File with the court that issued the order 1 or more documents or other evidence verifying that all firearms previously in the individual's possession or control were surrendered to or seized by the local law enforcement agency designated under section 9(1)(g) and that any concealed pistol license was surrendered to the county clerk as required by the order and section 8 of 1927 PA 372, MCL 28.428, and verify to the court that at the time of the verification the individual does not have any firearms or a concealed pistol license in the individual's possession or control.
- b. File with the court that issued the order 1 or more documents or other evidence verifying that both of the following are true:
  - i. At the time the order was issued, the individual did not have a firearm or a concealed pistol license in the individual's possession or control.
  - ii. At the time of the verification, the individual does not have a firearm or a concealed pistol license in the individual's possession or control.

2. If a restrained individual has not satisfied the requirements of subsection (1)(a) or (b) within 1 business day after the extreme risk protection order was served or the restrained individual received actual notice of the order, the clerk of the court that issued the order shall inform the local law enforcement agency designated under section 9(1)(g) of that fact.
3. A local law enforcement agency that receives a notification under subsection (2) shall make a good-faith effort to determine whether there is evidence that the restrained individual has failed to surrender a firearm or concealed pistol license in the restrained individual's possession or control as required.
4. The court shall schedule a compliance hearing to be held not later than 5 days after an extreme risk protection order is served on the restrained individual or after the restrained individual receives actual notice of the order. If the restrained individual has satisfied the requirements of subsection (1)(a) or (b) before the hearing, the court may cancel the hearing. If the restrained individual has failed to comply with the requirements of subsection (1)(a) or (b) or fails to appear at the compliance hearing, the court shall issue a bench warrant and issue a search warrant under 1966 PA 189, MCL 780.651 to 780.659, to seize any firearms and may hold the restrained individual in contempt.
5. At any time while an extreme risk protection order is in effect, the prosecuting attorney for the county in which the order was issued or a law enforcement officer may file an affidavit with the court that issued the order alleging that the restrained individual has a firearm or a concealed pistol license in the individual's possession or control. If an affidavit is filed under this subsection, the court shall determine whether probable cause exists to believe that the restrained individual has a firearm or concealed pistol license in the individual's possession or control. If the court finds that probable cause exists, the court may issue an arrest warrant or order a hearing. The court shall also issue a search warrant under 1966 PA 189, MCL 780.651 to 780.659, describing the firearm or firearms or the concealed pistol license believed to be in the restrained individual's possession or control and authorizing a designated law enforcement agency to search the location or locations where the firearm or firearms or concealed pistol license is believed to be and to seize any firearm or concealed pistol license discovered by the search.

#### **§ 691.1811. Duties of the clerk of the court; notifications**

1. The clerk of a court that issues an extreme risk protection order shall do all of the following immediately after issuance and without requiring a proof of service on the restrained individual:
  - a. Provide a true copy of the order to the law enforcement agency designated under section 9(1)(g).
  - b. Provide the petitioner with at least 2 true copies of the order.
  - c. If the restrained individual is identified in the complaint as an individual described in section 5(5), notify the individual's employer, if known, of the existence of the order. It is the intent of the legislature that the restrained individual's employer work with the restrained individual's union or bargaining representative under this subdivision to avoid the restrained individual losing the individual's employment or compensation and benefits while the extreme risk protection order is in effect.
  - d. Notify the department of state police and the clerk of the restrained individual's county of residence of the existence of the order for purposes of performing their duties under 1927 PA 372, MCL 28.421 to 28.435.
  - e. Inform the petitioner that the petitioner may take a true copy of the order to the law enforcement agency designated under section 9(1)(g) to be immediately provided to the Federal Bureau of Investigation and, unless a local entering authority is designated under section 9(1)(h), into the law enforcement information network.
2. The clerk of the court that issued the extreme risk protection order shall immediately notify the law enforcement agency designated under section 9(1)(g) if any of the following occur:
  - a. The clerk receives proof that the restrained individual has been served.

- b. The order is rescinded, modified, or extended.
  - c. The order expires without being extended.
3. A local entering authority designated under section 9(1)(h) shall enter the order into the law enforcement information network as provided by the C.J.I.S. policy council act.

**§ 691.1813. Service of extreme risk protection order.**

1. Except as provided in subsection (2), an extreme risk protection order must be served on the restrained individual in person, by registered or certified mail, return receipt requested, by delivery to the last known address of the restrained individual, or by any other means allowed under Michigan court rules as decided by the court.
2. If the court has ordered the immediate surrender of the individual's firearms, the order must be served personally by a law enforcement officer. If the restrained individual has not been served, a law enforcement officer who knows that the order exists may, at any time, serve the restrained individual with a true copy of the order or advise the restrained individual of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the restrained individual may obtain a copy of the order.
3. The individual who serves an extreme risk protection order or the law enforcement officer who gives oral notice of the order shall file proof of service or proof of oral notice with the clerk of the court that issued the order and the petitioner.

**§ 691.1815. Duties of law enforcement agency; seizure of firearm; use of law enforcement information network; notification of Federal Bureau of Investigation; failure to reclaim firearm.**

1. A law enforcement agency designated in an extreme risk protection order under section 9(1)(g) that receives a true copy of the order shall immediately and without requiring proof of service do both of the following:
  - a. Unless a local entering authority is designated under section 9(1)(h), enter the order into the law enforcement information network as provided by the C.J.I.S. policy council act.
  - b. Report the entry of the order to the Criminal Justice Information Services Division of the Federal Bureau of Investigation for purposes of the national crime information center.
2. A law enforcement agency that receives information under section 11(2) shall enter the information into the law enforcement information network as provided by the C.J.I.S. policy council act and report the information to the Federal Bureau of Investigation as described in subsection (1)(b).
3. If an extreme risk protection order has not been served on the restrained individual, a law enforcement agency or officer responding to a call alleging a violation of the order shall serve the restrained individual with a true copy of the order or advise the restrained individual of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the restrained individual may obtain a copy of the order. Subject to subsection (4), the law enforcement officer shall enforce the order and immediately enter or cause to be entered into the law enforcement information network and reported to the Federal Bureau of Investigation that the restrained individual has actual notice of the order. The law enforcement officer also shall comply with section 13(3).
4. In the circumstances described in subsection (3), the law enforcement officer shall give the restrained individual an opportunity to comply with the extreme risk protection order before the law enforcement officer makes a custodial arrest for violation of the order. The failure by the restrained individual to comply with the order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a.
5. The law enforcement agency ordered to seize a firearm under this act shall do all of the following:

- a. Seize a firearm identified in an order issued under this act from any place or from any individual who has possession or control of the firearm.
  - b. Seize any other firearms discovered that are owned by or in the possession or control of the restrained individual or if allowed under other applicable law.
6. A law enforcement officer who seizes a firearm under this act shall give a tabulation of firearms seized as is required under section 5 of 1966 PA 189, MCL 780.655, to the individual from whom the firearms were taken. If no individual is present at the time of seizure, the officer shall leave the tabulation in the place where the officer found the firearms that were seized.
7. The law enforcement agency that seizes a firearm under this act shall retain and store the firearm subject to order of the court that issued the extreme risk protection order under which the firearm was seized. In addition to any other order that the court determines is appropriate, the court shall order that the restrained individual may reclaim the firearm when the extreme risk protection order expires or is terminated, unless the restrained individual is prohibited for another reason from owning or possessing a firearm, or order that the firearm be transferred to a licensed firearm dealer if the restrained individual sells or transfers ownership of the firearm to the dealer. Before allowing the restrained individual to reclaim a firearm under this subsection, and to determine whether the restrained individual is prohibited from owning or possessing a firearm for another reason, the law enforcement agency shall conduct a verification under the law enforcement information network and the national instant criminal background check system in the same manner as required under section 5b(6) of 1927 PA 372, MCL 28.425b.
8. A law enforcement agency from whom a restrained individual reclaims a firearm under subsection (7) shall enter into the law enforcement information network and notify the Federal Bureau of Investigation that the court has ordered the firearm returned on expiration of the extreme risk protection order.
9. A law enforcement agency that seizes and stores a firearm under this act is not liable for damage to or a change in condition of the firearm unless the damage or change in condition resulted from a failure to exercise reasonable care in the seizure, transportation, or storage of the firearm.
10. If a restrained individual fails to reclaim a firearm under subsection (7) within 90 days after the extreme risk protection order expires or is ordered terminated, the law enforcement agency storing the firearm shall do 1 of the following:
  - a. Proceed as for a firearm subject to disposal under sections 239 and 239a of the Michigan penal code, 1931 PA 328, MCL 750.239 and 750.239a.
  - b. Follow the procedures for property under 1987 PA 273, MCL 434.21 to 434.29.
11. Subject to subsection (7) or (8), if any individual other than the restrained individual claims title to a firearm seized under this act, the firearm must be returned to the claimant if the court determines that the claimant is the lawful owner.

#### **§ 691.1817. Issuance of extended extreme risk protection order.**

The petitioner may move the court to issue, or the court on its own motion may issue, 1 or more extended extreme risk protection orders, each effective for 1 year after the expiration of the preceding order. The court shall only issue an extended order under this section if the preponderance of the evidence shows that the restrained individual can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual by possessing a firearm, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation. The petitioner or the court, as applicable, shall give the restrained individual written notice of a hearing on a motion to extend the order.

#### **§ 691.1818. List of licensed firearm dealers.**



Each circuit court shall prepare a list of trusted licensed firearm dealers located in the jurisdiction of the circuit court. In preparing this list, the court may obtain a list of currently licensed firearm dealers in the court's jurisdiction from the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives.

**§ 691.1819. Refusal or failure to comply with extreme risk protection order; making a false statement in complaint; penalties.**

**1.** An individual who refuses or fails to comply with an extreme risk protection order is guilty and subject to penalties as follows, which may be imposed in addition to a penalty imposed for another criminal offense arising from the same conduct:

**a.** For a first offense under this subsection, guilty of a felony punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

**b.** For a second offense under this subsection, guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

**c.** For a third or subsequent offense under this subsection, guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$20,000.00, or both.

**2.** If a court or a jury finds that the restrained individual has refused or failed to comply with an extreme risk protection order, the court that issued the order shall issue an extended extreme risk protection order effective for 1 year after the expiration of the preceding order.

**3.** The court may also enforce an extreme risk protection order by charging the restrained individual with contempt of court under chapter 17 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1701 to 600.1745.

**4.** A petitioner who knowingly and intentionally makes a false statement to the court in the complaint or in support of the complaint under this act is guilty and subject to penalties as follows:

**a.** For a first offense under this subsection, guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

**b.** For a second offense under this subsection, guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

**c.** For a third or subsequent offense under this subsection, guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$20,000.00, or both.

**5.** An individual who knowingly places a firearm in the possession of an individual who is restrained under an extreme risk protection order is guilty of a felony punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

# Minnesota

(effective January 2024)

**Types of Orders:** Extreme Risk Protection Orders, Emergency Extreme Risk Protection Orders

**Citation:** Minn. Stat. §§ 624.7171-624.7178

## Highlighted Provisions

### **Persons eligible to petition:**

The chief law enforcement officer, the chief law enforcement officer's designee, a city or county attorney, any family or household members of the respondent, or a guardian of the respondent.

### **Standard of proof:**

ERPO: Clear and convincing evidence

Emergency ERPO: probable cause

### **Findings required:**

ERPO: the respondent poses a significant danger to other persons or is at significant risk of suicide by possessing a firearm.

Emergency ERPO: (1) the respondent poses a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm, and (2) the respondent presents an immediate and present danger of either bodily harm to others or of taking their life, the court shall issue an ex parte emergency order prohibiting the respondent from possessing or purchasing a firearm for the duration of the order.

### **Length of order:**

ERPO: The court shall determine the length of time the order is in effect, but may not set the length of time for less than six months or more than one year, subject to renewal or extension under section.

Emergency ERPO: The emergency order shall have a fixed period of 14 days unless a hearing is set on an earlier date.

### **Service on respondent:**

ERPO: The petitioning agency shall be responsible for service of an extreme risk protection order issued by the court. If personal service cannot be made, the court may order service of the petition and any order issued under this section by alternate means.

Emergency ERPO: the respondent shall be personally served immediately with a copy of the emergency order and a copy of the petition. If personal service cannot be made, the court may order service of the petition and any order issued under this section by alternate means.

### **Notification of persons at risk:**

The statute is silent.

### **Renewal/Termination of the order:**

**(a)** Upon application by any party entitled to petition for an order, and after notice to the respondent and a hearing, the court may extend the relief granted in an existing order granted after a hearing. Application for an extension may be made any time within the three months before the expiration of the existing order. The court may extend the order if the court makes the same findings by clear and convincing evidence as required for granting of an initial order. The minimum length of time of an extension is six months and the maximum length of time of an extension is one year. The court shall consider the same types of evidence as required for the initial.

**(b)** Upon application by the respondent to an order issued, the court may terminate an order after a hearing at

which the respondent shall bear the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger to other persons or is at significant risk of suicide by possessing a firearm. Application for termination may be made one time for every six months an order is in effect. If an order has been issued for a period of six months, the respondent may apply for termination one time.

**Filing fees:**

The filing fees for an extreme risk protection order under this section are waived for the petitioner and respondent.

**Firearm prohibitions:**

Prohibit the respondent from possessing or purchasing firearms for as long as the order remains in effect.

**Firearm relinquishment process:**

The chief law enforcement officer, or the chief's designee, shall notify the respondent of the option to voluntarily comply with the order by surrendering the respondent's firearms to law enforcement prior to execution of the search warrant. Only if the respondent refuses to voluntarily comply with the order to surrender the respondent's firearms shall the officer or officers tasked with serving the search warrant execute the warrant. The local law enforcement agency shall, upon written notice from the respondent, transfer the firearms to a federally licensed firearms dealer.

**Firearm disposal process:**

A dealer or agency may establish policies for disposal of abandoned firearms, provided these policies require that the respondent be notified prior to disposal of abandoned firearms.

**Limitations on liability:**

Liability protection for petition. A chief law enforcement officer, the chief law enforcement officer's designee, or a city or county attorney who, in good faith, decides not to petition for an extreme risk protection order or emergency extreme risk protection order shall be immune from criminal or civil liability.

Liability protection for storage of firearms. A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms, ammunition, or weapons stored or transported. This shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

Liability protection for harm following service of an order or execution of a search warrant. A peace officer, law enforcement agency, and the state or a political subdivision by which a peace officer is employed has immunity from any liability, civil or criminal, for harm caused by a person who is the subject of an extreme risk protection order, a search warrant, or both, after service of the order or execution of the warrant, whichever comes first, if the peace officer acts in good faith in serving the order or executing the warrant.

Liability protection for mental health professionals. A mental health professional who provides notice to the sheriff is immune from monetary liability and no cause of action, or disciplinary action by the person's licensing board may arise against the mental health professional for disclosure of confidences to the sheriff, for failure to disclose confidences to the sheriff, or for erroneous disclosure of confidences to the sheriff in a good faith effort to warn against or take precautions against a client's violent behavior or threat of suicide.

**Return/transfer of firearms:**

Law enforcement. A local law enforcement agency that accepted temporary transfer of firearms shall return the firearms to the respondent after the expiration of the order, provided the respondent is not otherwise prohibited from possessing firearms under state or federal law.

Firearms dealer. A federally licensed firearms dealer that accepted temporary transfer of firearms shall return the transferred firearms to the respondent upon request after the expiration of the order, provided the respondent is not otherwise prohibited from possessing firearms under state or federal law. A federally licensed firearms dealer returning firearms shall comply with state and federal law as though transferring a firearm from the dealer's own inventory.

**Warrant authority:**

If a court issues an emergency order or makes a finding of immediate and present danger under, and there is probable cause to believe the respondent possesses firearms, the court shall issue a search warrant to the local law enforcement agency to take possession of all firearms in the respondent's possession as soon as practicable. The chief law enforcement officer, or the chief's designee, shall notify the respondent of the option to voluntarily comply with the order by surrendering the respondent's firearms to law enforcement prior to execution of the search warrant.

**Venue:**

An application for relief may be filed in the county of residence of the respondent.

At the time of filing, a petitioner may request that the court allow the petitioner to appear virtually at all proceedings. If the court denies the petitioner's request for virtual participation, the petitioner may refile the petition in the county where the petitioner resides or is officed.

**Penalties:**

Subd. 2.

Violation of order.

A person who possesses a firearm and knows or should have known that the person is prohibited from doing so by an extreme risk protection order under section 624.7172 or 624.7174, or by an order of protection granted by a judge or referee pursuant to a substantially similar law of another state, is guilty of a misdemeanor and shall be prohibited from possessing firearms for a period of five years. Each extreme risk protection order granted under this chapter must contain a conspicuous notice to the respondent regarding the penalty for violation of the order.

**Entry Registry/NCIC POF:**

Any extreme risk protection order or subsequent extension issued under sections shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the respondent and electronically transmitted within three business days to the National Instant Criminal Background Check System. When an order expires or is terminated by the court, the court must submit a request that the order be removed from the National Instant Background.

## Statutes

**Sec. 2. [624.7171] EXTREME RISK PROTECTION ORDERS.****Subdivision 1. Definitions.**

- (a) As used in sections 624.7171 to 624.7178, the following terms have the meanings given.
- (b) "Family or household members" means:
  - (1) spouses and former spouses of the respondent;
  - (2) parents and children of the respondent;
  - (3) persons who are presently residing with the respondent; or
  - (4) a person involved in a significant romantic or sexual relationship with the respondent.

In determining whether persons are in a significant romantic or sexual relationship under clause (4), the court shall consider the length of time of the relationship; type of relationship; and frequency of interaction between the parties.

- (c) "Firearm" has the meaning given in section 609.666, subdivision 1, paragraph (a).
- (d) "Mental health professional" has the meaning given in section 2451.02, subdivision 27.

## **Subd. 2. Court jurisdiction.**

(a) An application for relief under sections 624.7172 and 624.7174 may be filed in the county of residence of the respondent except as provided for in paragraph (b). Actions under sections 624.7172 and 624.7174 shall be given docket priorities by the court.

(b) At the time of filing, a petitioner may request that the court allow the petitioner to appear virtually at all proceedings. If the court denies the petitioner's request for virtual participation, the petitioner may refile the petition in the county where the petitioner resides or is officed.

## **Subd. 3. Information on petitioner's location or residence.**

Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public and may be disclosed only to court personnel or law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

## **Subd. 4. Generally.**

(a) There shall exist an action known as a petition for an extreme risk protection order, which order shall enjoin and prohibit the respondent from possessing or purchasing firearms for as long as the order remains in effect.

(b) A petition for relief under sections 624.7171 to 624.7178 may be made by the chief law enforcement officer, the chief law enforcement officer's designee, a city or county attorney, any family or household members of the respondent, or a guardian, as defined in section 524.1-201, clause (27), of the respondent.

(c) A petition for relief shall allege that the respondent poses a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm. The petition shall be accompanied by an affidavit made under oath stating specific facts and circumstances forming a basis to allege that an extreme risk protection order should be granted. The affidavit may include but is not limited to evidence showing any of the factors described in section 624.7172, subdivision 2.

(d) A petition for emergency relief under section 624.7174 shall additionally allege that the respondent presents an immediate and present danger of either bodily harm to others or of taking their life.

(e) A petition for relief must describe, to the best of the petitioner's knowledge, the types and location of any firearms believed by the petitioner to be possessed by the respondent.

(f) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(g) The state court administrator shall create all forms necessary under sections 624.7171 to 624.7178.

(h) The filing fees for an extreme risk protection order under this section are waived for the petitioner and respondent. The court administrator, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the sheriff or other law enforcement or corrections officer is unavailable or if service is made by publication, without requiring the petitioner to make application under section 563.01.

(i) The court shall advise the petitioner of the right to serve the respondent by alternate notice under section 624.7172, subdivision 1, paragraph (e), if the respondent is avoiding personal service by concealment or otherwise, and shall assist in the writing and filing of the affidavit.

(j) The court shall advise the petitioner of the right to request a hearing under section 624.7174. If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing.

(k) Any proceeding under sections 624.7171 to 624.7178 shall be in addition to other civil or criminal remedies.

(l) All health records and other health information provided in a petition or considered as evidence in a proceeding under sections 624.7171 to 624.7178 shall be protected from public disclosure but may be provided to law enforcement agencies as described in this section.

(m) Any extreme risk protection order or subsequent extension issued under sections 624.7171 to 624.7178 shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the respondent and electronically transmitted within three business days to the National Instant Criminal Background Check System. When an order expires or is terminated by the court, the court must submit a request that the order be removed from the National Instant Background Check System. Each appropriate law enforcement agency shall make available to other law enforcement officers, through a system for verification, information as to the existence and status of any extreme risk protection order issued under sections 624.7171 to 624.7178.

**Subd. 5. Mental health professionals.**

When a mental health professional has a statutory duty to warn another of a client's serious threat of physically violent behavior or determines that a client presents a significant risk of suicide by possessing a firearm, the mental health professional must communicate the threat or risk to the sheriff of the county where the client resides and make a recommendation to the sheriff regarding the client's fitness to possess firearms.

**Sec. 3. [624.7172] EXTREME RISK PROTECTION ORDERS ISSUED AFTER HEARING.**

**Subdivision 1. Hearing.**

(a) Upon receipt of the petition for an order after a hearing, the court must schedule and hold a hearing within 14 days from the date the petition was received.

(b) The court shall advise the petitioner of the right to request an emergency extreme risk protection order under section 624.7174 separately from or simultaneously with the petition under this subdivision.

(c) The petitioning agency shall be responsible for service of an extreme risk protection order issued by the court and shall further be the agency responsible for the execution of any legal process required for the seizure and storage of firearms subject to the order. Nothing in this provision limits the ability of the law enforcement agency of record from cooperating with other law enforcement entities. When a court issues an extreme risk protection order for a person who resides on Tribal territory, the chief law enforcement officer of the law enforcement agency responsible for serving the order must request the assistance and counsel of the appropriate Tribal police department prior to serving the respondent. When the petitioner is a family or household member of the respondent, the primary law enforcement agency serving the jurisdiction of residency of the respondent shall be responsible for the execution of any legal process required for the seizure and storage of firearms subject to the order.

(d) Personal service of notice for the hearing may be made upon the respondent at any time up to 48 hours prior to the time set for the hearing, provided that the respondent at the hearing may request a continuance of up to 14 days if the respondent is served less than five days prior to the hearing, which continuance shall be granted unless there are compelling reasons not to do so. If the court grants the requested continuance, and an existing emergency order under section 624.7174 will expire due to the continuance, the court shall also issue a written order continuing the emergency order pending the new time set for the hearing.

(e) If personal service cannot be made, the court may order service of the petition and any order issued under this section by alternate means. The application for alternate service must include the last known location of the respondent; the petitioner's most recent contacts with the respondent; the last known location of the respondent's employment; the names and locations of the respondent's parents, siblings, children, and other close relatives; the names and locations of other persons who are likely to know the respondent's whereabouts; and a description of efforts to locate those persons. The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of

the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent. The court may also order publication, within or without the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Service shall be deemed complete 14 days after mailing or 14 days after court-ordered publication.

**(f)** When a petitioner who is not the sheriff of the county where the respondent resides, the sheriff's designee, or a family or household member files a petition, the petitioner must provide notice of the action to the sheriff of the county where the respondent resides. When a family or household member is the petitioner, the court must provide notice of the action to the sheriff of the county where the respondent resides.

### **Subd. 2. Relief by court.**

**(a)** At the hearing, the petitioner must prove by clear and convincing evidence that the respondent poses a significant danger to other persons or is at significant risk of suicide by possessing a firearm.

**(b)** In determining whether to grant the order after a hearing, the court shall consider evidence of the following, whether or not the petitioner has provided evidence of the same:

- (1)** a history of threats or acts of violence by the respondent directed toward another person;
- (2)** the history of use, attempted use, or threatened use of physical force by the respondent against another person;
- (3)** a violation of any court order, including but not limited to orders issued under sections 624.7171 to 624.7178 or chapter 260C or 518B;
- (4)** a prior arrest for a violent felony offense;
- (5)** a conviction or prior arrest for a violent misdemeanor offense, for a stalking offense under section 609.749, or for domestic assault under section 609.2242;
- (6)** a conviction for an offense of cruelty to animals under chapter 343;
- (7)** the unlawful and reckless use, display, or brandishing of a firearm by the respondent;
- (8)** suicide attempts by the respondent or a serious mental illness; and
- (9)** whether the respondent is named in an existing order in effect under sections 624.7171 to 624.7178 or chapter 260C or 518B, or party to a pending lawsuit, complaint, petition, or other action under sections 624.7171 to 624.7178 or chapter 518B.

**(c)** In determining whether to grant the order after a hearing, the court may:

- (1)** subpoena peace officers who have had contact with the respondent to provide written or sworn testimony regarding the officer's contacts with the respondent; and
- (2)** consider any other evidence that bears on whether the respondent poses a danger to others or is at risk of suicide.

**(d)** If the court finds there is clear and convincing evidence to issue an extreme risk protection order, the court shall issue the order prohibiting the person from possessing or purchasing a firearm for the duration of the order. The court shall inform the respondent that the respondent is prohibited from possessing or purchasing firearms and shall issue a transfer order under section 624.7175. The court shall also give notice to the county attorney's office, which may take action as it deems appropriate.

**(e)** The court shall determine the length of time the order is in effect, but may not set the length of time for less

than six months or more than one year, subject to renewal or extension under section 624.7173.

**(f)** If there is no existing emergency order under section 624.7174 at the time an order is granted under this section, the court shall determine by clear and convincing evidence whether the respondent presents an immediate and present danger of bodily harm. If the court so determines, the transfer order shall include the provisions described in section 624.7175, paragraph (d).

**(g)** If, after a hearing, the court does not issue an order of protection, the court shall vacate any emergency extreme risk protection order currently in effect.

**(h)** A respondent may waive the respondent's right to contest the hearing and consent to the court's imposition of an extreme risk protection order. The court shall seal the petition filed under this section and section 624.7174 if a respondent who consents to imposition of an extreme risk protection order requests that the petition be sealed, unless the court finds that there is clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the respondent of not sealing the petition. All extreme risk protection orders based on the respondent being a danger to others shall remain public. Extreme risk protection orders issued for respondents who are solely at risk of suicide shall not be public.

#### **Sec. 4. [624.7173] SUBSEQUENT EXTENSIONS AND TERMINATION.**

**(a)** Upon application by any party entitled to petition for an order under section 624.7172, and after notice to the respondent and a hearing, the court may extend the relief granted in an existing order granted after a hearing under section 624.7172. Application for an extension may be made any time within the three months before the expiration of the existing order. The court may extend the order if the court makes the same findings by clear and convincing evidence as required for granting of an initial order under section 624.7172, subdivision 2, paragraph (d). The minimum length of time of an extension is six months and the maximum length of time of an extension is one year. The court shall consider the same types of evidence as required for the initial order under section 624.7172, subdivision 2, paragraphs (b) and (c).

**(b)** Upon application by the respondent to an order issued under section 624.7172, the court may terminate an order after a hearing at which the respondent shall bear the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger to other persons or is at significant risk of suicide by possessing a firearm. Application for termination may be made one time for every six months an order is in effect. If an order has been issued for a period of six months, the respondent may apply for termination one time.

#### **Sec. 5. [624.7174] EMERGENCY ISSUANCE OF EXTREME RISK PROTECTION ORDER.**

**(a)** In determining whether to grant an emergency extreme risk protection order, the court shall consider evidence of all facts identified in section 624.7172, subdivision 2, paragraphs (b) and (c).

**(b)** The court shall advise the petitioner of the right to request an order after a hearing under section 624.7172 separately from or simultaneously with the petition.

**(c)** If the court finds there is probable cause that (1) the respondent poses a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm, and (2) the respondent presents an immediate and present danger of either bodily harm to others or of taking their life, the court shall issue an ex parte emergency order prohibiting the respondent from possessing or purchasing a firearm for the duration of the order. The order shall inform the respondent that the respondent is prohibited from possessing or purchasing firearms and shall issue a transfer order under section 624.7175, paragraph (d).

**(d)** A finding by the court that there is a basis for issuing an emergency extreme risk protection order constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte relief.



**(e)** The emergency order shall have a fixed period of 14 days unless a hearing is set under section 624.7172 on an earlier date, in which case the order shall expire upon a judge's finding that no order is issued under section 624.7172.

**(f)** Except as provided in paragraph (g), the respondent shall be personally served immediately with a copy of the emergency order and a copy of the petition and, if a hearing is requested by the petitioner under section 624.7172, notice of the date set for the hearing. If the petitioner does not request a hearing under section 624.7172, an order served on a respondent under this section must include a notice advising the respondent of the right to request a hearing challenging the issuance of the emergency order, and must be accompanied by a form that can be used by the respondent to request a hearing.

**(g)** Service of the emergency order may be made by alternate service as provided under section 624.7172, subdivision 1, paragraph (e), provided that the petitioner files the affidavit required under that subdivision. If the petitioner does not request a hearing under section 624.7172, the petition mailed to the respondent's residence, if known, must be accompanied by the form for requesting a hearing described in paragraph (f).

#### **Sec. 6. [624.7175] TRANSFER OF FIREARMS.**

**(a)** Except as provided in paragraph (b), upon issuance of an extreme risk protection order, the court shall direct the respondent to transfer any firearms the person possesses as soon as reasonably practicable, but in no case later than 24 hours, to a federally licensed firearms dealer or a law enforcement agency. If the respondent elects to transfer the respondent's firearms to a law enforcement agency, the agency must accept the transfer. The transfer may be permanent or temporary. A temporary firearm transfer only entitles the receiving party to possess the firearm and does not transfer ownership or title. If the respondent makes a temporary transfer to a federally licensed firearms dealer, the dealer may charge the respondent a reasonable fee to store the firearms. If the temporary transfer is made to a law enforcement agency, the agency may not charge the respondent any storage or other associated fee. A dealer or agency may establish policies for disposal of abandoned firearms, provided these policies require that the respondent be notified prior to disposal of abandoned firearms. If a respondent permanently transfers the respondent's firearms to a law enforcement agency, the agency must compensate the respondent at fair market value and may not charge the respondent any processing or other fees.

**(b)** A person directed to transfer any firearms pursuant to paragraph (a) may transfer any antique firearm, as defined in United States Code, title 18, section 921, paragraph (a), clause (16), as amended, or a curio or relic as defined in Code of Federal Regulations, title 27, section 478.11, as amended, to a relative who does not live with the respondent after confirming that the relative may lawfully own or possess a firearm.

**(c)** The respondent must file proof of transfer as provided in this paragraph.

**(1)** A law enforcement agency or federally licensed firearms dealer accepting transfer of a firearm pursuant to this section shall provide proof of transfer to the respondent. The proof of transfer must specify whether the firearms were permanently or temporarily transferred and must include the name of the respondent, date of transfer, and the serial number, manufacturer, and model of all transferred firearms. If transfer is made to a federally licensed firearms dealer, the respondent shall, within two business days after being served with the order, file a copy of proof of transfer with the law enforcement agency and attest that all firearms owned or possessed at the time of the order have been transferred in accordance with this section and that the person currently does not possess any firearms. If the respondent claims not to own or possess firearms, the respondent shall file a declaration of nonpossession with the law enforcement agency attesting that, at the time of the order, the respondent neither owned nor possessed any firearms, and that the respondent currently neither owns nor possesses any firearms. If the transfer is made to a relative pursuant to paragraph (b), the relative must sign an affidavit under oath before a notary public either acknowledging that the respondent permanently transferred the respondent's antique firearms, curios, or relics to the relative or agreeing to temporarily store the respondent's antique firearms, curios, or relics until such time as the

respondent is legally permitted to possess firearms. To the extent possible, the affidavit shall indicate the serial number, make, and model of all antique firearms, curios, or relics transferred by the respondent to the relative.

**(2)** The court shall seal affidavits, proofs of transfer, and declarations of nonpossession filed pursuant to this paragraph.

**(d)** If a court issues an emergency order under section 624.7174, or makes a finding of immediate and present danger under section 624.7172, subdivision 2, paragraph (f), and there is probable cause to believe the respondent possesses firearms, the court shall issue a search warrant to the local law enforcement agency to take possession of all firearms in the respondent's possession as soon as practicable. The chief law enforcement officer, or the chief's designee, shall notify the respondent of the option to voluntarily comply with the order by surrendering the respondent's firearms to law enforcement prior to execution of the search warrant. Only if the respondent refuses to voluntarily comply with the order to surrender the respondent's firearms shall the officer or officers tasked with serving the search warrant execute the warrant. The local law enforcement agency shall, upon written notice from the respondent, transfer the firearms to a federally licensed firearms dealer. Before a local law enforcement agency transfers a firearm under this paragraph, the agency shall require the federally licensed firearms dealer receiving the firearm to submit a proof of transfer that complies with the requirements for proofs of transfer established in paragraph (c). The agency shall file all proofs of transfer received by the court within two business days of the transfer. A federally licensed firearms dealer who accepts a firearm transfer pursuant to this paragraph shall comply with paragraphs (a) and (c) as if accepting transfer directly from the respondent. A law enforcement agency may establish policies for disposal of abandoned firearms, provided these policies require that the respondent be notified prior to disposal of abandoned firearms.

## **Sec. 7. [624.7176] RETURN OF FIREARMS.**

**Subdivision 1. Law enforcement.** A local law enforcement agency that accepted temporary transfer of firearms under section 624.7175 shall return the firearms to the respondent after the expiration of the order, provided the respondent is not otherwise prohibited from possessing firearms under state or federal law.

**Subd. 2. Firearms dealer.** A federally licensed firearms dealer that accepted temporary transfer of firearms under section 624.7175 shall return the transferred firearms to the respondent upon request after the expiration of the order, provided the respondent is not otherwise prohibited from possessing firearms under state or federal law. A federally licensed firearms dealer returning firearms shall comply with state and federal law as though transferring a firearm from the dealer's own inventory.

## **Sec. 8. [624.7177] OFFENSES.**

**Subdivision 1. False information or harassment.** A person who petitions for an extreme risk protection order under section 624.7172 or 624.7174, knowing any information in the petition to be materially false or with the intent to harass, abuse, or threaten, is guilty of a gross misdemeanor.

**Subd. 2. Violation of order.** A person who possesses a firearm and knows or should have known that the person is prohibited from doing so by an extreme risk protection order under section 624.7172 or 624.7174, or by an order of protection granted by a judge or referee pursuant to a substantially similar law of another state, is guilty of a misdemeanor and shall be prohibited from possessing firearms for a period of five years. Each extreme risk protection order granted under this chapter must contain a conspicuous notice to the respondent regarding the penalty for violation of the order.

## **Sec. 9. [624.7178] LIABILITY PROTECTION.**

**Subdivision 1. Liability protection for petition.** A chief law enforcement officer, the chief law enforcement officer's designee, or a city or county attorney who, in good faith, decides not to petition for an extreme risk protection order or emergency extreme risk protection order shall be immune from criminal or civil liability.

**Subd. 2. Liability protection for storage of firearms.** A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms, ammunition, or weapons stored or transported pursuant to section 624.7175. This subdivision shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

**Subd. 3. Liability protection for harm following service of an order or execution of a search warrant.** A peace officer, law enforcement agency, and the state or a political subdivision by which a peace officer is employed has immunity from any liability, civil or criminal, for harm caused by a person who is the subject of an extreme risk protection order, a search warrant issued pursuant to section 624.7175, paragraph (d), or both, after service of the order or execution of the warrant, whichever comes first, if the peace officer acts in good faith in serving the order or executing the warrant.

**Subd. 4. Liability protection for mental health professionals.** A mental health professional who provides notice to the sheriff under section 626.7171, subdivision 5, is immune from monetary liability and no cause of action, or disciplinary action by the person's licensing board may arise against the mental health professional for disclosure of confidences to the sheriff, for failure to disclose confidences to the sheriff, or for erroneous disclosure of confidences to the sheriff in a good faith effort to warn against or take precautions against a client's violent behavior or threat of suicide.

# Nevada

**Types of Orders:** Emergency Order of protection against high-risk behavior, Extended Order (Order of protection against high-risk behavior)

**Citation:** Nev. Rev. Stat. §§ 33.500 — 33.670

## Highlighted Provisions

### Persons eligible to petition:

Law enforcement or Family / household member

### Standard of Proof:

Emergency/Ex Parte Order: Preponderance of the Evidence

Extended Order: clear and convincing evidence

### Findings required:

That a person poses an imminent risk of causing a self-inflicted injury or a personal injury to another person by possessing, controlling, purchasing or otherwise acquiring any firearm;

(b) The person engaged in high-risk behavior; and

(c) Less restrictive options have been exhausted or are not effective.

### Duration of order:

Ex parte: Not to exceed 7 days as the court permits

Extended order: up to 1 year

### Service procedures:

The court shall transmit, by the end of the next business day after an ex parte or extended order is issued or renewed, a copy of the order to the appropriate law enforcement agency.

The court shall order the appropriate law enforcement agency to serve, without charge, the adverse party personally with the ex parte or extended order and file with or mail to the clerk of the court proof of service by the end of the next business day after service is made.

If, while attempting to serve the adverse party personally pursuant to subsection 2, the health or safety of the officer or the adverse party is put at risk because of any action of the adverse party, the law enforcement officer is under no duty to continue to attempt to serve the adverse party personally and the service shall be deemed unsuccessful. If such service is unsuccessful, the law enforcement agency shall, as soon as practicable after the risk has subsided, attempt to serve the adverse party personally until the emergency or extended order is successfully served.

Service of an application for an extended order and the notice of hearing thereon must be served upon the adverse party pursuant to the Rules of Civil Procedure.

### Notification procedures for people at risk:

Statute is silent

### Renewal/Termination:

The family or household member or law enforcement officer who filed the verified application or the adverse party may request in writing to appear and move for the dissolution of an emergency or extended order. Upon a finding by clear and convincing evidence that the adverse party no longer poses a risk of causing personal injury to himself or herself or another person by possessing or having under his or her custody or control or by purchasing or otherwise acquiring any firearm, the court shall dissolve the order. If the court finds that

all parties agree to dissolve the order, the court shall dissolve the order upon a finding of good cause.

Not less than 3 months before the expiration of an extended order and upon petition by a family or household member or law enforcement officer, the court may, after notice and a hearing, renew an extended order upon a finding by clear and convincing evidence. Such an order expires within a period, not to exceed 1 year, as the court fixes.

**Filing fees:**

The order is silent of filing fees. The clerk of the court shall issue, without fee, a copy of the emergency or extended order to any family or household member who files a verified application or the adverse party.

**Firearm prohibition:**

Emergency or extended order:

1. Require the adverse party to surrender any firearm in his or her possession or under his or her custody or control.
2. Prohibit the adverse party from possessing or having under his or her custody or control any firearm while the order is in effect.

**Firearms relinquishment process:**

After a court orders an adverse party to surrender any firearm pursuant the adverse party shall, immediately after service of the order:

Surrender any firearm in his or her possession or under his or her custody or control to the appropriate law enforcement agency designated by the court in the order; or

Surrender any firearm in his or her possession or under his or her custody or control to a person, other than a person who resides with the adverse party, designated by the court in the order.

If the court orders the adverse party to surrender any firearm to a law enforcement agency pursuant to paragraph (a) of subsection 1, the law enforcement agency shall provide the adverse party with a receipt which includes a description of each firearm surrendered and the adverse party shall, not later than 72 hours or 1 business day, whichever is later, after surrendering any such firearm, provide the original receipt to the court. The law enforcement agency shall store any such firearm or may contract with a licensed firearm dealer to provide storage.

**Firearm disposal process:**

Statute is silent

**Limitation on liability for law enforcement:**

Statute is silent

**Return/Transfer of Firearms:**

A law enforcement agency shall return any surrendered or seized firearm to the adverse party:

- (a) In the manner provided by the policies and procedures of the law enforcement agency;
- (b) After confirming that:
  - (1) The adverse party is eligible to own or possess a firearm under state and federal law; and
  - (2) Any ex parte or extended order is dissolved or no longer in effect.

**Warranty authority:**

If there is probable cause to believe that the adverse party has not surrendered any firearm in his or her possession or under his or her custody or control within the time set forth in subsections 2 and 3, the court may issue and deliver to any law enforcement officer a search warrant which authorizes the officer to enter and search any place where there is probable cause to believe any such firearm is located and seize the firearm.

If, while executing a search warrant pursuant to subsection 4, the health or safety of the officer or the adverse party is put at risk because of any action of the adverse party, the law enforcement officer is under no duty to continue to attempt to execute the search warrant and the execution of the warrant shall be deemed unsuccessful. If such execution is unsuccessful, the law enforcement agency shall, as soon as practicable after the risk has subsided, attempt to execute the search warrant until the search warrant is successfully executed.

**Venue:**

Statute is silent

**Penalties:**

A person who intentionally violates an emergency or extended order is, unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order, guilty of a misdemeanor.

**Entry Registry/NCIC POF:**

1. Any time that a court issues an emergency or extended order or renews an extended order and any time that a person serves such an order or receives any information or takes any other action pursuant to NRS 33.500 to 33.670, inclusive, the person shall, by the end of the next business day:

(a) Cause to be transmitted, in the manner prescribed by the Central Repository for Nevada Records of Criminal History, any information required by the Central Repository in a manner which ensures that the information is received by the Central Repository; and

(b) Transmit a copy of the order to the Attorney General.

## Statutes

**§ 33.500. Definitions.**

As used in NRS 33.500 to 33.670, inclusive, unless the context otherwise requires, the words and terms defined in NRS 33.510 to 33.540, inclusive, have the meanings ascribed to them in those sections.

**§ 33.510. “Adverse party” defined.**

“Adverse party” means a natural person who is named in an application for an order of protection against high-risk behavior.

**§ 33.520. “Emergency order” defined.**

“Emergency means an emergency order for protection against high-risk behavior.

**§ 33.530. “Extended order” defined.**

“Extended order” means an extended order for protection against high-risk behavior.

**§ 33.540. “Family or household member” defined.**

“Family or household member” means, with respect to an adverse party, any:

1. Person related by blood, adoption or marriage to the adverse party within the first degree of consanguinity;
2. Person who has a child in common with the adverse party, regardless of whether the person has been married to the adverse party or has lived together with the adverse party at any time;
3. Domestic partner of the adverse party;
4. Person who has a biological or legal parent and child relationship with the adverse party, including, without limitation, a natural parent, adoptive parent, stepparent, stepchild, grandparent or grandchild;

5. Person who is acting or has acted as a guardian to the adverse party; or
6. Person who is currently in a dating or ongoing intimate relationship with the adverse party.

**§ 33.550. Acts that constitute high-risk behavior.**

1. High-risk behavior occurs when a person:

- (a) Uses, attempts to use or threatens the use of physical force against another person;
- (b) Communicates a threat of imminent violence toward himself or herself or against another person;
- (c) Commits an act of violence directed toward himself or herself or another person;
- (d) Engages in a pattern of threats of violence or acts of violence against himself or herself or another person, including, without limitation, threats of violence or acts of violence that have caused another person to be in reasonable fear of physical harm to himself or herself;
- (e) Exhibits conduct which a law enforcement officer reasonably determines would present a serious and imminent threat to the safety of the public;
- (f) Engages in conduct which presents a danger to himself or herself or another person while:
  - (1) In possession, custody or control of a firearm; or
  - (2) Purchasing or otherwise acquiring a firearm;
- (g) Abuses a controlled substance or alcohol while engaging in high-risk behavior as described in this section;  
or
- (h) Acquires a firearm or other deadly weapon within the immediately preceding 6 months before the person otherwise engages in high-risk behavior as described in this section.

2. For the purposes of this section, a person shall be deemed to engage in high-risk behavior if he or she has previously been convicted of:

- (a) Violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.020;
- (b) Violating a temporary or extended order for protection against sexual assault issued pursuant to NRS 200.378; or
- (c) A crime of violence, as defined in NRS 200.408, punishable as a felony.

**§ 33.560. Filing of verified application for emergency or extended order: Persons who may file verified application; grounds; contents; service.**

1. A law enforcement officer who has probable cause to believe that a person poses an imminent risk of causing a self-inflicted injury or a personal injury to another person by possessing, controlling, purchasing or otherwise acquiring any firearm may file a verified application for an order for protection against high-risk behavior.
2. A family or household member who reasonably believes that a person poses an imminent risk of causing a self-inflicted injury or a personal injury to another person by possessing, controlling, purchasing or otherwise acquiring any firearm may file a verified application for an order for protection against high-risk behavior.
3. A verified application filed pursuant to this section must include, without limitation:
  - (a) The name of the person seeking the order for protection against high-risk behavior;
  - (b) The name and address, if known, of the person who is alleged to pose an imminent risk pursuant to

subsection 1 or 2;

(c) A detailed description of the conduct and acts that constitute high-risk behavior and the dates on which the high-risk behavior occurred; and

(d) Any supplemental documents or information.

4. An applicant is not required to serve, or have served on its behalf, an application for an order for protection against high-risk behavior and notice of the hearing described in NRS 33.565, but an applicant who is a law enforcement officer may in the discretion of the officer serve the verified application and notice of the hearing on the adverse party.

**§ 33.565. Hearing to review verified application for emergency or extended order: Time for hearing in open court; actions that court may take; telephonic hearing to review verified application filed by law enforcement officer; availability of court.**

1. Except as otherwise provided in subsection 2, a court shall hold a hearing in open court to review a verified application filed pursuant to NRS 33.560 not later than 1 judicial day after its filing by the applicant. At the hearing the court may:

(a) Regardless of whether notice and an opportunity to be heard has been provided to the adverse party:

(1) Issue an emergency order pursuant to NRS 33.570; or

(2) Decline to issue an emergency order, in which case, the court must:

(I) Schedule a hearing in accordance with NRS 33.575; or

(II) If the applicant so requests, dismiss the verified application.

(b) If notice and an opportunity to be heard has been provided to the adverse party:

(1) Issue an extended order pursuant to NRS 33.580;

(2) Dismiss the verified application; or

(3) Upon the request of either party and for good cause shown, schedule a hearing in accordance with NRS 33.575.

2. If the verified application was filed by a law enforcement officer, the court may hold a telephonic hearing to review the verified application not later than 1 day after the filing of the application. At the telephonic hearing, the court:

(a) May not issue an extended order pursuant to NRS 33.580.

(b) May, regardless of whether notice and an opportunity to be heard has been provided to the adverse party:

(1) Issue an emergency order pursuant to NRS 33.570; or

(2) Decline to issue the emergency order, in which case, the court must:

(I) Schedule a hearing in accordance with NRS 33.575; or

(II) If the law enforcement agency so requests, dismiss the verified application.

3. The telephonic hearing described in subsection 2 must be recorded contemporaneously by a certified court reporter or by electronic means. After the hearing, the recording must be transcribed, certified by a judicial officer and filed with the clerk of court.

4. In a county whose population is 100,000 or more, the court shall be available 24 hours a day, 7 days a week, including nonjudicial days and holidays, to conduct telephonic hearings pursuant to subsection 2.



5. In a county whose population is less than 100,000, the court may be available 24 hours a day, 7 days a week, including nonjudicial days and holidays, to conduct telephonic hearings pursuant to subsection 2.

**§ 33.570. Requirements for issuance of emergency order; availability of court; court to inform applicant and adverse party upon transfer of information to Central Repository.**

1. The court shall issue an emergency order if the court finds by a preponderance of the evidence from facts shown by a verified application filed pursuant to NRS 33.560:

(a) That a person poses an imminent risk of causing a self-inflicted injury or a personal injury to another person by possessing, controlling, purchasing or otherwise acquiring any firearm;

(b) The person engaged in high-risk behavior; and

(c) Less restrictive options have been exhausted or are not effective.

2. The court may require the person who filed the verified application or the adverse party, or both, to appear before the court before determining whether to issue an emergency order.

3. An emergency order may be issued with or without notice to the adverse party.

4. The clerk of the court shall inform the applicant and the adverse party upon the successful transfer of information concerning the registration to the Central Repository for Nevada Records of Criminal History as required pursuant to NRS 33.095.

**§ 33.575. Issuance of emergency order; expiration of emergency order; extension of emergency order; declination to issue emergency order; hearing to determine whether to issue extended order of dismiss verified application.**

1. If a court issues an emergency order at a hearing described in NRS 33.565:

(a) The emergency order expires within such time, as the court fixes, not to exceed 7 calendar days from the date that the verified application was filed by the applicant pursuant to NRS 33.560; and

(b) Unless the emergency order is dissolved pursuant to NRS 33.640, the court shall, not later than the day that the emergency order expires, hold a hearing to determine whether to:

(1) Issue an extended order pursuant to NRS 33.580; or

(2) Dismiss the verified application.

2. In order for service of an emergency order to be effectuated pursuant to NRS 33.620 or for good cause shown, the court may extend the duration of an emergency order for a period not to exceed 7 days. Notice of any such extension must be served on the adverse party by a law enforcement agency.

3. If the court declines to issue an emergency order at the hearing described in NRS 33.565 or upon the request of either party and for good cause shown as provided in subparagraph (3) of paragraph (b) of subsection 1 of NRS 33.565, the court shall, not later than 7 calendar days after the filing of the verified application pursuant to NRS 33.560, schedule a hearing to determine whether to:

(a) Issue an extended order pursuant to NRS 33.580; or

(b) Dismiss the verified application.

4. If a court issues an extended order at the hearing described in this section or at the hearing described in subsection 1 of NRS 33.565, the extended order expires within such time, not to exceed 1 year, as the court fixes.

**§ 33.580. Requirements for issuance of extended order; court to inform applicant and adverse party upon transfer of information to Central Repository.**

1. The court shall issue an extended order if the court finds by clear and convincing evidence from facts shown by a verified application filed pursuant to NRS 33.560:

- (a) That a person poses a risk of causing a self-inflicted injury or a personal injury to another person by possessing, controlling, purchasing or otherwise acquiring any firearm;
- (b) The person engaged in high-risk behavior; and
- (c) Less restrictive options have been exhausted or are not effective.

2. The clerk of the court shall inform the applicant and the adverse party upon the successful transfer of information concerning the registration to the Central Repository for Nevada Records of Criminal History as required pursuant to NRS 33.095.

### **§ 33.590 Contents of emergency or extended order.**

Each emergency or extended order issued pursuant to NRS 33.570 or 33.580 must:

- 1. Require the adverse party to surrender any firearm that is in the possession or control of the adverse party in the manner set forth in NRS 33.600.
- 2. Prohibit the adverse party from possessing or controlling any firearm while the order is in effect.
- 3. Include a provision ordering any law enforcement officer to arrest the adverse party with a warrant, or without a warrant if the officer has probable cause to believe that the person has been served with a copy of the order and has violated a provision of the order.
- 4. State the reasons for the issuance of the order.
- 5. Include instructions for surrendering any firearm as ordered by the court.
- 6. State the time and date on which the order expires.
- 7. Require the adverse party to surrender any permit issued pursuant to NRS 202.3657.
- 8. Include the following statement:

WARNING

This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of violating an emergency or extended order and any other crime that you may have committed in disobeying this order.

### **§ 33.600. Requirements for surrender of firearm in possession of adverse party.**

1. After a court orders an adverse party to surrender any firearm pursuant to NRS 33.590, the adverse party shall, immediately after service of the order, surrender any firearm that is in the possession or control of the adverse party to:

- (a) The law enforcement agency designated by the court in the order, if the verified application pursuant to NRS 33.560 was filed by a family or household member; or
- (b) The law enforcement agency of the law enforcement officer who filed the verified application pursuant to NRS 33.560.

2. At the time any firearm is surrendered, the law enforcement agency shall provide the adverse party with a receipt which includes a description of each firearm surrendered and the adverse party shall, not later than 1 business day after surrendering any such firearm, provide the original receipt to the court. The law enforcement agency shall store any such firearm or may contract with a licensed firearm dealer to provide storage.

3. If there is probable cause to believe that the adverse party has not surrendered any firearm that is in the possession or control of the adverse party, any law enforcement officer may apply to the court for a search warrant which authorizes the officer to enter and search any place where there is probable cause to believe any such firearm is located and seize the firearm.

4. If, while executing a search warrant pursuant to subsection 3, the health or safety of the officer or the adverse party is put at risk because of any action of the adverse party, the law enforcement officer is under no duty to continue to attempt to execute the search warrant and the execution of the warrant shall be deemed unsuccessful. If such execution is unsuccessful, the law enforcement agency shall, as soon as practicable after the risk has subsided, attempt to execute the search warrant until the search warrant is successfully executed.

5. A law enforcement agency shall return any surrendered or seized firearm to the adverse party:

(a) In the manner provided by the policies and procedures of the law enforcement agency;

(b) After confirming that:

(1) The adverse party is eligible to own or possess a firearm under state and federal law; and

(2) Any emergency order issued pursuant to NRS 33.570 is dissolved or no longer in effect or a court has issued an order to return the surrendered firearms pursuant to NRS 33.640, as applicable; and

(c) As soon as practicable but not more than 14 days after the dissolution or expiration of the emergency order or receiving the order to return the surrendered firearms pursuant to NRS 33.640, as applicable.

6. If a person other than the adverse party claims title to any firearm surrendered or seized pursuant to this section and the person is determined by the law enforcement agency to be the lawful owner, the firearm must be returned to the lawful owner, if:

(a) The lawful owner agrees to store the firearm in a manner such that the adverse party does not have access to or control of the firearm; and

(b) The law enforcement agency determines that:

(1) The firearm is not otherwise unlawfully possessed by the lawful owner; and

(2) The person is eligible to own or possess a firearm under state or federal law.

7. As used in this section, “licensed firearm dealer” means a person licensed pursuant to 18 U.S.C. § 923(a).

**§ 33.620. Notice of order to law enforcement agency; duty to serve order without charge and to enforce order; risk to health or safety of the law enforcement officer or adverse party; no charge for copy of order for applicant and adverse party.**

1. The court shall transmit, by the end of the next business day after an emergency or extended order is issued or renewed, a copy of the order to the appropriate law enforcement agency.

2. Unless the adverse party is present at the hearing described in NRS 33.565 to receive the date of the hearing described in NRS 33.575 in which the court will determine whether to issue an extended order, the court shall order the appropriate law enforcement agency to serve, without charge, the adverse party personally with:

(a) The emergency order;

(b) Subject to the provisions of subsection 8, the application and any supplemental documents submitted to the court; and

(c) Notice of the hearing described in NRS 33.575.

3. The court shall order the appropriate law enforcement agency to serve, without charge, the adverse party

personally with the extended order.

**4.** The law enforcement agency shall file with or mail to the clerk of the court proof of service of the emergency order pursuant to subsection 2 or the extended order pursuant to subsection 3 by the end of the next business day after service is made.

**5.** If, while attempting to serve the adverse party personally pursuant to subsection 2 or 3, the health or safety of the officer or the adverse party is put at risk because of any action of the adverse party, the law enforcement officer is under no duty to continue to attempt to serve the adverse party personally and the service shall be deemed unsuccessful. If such service is unsuccessful, the law enforcement agency shall, as soon as practicable after the risk has subsided, attempt to serve the adverse party personally until the emergency or extended order is successfully served.

**6.** A law enforcement agency shall enforce an emergency or extended order without regard to the county in which the order was issued.

**7.** The clerk of the court shall issue, without fee, a copy of the emergency or extended order to any family or household member or law enforcement officer who files a verified application pursuant to NRS 33.560 or the adverse party.

**8.** The court may withhold or redact from the application or any supplemental documents to be served upon the adverse party any personal identifying information of the applicant or any other person if the court determines that disclosure of the personal identifying information would create a substantial threat to the applicant or any other person of bodily harm, intimidation, coercion or harassment. If the court withholds or redacts any personal identifying information pursuant to this subsection, the court shall:

**(a)** Upon request of the adverse party, provide the adverse party or the adverse party's attorney or agent with an opportunity to interview the applicant or other person whose personal identifying information was withheld or redacted in an environment that provides for protection of the applicant or other person;

**(b)** Maintain any information or documents withheld or redacted pursuant to this subsection in a confidential file; and

**(c)** Permit the adverse party or the adverse party's attorney or agent to inspect and to copy or photograph any information or documents withheld or redacted pursuant to this subsection before the hearing described in NRS 33.575.

**9.** As used in this section, "personal identifying information" means any information which would identify a person, including, without limitation, a name, an address, a date of birth or a social security number.

**§ 33.630. Arrest of person who violates order; verification of notice to adverse party.**

**1.** Whether or not a violation of an emergency or extended order occurs in the presence of a law enforcement officer, the officer may arrest and take into custody an adverse party:

**(a)** With a warrant; or

**(b)** Without a warrant if the officer has probable cause to believe that:

**(1)** An order has been issued pursuant to NRS 33.570 or 33.580 against the adverse party;

**(2)** The adverse party has been served with a copy of the order; and

**(3)** The adverse party is acting in violation of the order.

**2.** If a law enforcement officer cannot verify that the adverse party was served with a copy of the application and emergency or extended order, the officer shall:

- (a) Inform the adverse party of the specific terms and conditions of the order;
- (b) Inform the adverse party that the adverse party has notice of the provisions of the order and that a violation of the order will result in his or her arrest;
- (c) Inform the adverse party of the location of the court that issued the original order and the hours during which the adverse party may obtain a copy of the order; and
- (d) Inform the adverse party of the date and time set for a hearing on an application for an emergency or extended order, if any.

3. Information concerning the terms and conditions of the emergency or extended order, the date and time of any notice provided to the adverse party and the name and identifying number of the law enforcement officer who gave the notice must be provided in writing to the applicant and noted in the records of the law enforcement agency and the court.

**§ 33.640. Expiration, dissolution and renewal of order.**

1. The family or household member or law enforcement officer who filed the verified application pursuant to NRS 33.560 or the adverse party may request in writing to appear and move for the dissolution of an emergency or extended order. Upon a finding by clear and convincing evidence that the adverse party no longer poses a risk of causing a self-inflicted injury or a personal injury to another person by possessing, controlling, purchasing or otherwise acquiring any firearm, the court shall dissolve the order. If all parties stipulate to dissolve the order, the court shall dissolve the order upon a finding of good cause.

2. Upon the expiration or dissolution of an emergency or extended order, the court shall:

(a) Order the return of any firearm surrendered by the adverse party;

(b) Provide a copy of the order to:

(1) The adverse party; and

(2) The law enforcement agency holding any such surrendered firearm; and

(c) Cause, on a form prescribed by the Department of Public Safety, a record of the expiration or dissolution of the order to be transmitted to the Central Repository for Nevada Records of Criminal History to ensure that information concerning the adverse party is removed from the Central Repository.

3. Not less than 3 months before the expiration of an extended order and upon petition by a family or household member or law enforcement officer, the court may, after notice and a hearing, renew an extended order upon a finding by clear and convincing evidence. Such an order expires within a period, not to exceed 1 year, as the court fixes.

**§ 33.650. Duty to transmit information concerning order to Central Repository and copy of order to Attorney General; petition by adverse party to declare basis for order no longer exists; actions required if petition granted; rehearing if petition denied.**

1. Any time that a court issues an emergency or extended order or renews an extended order and any time that a person serves such an order or receives any information or takes any other action pursuant to NRS 33.500 to 33.670, inclusive, the person shall, by the end of the next business day:

(a) Cause to be transmitted, in the manner prescribed by the Central Repository for Nevada Records of Criminal History, any information required by the Central Repository in a manner which ensures that the information is received by the Central Repository; and

(b) Transmit a copy of the order to the Attorney General.

2. If the Central Repository for Nevada Records of Criminal History receives any information described in subsection 1, the adverse party may petition the court for an order declaring that the basis for the information transmitted no longer exists.
3. A petition brought pursuant to subsection 2 must be filed in the court which issued the emergency or extended order.
4. The court shall grant the petition and issue the order described in subsection 2 if the court finds that the basis for the emergency or extended order no longer exists.
5. The court, upon granting the petition and entering an order pursuant to this section, shall cause, on a form prescribed by the Department of Public Safety, a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History.
6. Within 5 business days after receiving a record of an order transmitted pursuant to subsection 5, the Central Repository for Nevada Records of Criminal History shall take reasonable steps to ensure that the information concerning the adverse party is removed from the Central Repository.
7. If the Central Repository for Nevada Records of Criminal History fails to remove the information as provided in subsection 6, the adverse party may bring an action to compel the removal of the information. If the adverse party prevails in the action, the court may award the adverse party reasonable attorney's fees and costs incurred in bringing the action.
8. If a petition brought pursuant to subsection 2 is denied, the adverse party may petition for a rehearing not sooner than 2 years after the date of the denial of the petition.
9. If an adverse party to the emergency or extended order is a child under the age of 18 years, the provisions of NRS 62H.035 govern petitions for and the issuance of orders declaring that the basis for an emergency or extended order no longer exists.

**§ 33.660. Unlawful to file verified application for order which person knows or has reason to know is false or misleading or with intent to harass adverse party; penalty.**

1. A person shall not file a verified application for an emergency or extended order:
  - (a) Which the person knows or has reason to know is false or misleading; or
  - (b) With the intent to harass the adverse party.
2. A person who violates the provisions of subsection 1 is guilty of a misdemeanor.

**§ 33.670. Penalty for intentional violation of order.**

A person who intentionally violates an emergency or extended order is, unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order, guilty of a misdemeanor.

# New Jersey

**Types of orders:** Temporary extreme risk protection order, Final extreme risk protection order

**Citation:** N.J. Stat. Ann. §§ 2C:58-20 to 2C:58-32

## Highlighted Provisions

### Persons eligible to petition:

Family Member or Law Enforcement officer.

### Standard of proof:

Temporary ERPO: good cause

Final ERPO: preponderance of the evidence

### Findings required:

Temporary ERPO: Respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm

Final ERPO: Respondent poses a significant danger of bodily injury to the respondent's self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm

### Length of order:

Temporary ERPO: until a final order is issued or denied

Final ERPO: indefinite, until terminated by the court

### Service on respondent:

The appropriate law enforcement agency in the municipality where respondent resides will personally serve respondent as soon as is practicable. If personal service can't be completed, the court can order alternate service as appropriate.

### Notification of persons at risk:

At least 10 days prior to returning the firearms or ammunition, the local law enforcement agency shall **notify** the family or household member that the firearms or ammunition will be returned to the owner. If the firearms or ammunition were seized by the State Police, the county prosecutor's office where the protective order is venued shall **notify** the family or household member that the firearms or ammunition will be returned to the owner.

### Renewal/Termination of the order:

Petitioner or respondent can request termination of a final order. If respondent is the one requesting termination, they must show by a preponderance of the evidence that respondent no longer poses a significant danger of causing bodily injury to the respondent's self or to other persons by having custody or control of, owning, possessing, purchasing, or receiving a firearm

### Filing fees:

No fees for filing or service of process may be charged by a court or any public agency to a petitioner filing a petition.

### Firearm prohibitions:

Temporary ERPO: Respondent is prohibited from having custody or control of, owning, purchasing, possessing, or receiving firearms or ammunition, and from securing or holding a firearms purchaser identification card or permit to purchase or carry a handgun

Final ERPO: Respondent is prohibited from having custody or control of, owning, purchasing, possessing, or receiving a firearm

**Firearm relinquishment process:**

When a temporary or final order is issued, respondent must surrender to local law enforcement all firearms, ammunition, firearms purchaser identification cards, and permits to purchase or carry handguns.

If the petition indicates that respondent has any firearms or ammunition, a warrant is issued alongside the order to search for and seize all firearms and ammunition. The officer serving the order will request that respondent immediately surrender all firearms and ammunition. Respondent may request that the agency sell the seized firearms and ammunition to a federally licensed firearms dealer.

**Firearm disposal process:**

If a law enforcement agency still holds firearms or ammunition at least a year after the order has expired, the agency may destroy them according to their own policies and procedures.

**Limitations on liability:**

Law enforcement officers have civil and criminal immunity for good faith choices not to file petitions. Law enforcement agencies have civil and criminal immunity for damage done to firearms or ammunition unless the damage was intentional or a result of recklessness or gross negligence.

**Return/transfer of firearms:**

When an order is terminated, respondent may petition the law enforcement agency for return of their firearms or ammunition. The agency must return the items within 30 days unless the item has been reported as stolen or respondent is otherwise prohibited from possessing it.

**Warrant authority:**

If the petition indicates respondent has any firearms or ammunition, the court must order a search warrant for those firearms or ammunition. If respondent fails to surrender any firearms or ammunition after being served with an ERPO, the court may issue a search warrant.

**Venue:**

If respondent is a law enforcement officer, the petition must be filed in the agency at which respondent is employed. In that case, the agency will conduct an internal investigation and then the county prosecutor will decide whether to refer it to the court.

The statute is otherwise silent.

**Penalties:**

A violation by the respondent of an order issued shall constitute an offense under subsection e. of N.J.S.2C:29-9 and each order shall so state. All contempt proceedings conducted involving an extreme risk protective order shall be heard by the Superior Court.

**Entry Registry/NCIC POF:**

The Administrative Office of the Courts shall include all persons who have had a final extreme risk protective order entered against them, and all persons who have been charged with a violation of a temporary or final extreme risk protective order issued, in an electronic central registry created and maintained by the Administrative Office of the Courts.

## Statutes

**§ 2C:58-20 Short Title [Extreme Risk Protective Order Act of 2018]**

This act shall be known and may be cited as the “Extreme Risk Protective Order Act of 2018.”

**§ 2C:58-21. Definitions relative to extreme risk protective orders**

As used in P.L.2018, c.35 (C.2C:58-20 et al.):



“Ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, but does not include any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing or any unloaded, non-metallic shotgun hull or casing not having a primer.

“Deadly weapon” shall have the same meaning as in subsection c. of N.J.S.2C:11-1.

“Family or household member” means a spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), partner in a civil union couple as defined in section 2 of P.L.2006, c.103 (C.37:1-29), or former spouse, former domestic partner, or former partner in a civil union couple, or any other person who is a present household member or was at any time a household member; a person with whom the respondent has a child in common, or with whom the respondent anticipates having a child in common if one of the parties is pregnant; or a current or former dating partner.

“Firearm” shall have the same meaning as in N.J.S.2C:39-1.

“Law enforcement agency” means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

“Law enforcement officer” means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.

“Petitioner” means a family or household member or law enforcement officer.

“Recent” means within six months prior to the date the petition was filed.

#### **§ 2C:58-22. Immunity from liability for law enforcement**

**a.** A law enforcement officer who, in good faith, does not file a petition for an extreme risk protective order or temporary extreme risk protective order shall be immune from criminal or civil liability.

**b.** A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms or ammunition stored or transported pursuant to section 7 or 8 of P.L.2018, c.35 (C.2C:58-26 or C.2C:58-27) unless the damage or deterioration resulted from recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

**c.** The immunity provided in subsections a. and b. of this section shall be in addition to any privileges or immunities provided pursuant to any other law.

#### **§ 2C:58-23. Filing of temporary extreme risk protection order**

**a.** Except as provided in subsection l. of this section, a petitioner may file a petition, as prescribed by the Administrative Director of the Courts, for a temporary extreme risk protective order in the court in accordance with the Rules of Court alleging that the respondent poses a significant danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm. The petition shall be heard by the court in an expedited manner.

Petition forms shall be readily available at the courts, and at State, county, and municipal law enforcement agencies.

Prior to filing a petition with the court, a family or household member may request assistance from a State, county, or municipal law enforcement agency which shall advise the petitioner of the procedure for completing and signing a petition for a temporary extreme risk protective order. A law enforcement officer from the agency may assist the family or household member in preparing or filing the petition. This assistance may include, but not be limited to, providing information related to the factors set forth in subsection f. of this section, joining in the petition, referring the matter to another law enforcement agency for additional assistance, or filing the officer’s own petition with the court.

Filing a petition pursuant to this section shall not prevent a petitioner from filing a criminal complaint or applying for a restraining order pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L. 1991, c. 261 (C.2C:25-17 et seq.) or prevent any person from taking any action authorized pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) based on the circumstances forming the basis of the petition.

A petitioner may apply for relief under this section in accordance with the Rules of Court.

**b.** A petition for a temporary extreme risk protective order shall include an affidavit setting forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist, and, to the extent available, the number, types, physical description, and locations of any firearms and ammunition currently believed by the petitioner to be controlled or possessed by the respondent.

**c.** The court shall not charge a fee to file the petition.

**d.** The court, before issuing a temporary extreme risk protective order, shall examine under oath the petitioner and any witness the petitioner may produce. The court, in lieu of examining the petitioner and any witness, may rely on an affidavit submitted in support of the petition.

**e.** A judge shall issue the order if the court finds good cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.

**f.** The county prosecutor or a designee of the county prosecutor shall produce in an expedited manner any available evidence including, but not limited to, available evidence related to the factors set forth in this section, and the court shall consider whether the respondent:

**(1)** has any history of threats or acts of violence by the respondent directed toward self or others;

**(2)** has any history of use, attempted use, or threatened use of physical force by the respondent against another person;

**(3)** is the subject of a temporary or final restraining order or has violated a temporary or final restraining order issued pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et seq.);

**(4)** is the subject of a temporary or final protective order or has violated a temporary or final protective order issued pursuant to the “Sexual Assault Survivor Protection Act of 2015,” P.L.2015, c.147 (C.2C:14-13 et al.);

**(5)** has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, stalking offense pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10), or domestic violence offense enumerated in section 3 of P.L.1991, c.261 (C.2C:25-19);

**(6)** has any prior arrests, pending charges, or convictions for any offense involving cruelty to animals or any history of acts involving cruelty to animals;

**(7)** has any history of drug or alcohol abuse and recovery from this abuse; or

**(8)** has recently acquired a firearm, ammunition, or other deadly weapon.

**g.** The temporary extreme risk protective order shall prohibit the respondent from having custody or control of, owning, purchasing, possessing, or receiving firearms or ammunition, and from securing or holding a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3, or a permit to carry a handgun pursuant to N.J.S.2C:58-4 during the period the protective order is in effect and shall order the respondent to surrender firearms and ammunition in the respondent’s custody or control, or which the respondent possesses or owns, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent in accordance with section 7 of P.L.2018, c.35 (C.2C:58-26). Any card or permit issued to the respondent shall be immediately revoked pursuant to subsection f. of

N.J.S.2C:58-3.

**h.** A temporary extreme risk protective order issued under this section shall remain in effect until a court issues a further order.

**i.** The court that issues the temporary extreme risk protective order shall immediately forward:

**(1)** a copy of the order to the petitioner and county prosecutor in the county in which the respondent resides; and

**(2)** a copy of the order and the petition to the appropriate law enforcement agency in the municipality in which the respondent resides, which shall immediately, or as soon as practicable, serve it on the respondent.

If personal service cannot be effected upon the respondent, the court may order other appropriate substituted service. At no time shall a petitioner who is a family or household member be asked or required to serve any order on the respondent. The law enforcement agency serving the order shall not charge a fee or seek reimbursement from the petitioner for service of the order.

**j.** Notice of temporary extreme risk protective orders issued pursuant to this section shall be sent by the county prosecutor to the appropriate chiefs of police, members of the State Police, and any other appropriate law enforcement agency or court.

**k.** Any temporary extreme risk protective order issued pursuant to this section shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

**l.**

**(1)** A petition for a temporary extreme risk protective order filed against a law enforcement officer shall be filed in the law enforcement agency in which the officer is employed. The law enforcement officer or employee receiving the petition shall advise the petitioner of the procedure for completing and signing a petition.

**(2)** Upon receipt of the petition, the law enforcement officer's employer shall immediately initiate an internal affairs investigation.

**(3)** The disposition of the internal affairs investigation shall immediately be served upon the county prosecutor who shall make a determination whether to refer the matter to the courts.

**(4)** The law enforcement officer's employer shall take appropriate steps to implement any findings set forth in the disposition of the internal affairs investigation.

The law enforcement officer shall not be terminated during the pendency of the internal affairs investigation.

#### **§ 2C:58-24. Final extreme risk protective order**

**a.** A hearing for a final extreme risk protective order shall be held in the Superior Court in accordance with the Rules of Court within 10 days of the filing of a petition pursuant to subsection a. of section 4 of P.L.2018, c.35 (C.2C:58-23). A copy of the petition shall be served on the respondent in accordance with the Rules of Court.

**b.** The county prosecutor shall produce in an expedited manner any available evidence including, but not limited to, evidence related to the factors enumerated in subsection f. of section 4 of P.L.2018, c.35 (C.2C:58-23). If the court finds by a preponderance of the evidence at the hearing that the respondent poses a significant danger of bodily injury to the respondent's self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the court shall issue an extreme risk protective order.

**c.** When deciding whether to issue the order, the court shall consider the factors enumerated in subsection f. of section 4 of P.L.2018, c.35 (C.2C:58-23), as well as any other relevant evidence.

**d.** An extreme risk protective order issued pursuant to this section shall prohibit the respondent from having

custody or control of, owning, purchasing, possessing, or receiving a firearm. A respondent who is a law enforcement officer shall be subject to the provisions of subsection l. of section 4 of P.L.2018, c.35 (C.2C:58-23).

#### **§ 2C:58-25. Termination of final extreme risk protective order**

Upon request of the petitioner or respondent, in a form prescribed by the Administrative Office of the Courts, the court may terminate a final extreme risk protective order issued pursuant to section 5 of P.L.2018, c.35 (C.2C:58-24) if:

- a.** the petitioner or respondent, as the case may be, has received notice in accordance with the Rules of Court;
- b.** the appropriate law enforcement agency and the county prosecutor have been notified; and
- c.** a hearing has been held by the court.

The petition for termination of the order may be filed at any time following the issuance of the order. During the hearing, the court shall consider the factors enumerated in subsection f. of section 4 of P.L.2018, c.35 (C.2C:58-23), as well as any other relevant evidence including, but not limited to, whether the respondent has received, or is receiving, mental health treatment.

If the respondent petitioned for termination, the respondent shall bear the burden at the hearing of proving by a preponderance of the evidence that the respondent no longer poses a significant danger of causing bodily injury to the respondent's self or to other persons by having custody or control of, owning, possessing, purchasing, or receiving a firearm.

#### **§ 2C:58-26. Surrender of firearms upon issuance of order**

**a.** When a temporary or final extreme risk protective order is issued pursuant to section 4 or 5 of P.L.2018, c.35 (C.2C:58-23 or C.2C:58-24), the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody or control, or which the respondent owns or possesses, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent. The court also shall notify the respondent that the respondent is prohibited from purchasing firearms or ammunition or applying for a firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun.

**b.** If the petition for the temporary extreme risk protective order indicates that the respondent owns or possesses any firearms or ammunition, the court shall issue a search warrant with the temporary or final extreme risk protective order and the law enforcement officer who serves the order shall request that all firearms and ammunition immediately be surrendered.

**(1)** The respondent immediately shall surrender, in a safe manner, all firearms and ammunition in the respondent's custody or control, or which the respondent owns or possesses, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent to the control of the law enforcement officer.

**(2)** The respondent may request that the law enforcement agency sell all firearms and ammunition in a safe manner to a federally licensed firearms dealer pursuant to section 8 of P.L.2018, c.35 (C.2C:58-27).

**(3)** The law enforcement officer or licensed firearms dealer taking possession of any firearms or ammunition pursuant to this subsection shall issue a receipt identifying all firearms and ammunition that have been surrendered by the respondent. The officer or dealer shall provide a copy of the receipt to the respondent at the time of surrender.

**(4)** If the respondent surrenders firearms and ammunition to a law enforcement officer pursuant to paragraph (1) of this subsection or surrenders or sells firearms and ammunition to a licensed dealer pursuant to paragraph (2) of this subsection, the respondent shall, within 48 hours after being served with the order, file the receipt with the county prosecutor. Failure to timely file the receipt or copy of the receipt shall constitute

contempt of the order.

**c.** The court which issued the protective order may issue a search warrant for a firearm or ammunition that is in the custody or control of, owned, or possessed by a respondent who is subject to a temporary or final protective order issued pursuant to section 4 or 5 of P.L.2018, c.35 (C.2C:58-23 or C.2C:58-24) if the respondent has lawfully been served with that order and has failed to surrender the firearm or ammunition as required by this section.

**d.** The respondent may petition the agency for the return of any surrendered firearms or ammunition upon termination of an order pursuant to section 6 of P.L.2018, c.35 (C.2C:58-25). Within 30 days of receiving a petition for the return of surrendered firearms or ammunition and after the termination of the order, the agency shall return the firearm or ammunition unless:

**(1)** the firearm has been reported as stolen; or

**(2)** the respondent is prohibited from possessing a firearm under State or federal law.

At least 10 days prior to returning the firearms or ammunition, the local law enforcement agency shall notify the family or household member that the firearms or ammunition will be returned to the owner. If the firearms or ammunition were seized by the State Police, the county prosecutor's office where the protective order is venued shall notify the family or household member that the firearms or ammunition will be returned to the owner. Nothing in this act shall prohibit revocation and seizure of a person's firearms purchaser identification card, permit to purchase a handgun, permit to carry a handgun, and weapons as authorized pursuant to applicable law.

**e.** If a person other than the respondent claims title to any firearm or ammunition surrendered pursuant to this section, and the law enforcement agency determines that the person is the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to that person.

**f.** If the respondent has surrendered a firearm or ammunition to a federally licensed firearms dealer, after termination of the order, the respondent may request the law enforcement agency, in writing, to authorize the return of the firearm or ammunition from the dealer. The dealer shall transfer the firearm or ammunition to the respondent in accordance with procedures required when a firearm or ammunition is being sold from the dealer's inventory in accordance with N.J.S.2C:58-2.

#### **§ 2C:58-27. Transfer, sale of surrendered firearms**

A respondent who has surrendered any firearm or ammunition to a law enforcement agency pursuant to P.L.2018, c.35 (C.2C:58-20 et al.) who does not want the firearm or ammunition returned or is no longer eligible to own or possess a firearm or ammunition may sell or transfer title of the firearm or ammunition to a federally licensed firearms dealer. The agency shall transfer possession of the firearm or ammunition to a licensed dealer only after the dealer has displayed written proof of transfer of the firearm or ammunition from the respondent to the dealer and the agency has verified the transfer with the respondent.

#### **§ 2C:58-28. Destruction of firearms permitted**

A law enforcement agency holding any firearm or ammunition surrendered pursuant to P.L.2018, c.35 (C.2C:58-20 et al.) for more than one year after the termination of the extreme risk protective order may destroy the firearm or ammunition in accordance with the policies and procedures of the agency for destruction of firearms or ammunition.

#### **§ 2C:58-29. Violations considered offense; contempt proceedings**

A violation by the respondent of an order issued pursuant to section 4 or 5 of P.L.2018, c.35 (C.2C:58-23 or C.2C:58-24) shall constitute an offense under subsection e. of N.J.S.2C:29-9 and each order shall so state. All contempt proceedings conducted pursuant to N.J.S.2C:29-9 involving an extreme risk protective order shall be heard by the Superior Court. All contempt proceedings brought pursuant to P.L.2018, c.35 (C.2C:58-20 et al.) shall be made in accordance with the Rules of Court.

### **§ 2C:58-30. Electronic central registry**

**a.** The Administrative Office of the Courts shall include all persons who have had a final extreme risk protective order entered against them pursuant to section 5 of P.L.2018, c.35 (C.2C:58-24), and all persons who have been charged with a violation of a temporary or final extreme risk protective order issued pursuant to section 4 or 5 of P.L.2018, c.35 (C.2C:58-23 or C.2C:58-24), in an electronic central registry created and maintained by the Administrative Office of the Courts. All records made pursuant to this section shall be kept confidential and shall be released only to a police or other law enforcement agency investigating a report of a crime, offense, or act of domestic violence, or conducting a background investigation involving a person's application for a firearms purchaser identification card or permit to purchase a handgun or employment as a police or law enforcement officer, or for any other purpose authorized by law or the Supreme Court of the State of New Jersey. A respondent's information, other than information related to a violation of a temporary or final order issued pursuant to section 4 or 5 of P.L.2018, c.35 (C.2C:58-23 or C.2C:58-24), shall be removed from the registry upon the termination of the extreme risk protective order.

**b.** Any person who disseminates or discloses a record or report of the central registry for a purpose other than the purposes authorized in this section or as otherwise authorized by law or the Supreme Court of the State of New Jersey is guilty of a crime of the fourth degree.

### **§ 2C:58-31. Rules of Court**

The Supreme Court may promulgate Rules of Court to effectuate the purposes of the "Extreme Risk Protective Order Act of 2018," P.L.2018, c.35 (C.2C:58-20 et al.).

### **§ 2C:58-32. Rules, regulations**

The Attorney General may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of the "Extreme Risk Protective Order Act of 2018," P.L.2018, c.35 (C.2C:58-20 et al.).

# New Mexico

**Types of orders:** Temporary extreme risk firearm protection order (ERFPO), One-year ERFPO

**Citation:** N.M. Stat. Ann. §§ 40-17-1 - 40-17-13

## Highlighted Provisions

### Persons eligible to petition:

Only by a law enforcement officer employed by a law enforcement agency; provided that, if the respondent is a law enforcement officer, the petition shall be filed by the district attorney or the attorney general.

### Standard of proof:

Temporary: probable cause

One-year ERPO: a preponderance of the evidence

### Findings required:

Temporary: Respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing, or receiving a firearm before notice is served and a hearing held.

One-year ERPO: Respondent poses a significant danger of causing imminent personal injury to self or others by having in respondent's custody or control or by purchasing, possessing, or receiving a firearm.

The court shall consider, at a minimum, the following:

- A.** any recent act or threat of violence by the respondent against self or others, regardless of whether the act or threat involved a firearm;
- B.** a pattern of acts or threats of violence by the respondent within the past twelve months, including acts or threats of violence against self or others;
- C.** the respondent's mental health history;
- D.** the respondent's abuse of controlled substances or alcohol;
- E.** the respondent's previous violations of any court order;
- F.** previous extreme risk firearm protection orders issued against the respondent;
- G.** the respondent's criminal history, including arrests and convictions for violent felony offenses, violent misdemeanor offenses, crimes involving domestic violence or stalking;
- H.** the respondent's history of the use, attempted use or threatened use of physical violence against another person; of stalking another person; or of cruelty to animals; and
- I.** any recent acquisition or attempts at acquisition of a firearm by the respondent.

### Duration of the order:

Valid for a maximum of 10 days or until there is a hearing, whichever happens first. Respondent can request an extension of up to 30 days

Extreme risk firearm protection order - 1 year.

### Service on respondent:

A one-year extreme risk firearm protection shall be personally served upon the respondent by the sheriff's office in the county in which the respondent resides; provided that if the respondent resides in a city or town that has a police department, the police department shall serve the order.

**Notification of persons at risk:**

Statute is silent

**Filing fees:**

A reporting party who requests that a petitioner seek an extreme risk firearm protection order shall not be required to bear the cost of:

- A. the filing, issuance or service of a petition for an extreme risk firearm protection order;
- B. the filing, issuance or service of a warrant;
- C. the filing, issuance or service of a witness subpoena;
- D. service of an extreme risk firearm protection order;
- E. obtaining law enforcement reports or photographs or copies of photographs relating to the allegations in the petition; or
- F. any cost associated with the confiscation, storage or destruction of a firearm.

**Renewal/Termination:**

Termination: A respondent may request that the court terminate a one-year extreme risk firearm protection order at any time prior to the expiration of the order.

Renewal: At any time not less than one month prior to the expiration of a one-year extreme risk firearm protection order, a petitioner may petition the court to extend the order. Each extension of the order shall not exceed one year. A petition filed pursuant to this subsection shall comply with the provisions of Subsections E and F of Section 5 of the Extreme Risk Firearm Protection Order Act and shall be served on the respondent as provided in Section 9 of that act.

**Firearm prohibitions:**

Enjoining the respondent from having possession, custody or control a firearm and from purchasing, receiving or attempting to purchase or receive a firearm while the order is in effect

**Firearm relinquishment:**

A respondent who receives a temporary or one-year extreme risk firearm protection order shall relinquish all firearms in the respondent's possession, custody or control or subject to the respondent's possession, custody or control in a safe manner to a law enforcement officer, a law enforcement agency or a federal firearms licensee within forty-eight hours of service of the order or sooner at the discretion of the court.

- B. A law enforcement officer, law enforcement agency or federal firearms licensee that takes temporary possession of a firearm pursuant to this section shall:
  - (1) prepare a receipt identifying all firearms that have been relinquished or taken
  - (2) provide a copy of the receipt to the respondent;
  - (3) provide a copy of the receipt to the petitioner within seventy-two hours of taking possession of the firearms;
  - (4) file the original receipt with the court that issued the temporary or one-year extreme risk firearm protection order within seventy-two hours of taking possession of the firearms; and
  - (5) ensure that the law enforcement agency retains a copy of the receipt.

**Firearm disposal process:**

Statute is silent.

**Limitations on liability:**

Statute is silent

**Return/transfer of firearms:**

Any firearm relinquished in accordance with the Extreme Risk Firearm Protection



Order Act shall be returned to the respondent within ten days following the expiration or termination of an extreme risk firearm protection order.

**B.** A respondent shall not be required to acquire any court order granting the return of relinquished firearms.

**C.** The law enforcement agency in possession of the firearms shall conduct a national criminal records check and shall return the firearms if the agency determines that the respondent is not prohibited from possessing firearms pursuant to state or federal law.

**D.** Upon written request of the respondent, the law enforcement agency storing a firearm shall transfer possession of the respondent's firearm to a federally licensed firearms dealer or lawful private party purchaser designated by the respondent; provided that the transfer is the result of a sale, that the transferee is the actual owner of the firearm thereafter and, except in the case of a federally licensed firearms dealer, the law enforcement agency has conducted a national criminal records check and determined that the transferee is not prohibited from possessing a firearm pursuant to state or federal law.

The law enforcement agency shall notify the transferee that it is unlawful to transfer or return the firearm to the respondent while the extreme risk firearm protection order is in effect.

**Warrant authority:**

Statute is silent.

**Venue:**

Proceedings pursuant to the Extreme Risk Firearm Protection Order Act shall be filed, heard and determined in the district court for the county in which the respondent resides.

**Penalties:**

A person who fails to relinquish, or who possesses or has custody or control over, any firearm or who purchases, receives or attempts to purchase, possess or receive any firearm, in violation of a temporary extreme risk firearm protection order or a one-year extreme risk firearm protection order is guilty of a misdemeanor.

**Entry Registry/NCIC POF:**

**C.** Upon receipt of a copy of a one-year extreme risk firearm protection order or temporary extreme risk firearm protection order, the law enforcement agency specified in Subsection A of this section shall enter the order into:

- (1)** the national instant criminal background check system;
- (2)** all federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and
- (3)** all computer-based criminal intelligence information systems and databases available in this state used by law enforcement agencies.

**D.** An extreme risk firearm protection order shall remain in each state system for the period stated in the order. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The extreme risk firearm protection order shall be fully enforceable in any county, city or town in the state.

## Statutes

**40-17-1. Short title.**

Sections 1 through 13 [40-17-1 to 40-17-13 NMSA 1978] of this act may be cited as the "Extreme Risk Firearm Protection Order Act".

**40-17-2. Definitions.**

As used in the Extreme Risk Firearm Protection Order Act [40-17-1 to 40-17-13 NMSA 1978]:

- A.** “court” means the district court in the county in which the respondent resides;
- B.** “extreme risk firearm protection order” means either a temporary extreme risk firearm protection order or a one-year extreme risk firearm protection order granted pursuant to the Extreme Risk Firearm Protection Order Act;
- C.** “firearm” means any weapon that is designed to expel a projectile by an explosion or the frame or receiver of any such weapon;
- D.** “law enforcement agency” means the police department of any city or town, the sheriff’s office of any county, the New Mexico state police and a district attorney’s office in the state and the office of the attorney general;
- E.** “law enforcement officer” means a public official or public officer vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of committing a crime, whether that duty extends to all crimes or is limited to specific crimes and includes an attorney employed by a district attorney or the attorney general;
- F.** “one-year extreme risk firearm protection order” means an extreme risk firearm protection order granted for up to one year following a hearing pursuant to the provisions of Section 7 of the Extreme Risk Firearm Protection Order Act;
- G.** “petitioner” means a law enforcement officer who files an extreme risk firearm protection order petition;
- H.** “reporting party” means a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order and includes a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, co-parent of a child, child, person with whom a respondent has or had a continuing personal relationship, employer or public or private school administrator;
- I.** “respondent” means the person identified in or subject to an extreme risk firearm protection order petition; and
- J.** “temporary extreme risk firearm protection order” means an extreme risk firearm protection order issued prior to a hearing pursuant to the provisions of Section 6 of the Extreme Risk Firearm Protection Order Act.

**40-17-3. Forbearance of costs associated with extreme risk firearm protection orders.**

A reporting party who requests that a petitioner seek an extreme risk firearm protection order shall not be required to bear the cost of:

- A.** the filing, issuance or service of a petition for an extreme risk firearm protection order;
- B.** the filing, issuance or service of a warrant;
- C.** the filing, issuance or service of a witness subpoena;
- D.** service of an extreme risk firearm protection order;
- E.** obtaining law enforcement reports or photographs or copies of photographs relating to the allegations in the petition; or
- F.** any cost associated with the confiscation, storage or destruction of a firearm.

**40-17-4. Extreme risk firearm protection orders; venue.**

Proceedings pursuant to the Extreme Risk Firearm Protection Order Act [40-17-1 to 40-17-13 NMSA 1978] shall be filed, heard and determined in the district court for the county in which the respondent resides.

#### **40-17-5. Petition for extreme risk firearm protection order; contents.**

- A.** A petition for an extreme risk firearm protection order shall be filed only by a law enforcement officer employed by a law enforcement agency; provided that, if the respondent is a law enforcement officer, the petition shall be filed by the district attorney or the attorney general.
- B.** A petitioner may file a petition with the court requesting an extreme risk firearm protection order that shall enjoin the respondent from having in the respondent's possession, custody or control any firearm and shall further enjoin the respondent from purchasing, receiving or attempting to purchase, possess or receive any firearm while the order is in effect.
- C.** If a law enforcement officer declines to file a requested petition for an extreme risk firearm protection order, the law enforcement officer shall file with the sheriff of the county in which the respondent resides a notice that the law enforcement officer is declining to file a petition pursuant to this section.
- D.** A law enforcement officer shall file a petition for an extreme risk firearm protection order upon receipt of credible information from a reporting party that gives the agency or officer probable cause to believe that a respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.
- E.** A petition for an extreme risk firearm protection order shall state the specific statements, actions or facts that support the belief that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.
- F.** A petition for an extreme risk firearm protection order shall be made under oath and shall be accompanied by a sworn affidavit signed by the reporting party setting forth specific facts supporting the order.
- G.** A petition for an extreme risk firearm protection order shall include:
- (1)** the name and address of the reporting party;
  - (2)** the name and address of the respondent;
  - (3)** a description of the number, types and locations of firearms or ammunition that the petitioner believes the respondent has custody of, controls, owns or possesses;
  - (4)** a description of the relationship between the reporting party and the respondent; and
  - (5)** a description of any lawsuit, complaint, petition, restraining order, injunction or other legal action between the reporting party and the respondent.

#### **40-17-6. Petition for temporary extreme risk firearm protection order; temporary orders; proceedings.**

- A.** Upon the filing of a petition pursuant to the Extreme Risk Firearm Protection Order Act [40-17-1 to 40-17-13 NMSA 1978], the court may enter a temporary extreme risk firearm protection order if the court finds from specific facts shown by the petition that there is probable cause to believe that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm before notice can be served and a hearing held.
- B.** If the court finds probable cause pursuant to Subsection A of this section, the court shall issue a temporary extreme risk firearm protection order enjoining the respondent from having in the respondent's possession, custody or control a firearm and shall further enjoin the respondent from purchasing, receiving or attempting to purchase or receive a firearm while the order is in effect.
- C.** The court shall conduct a hearing within ten days of the issuance of a temporary extreme risk firearm protection order to determine if a one-year extreme risk firearm protection order should be issued pursuant to this section.

**D.** A temporary extreme risk firearm protection order shall include:

(1) a statement of the grounds supporting the issuance of the order;

(2) the date and time the order was issued;

(3) a statement that the order shall continue until the earlier of ten days or such time as a court considers the petition at a hearing, unless an extension is granted at the request of the respondent pursuant to Subsection E of this section;

(4) the address of the court that issued the order and in which any responsive pleading should be filed; and

(5) the date and time of the scheduled hearing, to be held within ten days of the issuance of the order.

**E.** The court may continue the hearing at the request of the respondent, but the hearing shall be set within thirty days of the respondent's request for continuance.

**F.** A temporary extreme risk firearm protection order shall be served by the petitioner along with supporting documents that formed the basis of the order, the notice of hearing and the petition for a one-year extreme risk firearm protection order.

**G.** If the court declines to issue a temporary extreme risk firearm protection order, the court shall enter an order that includes the reasons for the denial.

#### **40-17-7. Hearings on petition; grounds for issuance; contents of order.**

In determining whether grounds for any extreme risk firearm protection order exist, the court shall consider, at a minimum, the following:

**A.** any recent act or threat of violence by the respondent against self or others, regardless of whether the act or threat involved a firearm;

**B.** a pattern of acts or threats of violence by the respondent within the past twelve months, including acts or threats of violence against self or others;

**C.** the respondent's mental health history;

**D.** the respondent's abuse of controlled substances or alcohol;

**E.** the respondent's previous violations of any court order;

**F.** previous extreme risk firearm protection orders issued against the respondent;

**G.** the respondent's criminal history, including arrests and convictions for violent felony offenses, violent misdemeanor offenses, crimes involving domestic violence or stalking;

**H.** the respondent's history of the use, attempted use or threatened use of physical violence against another person; of stalking another person; or of cruelty to animals; and

**I.** any recent acquisition or attempts at acquisition of a firearm by the respondent.

#### **40-17-8. One-year extreme risk firearm protection order; grounds for issuance; contents of order; termination; expiration; renewal of orders.**

**A.** If, after hearing the matter, the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm, the court shall issue a one-year extreme risk firearm protection order.

**B.** A one-year extreme risk firearm protection order shall include:

- (1) a statement of the grounds supporting the issuance of the order;
- (2) the date and time the order was issued;
- (3) the date and time the order expires;
- (4) information pertaining to any recommendation by the court for mental health or substance abuse evaluations, if applicable;
- (5) the address of the court that issued the order; and
- (6) notice that the respondent is entitled to request termination of the order prior to the expiration of the order.

**C.** If the court declines to issue a one-year extreme risk firearm protection order, the court shall state in writing the reasons for the court's denial and shall order the return of any firearms to the respondent.

**D.** A respondent may request that the court terminate a one-year extreme risk firearm protection order at any time prior to the expiration of the order.

**E.** At any time not less than one month prior to the expiration of a one-year extreme risk firearm protection order, a petitioner may petition the court to extend the order. Each extension of the order shall not exceed one year. A petition filed pursuant to this subsection shall comply with the provisions of Subsections E and F of Section 5 of the Extreme Risk Firearm Protection Order Act [40-17-1 to 40-17-13 NMSA 1978] and shall be served on the respondent as provided in Section 9 of that act.

**F.** A one-year extreme risk firearm protection order is a final, immediately appealable order.

#### **40-17-9. Service of extreme risk firearm protection orders.**

A one-year extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act [40-17-1 to 40-17-13 NMSA 1978] shall be personally served upon the respondent by the sheriff's office in the county in which the respondent resides; provided that if the respondent resides in a city or town that has a police department, the police department shall serve the order.

#### **40-17-10. Relinquishment of firearms.**

**A.** A respondent who receives a temporary or one-year extreme risk firearm protection order shall relinquish all firearms in the respondent's possession, custody or control or subject to the respondent's possession, custody or control in a safe manner to a law enforcement officer, a law enforcement agency or a federal firearms licensee within forty-eight hours of service of the order or sooner at the discretion of the court.

**B.** A law enforcement officer, law enforcement agency or federal firearms licensee that takes temporary possession of a firearm pursuant to this section shall:

- (1) prepare a receipt identifying all firearms that have been relinquished or taken;
- (2) provide a copy of the receipt to the respondent;
- (3) provide a copy of the receipt to the petitioner within seventy-two hours of taking possession of the firearms;
- (4) file the original receipt with the court that issued the temporary or one-year extreme risk firearm protection order within seventy-two hours of taking possession of the firearms; and
- (5) ensure that the law enforcement agency retains a copy of the receipt.

#### **40-17-11. Penalties.**

A person who fails to relinquish, or who possesses or has custody or control over, any firearm or who purchases,

receives or attempts to purchase, possess or receive any firearm, in violation of a temporary extreme risk firearm protection order or a one-year extreme risk firearm protection order is guilty of a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978.

#### **40-17-12. Extreme risk firearm protection order; reporting of orders; availability of data.**

**A.** The clerk of the court shall provide a copy of a one-year extreme risk firearm protection order or temporary extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act [40-17-1 to 40-17-13 NMSA 1978] to any law enforcement agency designated to provide information to the national instant criminal background check system.

**B.** The clerk of the court shall forward a copy of any order issued, renewed or terminated pursuant to the Extreme Risk Firearm Protection Order Act to the petitioner and to the law enforcement agency specified in Subsection A of this section.

**C.** Upon receipt of a copy of a one-year extreme risk firearm protection order or temporary extreme risk firearm protection order, the law enforcement agency specified in Subsection A of this section shall enter the order into:

(1) the national instant criminal background check system;

(2) all federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and

(3) all computer-based criminal intelligence information systems and databases available in this state used by law enforcement agencies.

**D.** An extreme risk firearm protection order shall remain in each state system for the period stated in the order. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The extreme risk firearm protection order shall be fully enforceable in any county, city or town in the state.

**E.** Upon the expiration of or upon receiving notice of the termination of an extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act, the law enforcement agency specified in Subsection A of this section shall promptly remove the order from any state computer-based system into which it was entered pursuant to Subsection C of this section and shall notify the national instant criminal background check system and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms.

**F.** Following the expiration or termination of an order issued pursuant to the Extreme Risk Firearm Protection Order Act and upon written request, the law enforcement agency specified in Subsection A of this section shall provide a sworn affidavit to the respondent affirming that the information contained within the order has been removed from all state databases and systems identified in Subsection C of this section and any other state databases into which information about the order was entered and that the law enforcement agency has notified the national instant criminal background check system and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms. The affidavit shall be provided to the respondent within five days of the receipt of the request.

**G.** If any extreme risk firearm protection order is terminated before its expiration date, the clerk of the court shall forward a copy of the termination order to the office of the attorney general and the petitioner.

**H.** Aggregate statistical data indicating the number of extreme risk firearm protection orders issued, renewed, denied or terminated shall be maintained by the issuing court and the administrative office of the courts and shall be available to the public upon request.

#### **40-17-13. Extreme risk firearm protection orders; firearms return; disposition.**

- A.** Any firearm relinquished in accordance with the Extreme Risk Firearm Protection Order Act [40-17-1 to 40-17-13 NMSA 1978] shall be returned to the respondent within ten days following the expiration or termination of an extreme risk firearm protection order.
- B.** A respondent shall not be required to acquire any court order granting the return of relinquished firearms.
- C.** The law enforcement agency in possession of the firearms shall conduct a national criminal records check and shall return the firearms if the agency determines that the respondent is not prohibited from possessing firearms pursuant to state or federal law.
- D.** Upon written request of the respondent, the law enforcement agency storing a firearm shall transfer possession of the respondent's firearm to a federally licensed firearms dealer or lawful private party purchaser designated by the respondent; provided that the transfer is the result of a sale, that the transferee is the actual owner of the firearm thereafter and, except in the case of a federally licensed firearms dealer, the law enforcement agency has conducted a national criminal records check and determined that the transferee is not prohibited from possessing a firearm pursuant to state or federal law.
- E.** No fee shall be charged for background checks required pursuant to Subsections C and D of this section.
- F.** The law enforcement agency transferring possession of a firearm to a transferee shall notify the transferee that it is unlawful to transfer or return the firearm to the respondent while the extreme risk firearm protection order is in effect. A transferee who violates this subsection is guilty of a misdemeanor and may be punished pursuant to Section 31-19-1 NMSA 1978.

# New York

**Types of orders:** Temporary extreme risk protection order (ERPO), Final ERPO

**Citation:** N.Y. C.P.L.R. §§ 6340 – 6348

## Highlighted Provisions

### Persons eligible to petition:

Police officer; District Attorney; Family or household member; School administrator or their designee; health professional

### Standard of proof:

Temporary ERPO: probable cause

Final ERPO: clear and convincing evidence

### Findings required:

Evidence that respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law.

\*\*\*“Likelihood to result in serious harm” as used in N.Y. Mental Hyg. Law § 9.39(a):

1. substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or
2. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

### Duration of order:

Temporary ERPO: until a hearing on a final order (3-6 days after service of temporary order, unless respondent requests more than 6 days to prepare for hearing.

Final ERPO: up to one year, as determined by the court but if temporary order was issued, duration of the final order will start counting from the day the temporary order was issued

### Service on respondent:

Prompt service must be made by an appropriate law enforcement agency with jurisdiction over respondent’s residence, unless petitioner voluntarily arranges a different form of service.

### Notification of persons at risk:

When an order expires, petitioner must be given notice and an opportunity to be heard before any firearm is returned to respondent.

### Renewal/Termination of the order:

Termination: respondent may make one request to set aside any part of the order. They must prove by clear and convincing evidence that the circumstances have changed in a way to justify the change to the order.

Renewal: anyone eligible to make a petition may request renewal up to 60 days before the order is to expire. The court may issue a temporary order during the time they are considering the request for renewal. The renewal hearing follows the same procedure as the hearing for the original final order.

### Filing fees:

Statute is silent

### Relief available:

Respondent may not purchase, possess, or attempt to purchase or possess a firearm



**Firearm relinquishment process:**

Respondent must promptly surrender any firearms to an authorized law enforcement official.

A law enforcement officer serving an order must request that respondent immediately surrender all firearms in their possession. The officer will take possession of all firearms that are surrendered, are visible in plain sight, or are discovered as part of a lawful search. The order may also include a search warrant.

**Firearm disposal process:**

Law enforcement may destroy a firearm pursuant to NY CLS Penal § 400.05 but they must wait at least 2 years before doing so.

**Limitations on liability:**

Statute is silent.

**Return/transfer of firearms:**

When an order expires, respondent may submit a written application to receive their firearms. First, notice must be given to petitioner and any licensing officer responsible for issuing firearms licenses to respondent. Then if there are no legal impediments, the firearms will be returned to respondent upon court order..

**Warrant authority:**

A final order may include a warrant directing an officer to search for firearms.

**Venue:**

Supreme court in respondent's county of residence

**Penalties:**

Silent

**Entry Registry/NCIC POF:**

Upon receiving notice of the issuance of a temporary extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation

Upon receiving notice of the issuance of a final extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of such protection order and any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

## Statutes

**Article 63-A Extreme Risk Protection Order****NY CLS CPLR § 6340. Definitions.**

For the purposes of this article:

1. "Extreme risk protection order" means a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.
2. "Petitioner" means: (a) a police officer, as defined in section 1.20 of the criminal procedure law, or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides; (b) a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, of the person against whom the order is sought; (c) a school administrator as defined in section eleven hundred twenty-five of the education law, or a school administrator's designee, of any school in which the person against whom the order is sought is currently enrolled or has been enrolled in the six months immediately preceding the filing of the petition; or (d) a licensed physician, licensed psychiatrist, licensed

psychologist, registered nurse, licensed clinical social worker, certified clinical nurse specialist, certified nurse practitioner, licensed clinical marriage and family therapist, registered professional nurse, licensed master social worker or licensed mental health counselor who has treated the person against whom the order is sought in the six months immediately preceding the filing of the petition. For purposes of this article, a school administrator's designee shall be employed at the same school as the school administrator and shall be any of the following who has been designated in writing to file a petition with respect to the person against whom the order is sought: a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, or other school personnel required to hold a teaching or administrative license or certificate, and full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate.

3. "Respondent" means the person against whom an extreme risk protection order is or may be sought under this article.

4. "Possess" shall have the same meaning as defined in subdivision eight of section 10.00 of the penal law.

**N.Y. Crim. Proc. Law § 1.20 (34). Definitions of terms of general use in this chapter 34. \*"Police officer." The following persons are police officers:**

- (a) A sworn member of the division of state police;
- (b) Sheriffs, under-sheriffs and deputy sheriffs of counties outside of New York City;
- (c) A sworn officer of an authorized county or county parkway police department;
- (d) A sworn officer of an authorized police department or force of a city, town, village or police district;
- (e) A sworn officer of an authorized police department of an authority or a sworn officer of the state regional park police in the office of parks and recreation;
- (f) A sworn officer of the capital police force of the office of general services;
- (g) An investigator employed in the office of a district attorney;
- (h) An investigator employed by a commission created by an interstate compact who is, to a substantial extent, engaged in the enforcement of the criminal laws of this state;
- (i) The chief and deputy fire marshals, the supervising fire marshals and the fire marshals of the bureau of fire investigation of the New York City fire department;
- (j) A sworn officer of the division of law enforcement in the department of environmental conservation;
- (k) A sworn officer of a police force of a public authority created by an interstate compact;
- (l) Long Island railroad police.
- (m) A special investigator employed in the statewide organized crime task force, while performing his assigned duties pursuant to [section seventy-a of the executive law](#).
- (n) A sworn officer of the Westchester county department of public safety services who, on or prior to June thirtieth, nineteen hundred seventy-nine was appointed as a sworn officer of the division of Westchester county parkway police or who was appointed on or after July first, nineteen hundred seventy-nine to the title of police officer, sergeant, lieutenant, captain or inspector or who, on or prior to January thirty-first, nineteen hundred eighty-three, was appointed as a Westchester county deputy sheriff.
- (o) A sworn officer of the water-supply police employed by the city of New York, appointed to protect the sources, works, and transmission of water supplied to the city of New York, and to protect persons on or in the vicinity of such water sources, works, and transmission.
- (p) Persons appointed as railroad police officers pursuant to [section eighty-eight of the railroad law](#).

**(q)** An employee of the department of taxation and finance (i) assigned to enforcement of the taxes imposed under or pursuant to the authority of article twelve-A of the tax law and administered by the commissioner of taxation and finance, taxes imposed under or pursuant to the authority of article eighteen of the tax law and administered by the commissioner, taxes imposed under article twenty of the tax law, or sales or compensating use taxes relating to petroleum products or cigarettes imposed under article twenty-eight or pursuant to the authority of article twenty-nine of the tax law and administered by the commissioner or (ii) designated as a revenue crimes specialist and assigned to the enforcement of the taxes described in paragraph (c) of subdivision four of section 2.10 of this title, for the purpose of applying for and executing search warrants under article six hundred ninety of this chapter, for the purpose of acting as a claiming agent under article thirteen-A of the civil practice law and rules in connection with the enforcement of the taxes referred to above and for the purpose of executing warrants of arrest relating to the respective crimes specified in subdivision four of section 2.10 of this title.

**(r)** Any employee of the Suffolk county department of parks who is appointed as a Suffolk county park police officer.

**(s)** A university police officer appointed by the state university pursuant to paragraph 1 of subdivision two of [section three hundred fifty-five of the education law](#).

**(t)** A sworn officer of the department of public safety of the Buffalo municipal housing authority who has achieved or been granted the status of sworn police officer and has been certified by the division of criminal justice services as successfully completing an approved basic course for police officers.

**(u)** Persons appointed as Indian police officers pursuant to section one hundred fourteen of the Indian law.

**(v)** Supervisor of forest ranger services; assistant supervisor of forest ranger services; forest ranger 3; forest ranger 2; forest ranger 1 employed by the state department of environmental conservation or sworn officer of the division of forest protection and fire management in the department of environmental conservation responsible for wild land search and rescue, wild land fire management in the state as prescribed in subdivision eighteen of section 9-0105 and title eleven of article nine of the environmental conservation law, exercising care, custody and control of state lands administered by the department of environmental conservation.

## **§ 459-a(2). Definitions**

As used in this article:

**2.** “Family or household members” mean the following individuals:

**(a)** persons related by consanguinity or affinity;

**(b)** persons legally married to one another;

**(c)** persons formerly married to one another regardless of whether they still reside in the same household;

**(d)** persons who have a child in common regardless of whether such persons are married or have lived together at any time;

**(e)** unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household;

**(f)** persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute

an “intimate relationship”; or

(g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.

### **§ 1125(6). Definitions**

6. “Administrator” or “school administrator” shall mean a principal, or the equivalent title, in a school, or other chief school officer.

N.Y. Educ. Law § 1125 (Consol., Lexis Advance through 2022 released Chapters 1-230)

### **§ 6341. Application for an extreme risk protection order.**

In accordance with this article, a petitioner may file an application, which shall be sworn, and accompanying supporting documentation, setting forth the facts and circumstances justifying the issuance of an extreme risk protection order. Provided, however, that a petitioner who is a police officer or district attorney shall file such application upon the receipt of credible information that an individual is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law, unless such petitioner determines that there is no probable cause for such filing. Such application and supporting documentation shall be filed in the supreme court in the county in which the respondent resides. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court’s consideration of such applications. Such application form shall include inquiry as to whether the petitioner knows, or has reason to believe, that the respondent owns, possesses or has access to a firearm, rifle or shotgun and if so, a request that the petitioner list or describe such firearms, rifles and shotguns, and the respective locations thereof, with as much specificity as possible.

### **§ 6342. Issuance of a temporary extreme risk protection order.**

1. Upon application of a petitioner pursuant to this article, the court may issue a temporary extreme risk protection order, ex parte or otherwise, to prohibit the respondent from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun, upon a finding that there is probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law. Such application for a temporary order shall be determined in writing on the same day the application is filed.
2. In determining whether grounds for a temporary extreme risk protection order exist, the court shall consider any relevant factors including, but not limited to, the following acts of the respondent:
  - (a) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;
  - (b) a violation or alleged violation of an order of protection;
  - (c) any pending charge or conviction for an offense involving the use of a weapon;
  - (d) the reckless use, display or brandishing of a firearm, rifle or shotgun;
  - (e) any history of a violation of an extreme risk protection order;
  - (f) evidence of recent or ongoing abuse of controlled substances or alcohol; or
  - (g) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any 40ammunition therefor.

In considering the factors under this subdivision, the court shall consider the time that has elapsed since the occurrence of such act or acts and the age of the person at the time of the occurrence of such act or acts.

For the purposes of this subdivision, “recent” means within the six months prior to the date the petition was filed.

- 3.** The application of the petitioner and supporting documentation, if any, shall set forth the factual basis for the request and probable cause for issuance of a temporary order. The court may conduct an examination under oath of the petitioner and any witness the petitioner may produce.
- 4.** A temporary extreme risk protection order, if warranted, shall issue in writing, and shall include:
- (a)** a statement of the grounds found for the issuance of the order;
  - (b)** the date and time the order expires;
  - (c)** the address of the court that issued the order;
  - (d)** a statement to the respondent: (i) directing that the respondent may not purchase, possess or attempt to purchase or possess a firearm, rifle or shotgun while the order is in effect and that any firearm, rifle or shotgun possessed by such respondent shall be promptly surrendered to any authorized law enforcement official in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law;
  - (ii)** informing the respondent that the court will hold a hearing no sooner than three nor more than six business days after service of the temporary order, to determine whether a final extreme risk protection order will be issued and the date, time and location of such hearing, provided that the respondent shall be entitled to more than six days upon request in order to prepare for the hearing; and **(iii)** informing the respondent that he or she may seek the advice of an attorney and that an attorney should be consulted promptly; and
  - (e)** a form to be completed and executed by the respondent at the time of service of the temporary extreme risk protection order which elicits a list of all firearms, rifles and shotguns possessed by the respondent and the particular location of each firearm, rifle or shotgun listed.
- 5.** If the application for a temporary extreme risk protection order is not granted, the court shall notify the petitioner and, unless the application is voluntarily withdrawn by the petitioner, nonetheless schedule a hearing on the application for a final extreme risk protection order. Such hearing shall be scheduled to be held promptly, but in any event no later than ten business days after the date on which such application is served on the respondent, provided, however, that the respondent may request, and the court may grant, additional time to allow the respondent to prepare for the hearing. A notice of such hearing shall be prepared by the court and shall include the date and time of the hearing, the address of the court, and the subject of the hearing.
- 6.**
- (a)** The court shall, in the manner specified in paragraph **(b)** of this subdivision, arrange for prompt service of a copy of the temporary extreme risk protection order, if any, the application therefor and, if separately applied for or if a temporary extreme risk protection order was not granted, the application for an extreme risk protection order, any notice of hearing prepared by the court, along with any associated papers including the petition and any supporting documentation, provided, that the court may redact the address and contact information of the petitioner from such application and papers where the court finds that disclosure of such address or other contact information would pose an unreasonable risk to the health or safety of the petitioner.
  - (b)** The court shall provide copies of such documents to the appropriate law enforcement agency serving the jurisdiction of the respondent's residence with a direction that such documents be promptly served, at no cost to the petitioner, on the respondent; provided, however, that the petitioner may voluntarily arrange for service of copies of such order and associated papers through a third party, such as a licensed process server.
- 7.**
- (a)** The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the division of criminal justice services of the issuance of a temporary extreme risk protection order and provide a copy of such order no later than the next business day after

issuing the order to such persons or agencies. The court also shall promptly notify such persons and agencies and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. The court also shall report such demographic data as required by the state division of criminal justice services at the time such order is transmitted thereto. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

**(b)** Upon receiving notice of the issuance of a temporary extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of any such protection order, any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

**8.** A law enforcement officer serving a temporary extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for firearms, rifles and shotguns in the respondent's possession in a manner consistent with the procedures of article six hundred ninety of the criminal procedure law.

**9.** Upon issuance of a temporary extreme risk protection order, or upon setting a hearing for a final extreme risk protection order where a temporary order is denied or not requested, the court shall direct the law enforcement agency having jurisdiction to conduct a background investigation and report to the court and, subject to any appropriate redactions to protect any person, each party regarding whether the respondent:

- (a)** has any prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence;
- (b)** has any criminal charge or violation currently pending against him or her;
- (c)** is currently on parole or probation;
- (d)** possesses any registered firearms, rifles or shotguns; and
- (e)** has been, or is, subject to any order of protection or has violated or allegedly violated any order of protection.

#### **§ 6343. Issuance of a final extreme risk protection order**

**1.** In accordance with this article, no sooner than three business days nor later than six business days after service of a temporary extreme risk protection order and, alternatively, no later than ten business days after service of an application under this article where no temporary extreme risk protection order has been issued, the supreme court shall hold a hearing to determine whether to issue a final extreme risk protection order and, when applicable, whether a firearm, rifle or shotgun surrendered by, or removed from, the respondent should be returned to the respondent. The respondent shall be entitled to more than six business days if a temporary extreme risk protection order has been issued and the respondent requests a reasonable period of additional time to prepare for the hearing. Where no temporary order has been issued, the respondent may request, and the court may grant, additional time beyond the ten days to allow the respondent to prepare for the hearing.

**2.** At the hearing pursuant to subdivision one of this section, the petitioner shall have the burden of proving, by clear and convincing evidence, that the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of

the mental hygiene law. The court may consider the petition and any evidence submitted by the petitioner, any evidence submitted by the respondent, any testimony presented, and the report of the relevant law enforcement agency submitted pursuant to subdivision nine of section sixty-three hundred forty-two of this article. The court shall also consider the factors set forth in subdivision two of section sixty-three hundred forty-two of this article.

**3.**

**(a)** After the hearing pursuant to subdivision one of this section, the court shall issue a written order granting or denying the extreme risk protection order and setting forth the reasons for such determination. If the extreme risk protection order is granted, the court shall direct service of such order in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

**(b)** Upon issuance of an extreme risk protection order: (i) any firearm, rifle or shotgun removed pursuant to a temporary extreme risk protection order or such extreme risk protection order shall be retained by the law enforcement agency having jurisdiction for the duration of the order, unless ownership of the firearm, rifle or shotgun is legally transferred by the respondent to another individual permitted by law to own and possess such firearm, rifle or shotgun; (ii) the supreme court shall temporarily suspend any existing firearm license possessed by the respondent and order the respondent temporarily ineligible for such a license; (iii) the respondent shall be prohibited from purchasing or possessing, or attempting to purchase or possess, a firearm, rifle or shotgun; and (iv) the court shall direct the respondent to surrender any firearm, rifle or shotgun in his or her possession in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law.

**(c)** An extreme risk protection order issued in accordance with this section shall extend, as specified by the court, for a period of up to one year from the date of the issuance of such order; provided, however, that if such order was immediately preceded by the issuance of a temporary extreme risk protection order, then the duration of the extreme risk protection order shall be measured from the date of issuance of such temporary extreme risk protection order.

**(d)** A law enforcement officer serving a final extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer to search for firearms, rifles and shotguns in a respondent's possession consistent with the procedures of article six hundred ninety of the criminal procedure law.

**4.**

**(a)** The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the division of criminal justice services of the issuance of a final extreme risk protection order and provide a copy of such order to such persons and agencies no later than the next business day after issuing the order. The court also shall promptly notify such persons and agencies and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

**(b)** Upon receiving notice of the issuance of a final extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of such protection order and any court order

amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

**5.**

**(a)** If, in accordance with a temporary extreme risk protection order, a firearm, rifle or shotgun has been surrendered by or removed from the respondent, and the supreme court subsequently finds that the petitioner has not met the required standard of proof, the court's finding shall include a written order, issued to all parties, directing that any firearm, rifle or shotgun surrendered or removed pursuant to such temporary order shall be returned to the respondent, upon a written finding that there is no legal impediment to the respondent's possession of such firearm, rifle or shotgun.

**(b)** If any other person demonstrates that he or she is the lawful owner of any firearm, rifle or shotgun surrendered or removed pursuant to a protection order issued in accordance with this article, and provided that the court has made a written finding that there is no legal impediment to the person's possession of a surrendered or removed firearm, rifle or shotgun, the court shall direct that such firearm, rifle or shotgun be returned to such lawful owner and inform such person of the obligation to safely store such firearm, rifle, or shotgun in accordance with section 265.45 of the penal law.

**6.** The respondent shall be notified on the record and in writing by the court that he or she may submit one written request, at any time during the effective period of an extreme risk protection order, for a hearing setting aside any portion of such order. The request shall be submitted in substantially the same form and manner as prescribed by the chief administrator of the courts. Upon such request, the court shall promptly hold a hearing, in accordance with this article, after providing reasonable notice to the petitioner. The respondent shall bear the burden to prove, by clear and convincing evidence, any change of circumstances that may justify a change to the order.

**§ 6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order.**

**1.** When a law enforcement officer takes any firearm, rifle or shotgun pursuant to a temporary extreme risk protection order or a final extreme risk protection order, the officer shall give to the person from whom such firearm, rifle or shotgun is taken a receipt or voucher for the property taken, describing the property in detail. In the absence of a person, the officer shall leave the receipt or voucher in the place where the property was found, mail a copy of the receipt or voucher, retaining proof of mailing, to the last known address of the respondent and, if different, the owner of the firearm, rifle or shotgun, and file a copy of such receipt or voucher with the court. All firearms, rifles and shotguns in the possession of a law enforcement official pursuant to this article shall be subject to the provisions of applicable law, including but not limited to subdivision six of section 400.05 of the penal law; provided, however, that any such firearm, rifle or shotgun shall be retained and not disposed of by the law enforcement agency for at least two years unless legally transferred by the respondent to an individual permitted by law to own and possess such firearm, rifle or shotgun.

**2.** If the location to be searched during the execution of a temporary extreme risk protection order or extreme risk protection order is jointly occupied by two or more parties, and a firearm, rifle or shotgun located during the execution of such order is owned by a person other than the respondent, the court shall, upon a written finding that there is no legal impediment to the person other than the respondent's possession of such firearm, rifle or shotgun, order the return of such firearm, rifle or shotgun to such lawful owner and inform such person of their obligation to safely store their firearm, rifle, or shotgun in accordance with section 265.45 of the penal law.

**§ 6345. Request for renewal of an extreme risk protection order.**

**1.** If a petitioner believes a person subject to an extreme risk protection order continues to be likely to engage in conduct that would result in serious harm to himself, herself, or others, as defined in paragraph one or



two of subdivision (a) of section 9.39 of the mental hygiene law, such petitioner may, at any time within sixty days prior to the expiration of such existing extreme risk protection order, initiate a request for a renewal of such order, setting forth the facts and circumstances necessitating the request. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. The court may issue a temporary extreme risk protection order in accordance with section sixty-three hundred forty-two of this article, during the period that a request for renewal of an extreme risk protection order is under consideration pursuant to this section.

2. A hearing held pursuant to this section shall be conducted in the supreme court, in accordance with section sixty-three hundred forty-three of this article, to determine if a request for renewal of the order shall be granted. The respondent shall be served with written notice of an application for renewal a reasonable time before the hearing, and shall be afforded an opportunity to fully participate in the hearing. The court shall direct service of such application and the accompanying papers in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

#### **§ 6346. Expiration of an extreme risk protection order.**

1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order and the clerk of the court wherein such proceedings were conducted shall immediately notify the commissioner of the division of criminal justice services, the heads of all appropriate police departments, applicable licensing officers, and all other appropriate law enforcement agencies that the order has expired and that the record of such protection order shall be sealed and not be made available to any person or public or private entity, except that such records shall be made available to:

(a) the respondent or the respondent's designated agent;

(b) courts in the unified court system;

(c) police forces and departments having responsibility for enforcement of the general criminal laws of the state;

(d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the respondent has made application for such a license; and

(e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this subparagraph and afforded an opportunity to make an explanation thereto.

2. Upon expiration of a protection order issued pursuant to this article and upon written application of the respondent who is the subject of such order, with notice and opportunity to be heard to the petitioner and every licensing officer responsible for issuance of a firearm license to the subject of the order pursuant to article four hundred of the penal law, and upon a written finding that there is no legal impediment to the respondent's possession of a surrendered firearm, rifle or shotgun, the court shall order the return of a firearm, rifle or shotgun not otherwise disposed of in accordance with subdivision one of section sixty-three hundred forty-four of this article. When issuing such order in connection with any firearm subject to a license requirement under article four hundred of the penal law, if the licensing officer informs the court that he or she will seek to revoke the license, the order shall be stayed by the court until the conclusion of any license revocation proceeding.

#### **§ 6347. Effect of findings and determinations in subsequent proceedings.**

Notwithstanding any contrary claim based on common law or a provision of any other law, no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or

similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding.

**§ 6348. Protections for health care providers applying for an extreme risk protection order.**

**1.**

**(a)** Notwithstanding the privileges set forth in article forty-five of this chapter, or any other provision of law to the contrary, a health care provider authorized under paragraph (d) of subdivision two of section sixty-three hundred forty of this article to file an application for an extreme risk protection order against a person such health care provider has examined shall, upon filing any application for an extreme risk protection order, be authorized to disclose protected health information, of the person against whom such order is sought as are necessary for the full investigation and disposition of such application for an extreme risk protection order under this article. When disclosing protected health information, such health care provider shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the application.

**(b)** Upon receipt of a petition by any health care provider identified in paragraph (a) of this subdivision and for good cause shown, the court may issue orders as may be necessary to obtain any records or documents relating to diagnosis, prognosis or treatment, and clinical records, of the patient against whom the order is sought as are necessary for the full investigation and disposition of an application for an extreme risk protection order under this article. All such records and other health information provided shall be sealed by the court.

**2.** The decision of any health care provider described in subdivision one of this section to disclose or not to disclose records or documents relating to the diagnosis, prognosis or treatment, and clinical records of a patient under paragraphs (a) and (b) of subdivision one of this section, when made reasonably and in good faith, shall not be the basis for any civil or criminal liability with respect to such health care provider.

N.Y. Mental Hyg. Law § 9.39(a). Emergency admissions for immediate observation, care, and treatment

**(a)** The director of any hospital maintaining adequate staff and facilities for the observation, examination, care, and treatment of persons alleged to be mentally ill and approved by the commissioner to receive and retain patients pursuant to this section may receive and retain therein as a patient for a period of fifteen days any person alleged to have a mental illness for which immediate observation, care, and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others. “Likelihood to result in serious harm” as used in this article shall mean:

- 1.** substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or
- 2.** a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

# Oklahoma

21 Okl. St. § 1289.24c

## Highlighted Provisions

Extreme Risk Protection  
Order Preemption



## Statutes

### § 1289.24c. State Preemption—Extreme Risk Protection Order

- A.** The State Legislature hereby occupies and preempts the entire field of legislation in this state touching in any way extreme risk protection orders against or upon a citizen of this state to the complete exclusion of any order, ordinance or regulation by any municipality or other political subdivision of this state.
- B.** Any agency of this state or any political subdivision in this state shall be prohibited from accepting any grants or funding to implement any statute, rule or executive order, judicial order or judicial findings that would have the effect of forcing an extreme risk protection order against or upon a citizen of this state.
- C.** For purposes of this section, 'extreme risk protection order means an executive order, written order or warrant issued by a court or signed by a magistrate or comparable officer of the court, for which the primary purpose is to reduce the risk of firearm-related death or injury by doing one or more of the following:
1. Prohibiting a named individual from having under the custody or control of the individual, owning, possessing or receiving a firearm; or
  2. Having a firearm removed or requiring the surrender of firearms from a named individual.

# Oregon

**Types of orders:** Ex Parte Extreme Risk Protection Order (ERPO), Final ERPO

**Citation:** Or. Rev. Stat. Ann. §§ 166.525 – 166.543

## Highlighted Provisions

### **Persons eligible to petition:**

Family or household member, Law Enforcement

### **Standard of proof:**

Ex Parte & Final: Clear and convincing evidence

### **Findings required:**

Evidence that respondent presents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person

### **Duration of order:**

Ex parte order: Until hearing date; within 30 days of service, the respondent can request a court hearing; if requested, both parties are notified of the hearing date within 21 days, and if the respondent doesn't request a hearing within 30 days, the order automatically remains effective for one year or until it's terminated earlier

Extreme risk protection order: one year

(If the respondent fails to request a hearing within 30 days after an extreme risk protection order is served, the ex parte order will be in effect for one year unless terminated by court)

### **Service on respondent:**

Ex Parte: Respondent must be personally served. Statute is silent on who is eligible to serve. If the person attempting service cannot complete it within 10 days, they must notify the petitioner that they have been unable to do so.

Extreme risk protection order: No service is required if respondent was present at the hearing. Otherwise, the statute is silent.

### **Notification of persons at risk:**

Silent

### **Renewal/Termination of the order:**

Termination: petitioner or respondent may each submit up to one written request to terminate during each 12-month period the order is in effect. The party who submitted the request has the burden of proving by clear and convincing evidence that respondent no longer presents a risk in the near future of suicide or of causing physical injury to another person.

Renewal: a person who was eligible to be a petitioner (not necessarily the original petitioner) may request a renewal within 90 days before the order is to expire. The person requesting renewal has the burden of proving by clear and convincing evidence that the respondent continues to present a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person. Respondent must be personally served with the renewed order unless they were present at the renewal hearing. The court may renew the protection order for up to one year.

Extension of hearing: The court may continue a hearing under upon a showing of good cause. The extreme risk protection order shall remain in effect until the next hearing date.

### **Filing fees:**

A filing fee, service fee or hearing fee may not be charged for proceedings under ORS 166.530 (hearing on order; continuation or termination of order) or 166.533 (hearing to terminate order).

**Firearm Prohibition:**

Respondent may not have in their custody or control, own, purchase, possess or receive, or attempt to purchase or receive, a deadly weapon.

**Firearm relinquishment process:**

Ex parte order: Respondent has 24 hours to surrender all deadly weapons in their custody, possession, or control to a law enforcement agency, a gun dealer, or a third party. Respondent also has 24 hours to surrender any concealed handgun license to a law enforcement agency.

Extreme risk protection order: Respondent must immediately surrender all deadly weapons in their custody, possession, or control to a law enforcement agency, a gun dealer, or a third party. Respondent must also immediately surrender any concealed handgun license to a law enforcement agency.

Ex parte order: If respondent is served by a law enforcement officer, the officer must request that respondent immediately surrender all deadly weapons and concealed handgun licenses. The officer shall take possession of all deadly weapons appearing to be in the custody, control or possession of the respondent that are surrendered by the respondent.

Extreme risk protection order: If respondent is served by a law enforcement officer, the officer must request that respondent immediately surrender all deadly weapons and concealed handgun licenses. The officer may conduct any search permitted by law for deadly weapons in the custody, control or possession of the respondent and shall take possession of all deadly weapons appearing to be in the custody, control or possession of the respondent that are surrendered, in plain sight or discovered pursuant to a lawful search.

**Firearm termination process:**

Any unclaimed weapon shall be disposed of in accordance with the law enforcement agency's policies and procedures.

**Limitations on liability:**

Statute is silent

**Return/transfer of firearms:**

If respondent requests return of a deadly weapon or concealed handgun license after the order is no longer in effect, the law enforcement agency holding it will return it after conducting a background check and confirming that the order has actually ended.

The law enforcement agency may also return the deadly weapon to a rightful third party upon proof of lawful ownership/procession.

**Warrant authority:**

Statute is silent

**Venue:**

Statute is silent

**Penalty:**

The person commits a Class A misdemeanor for failure to comply and for complainant.

**Entry Registry/NCIC POF:**

Upon receipt of a copy of the order and notice of completion of service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police and request that the order be entered into the databases of the National Crime Information Center of the United States Department of Justice. If the order was served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter

the order into the Law Enforcement Data System and shall request that the information be entered into the databases of the National Crime Information Center, upon receipt of a true copy of proof of service. The sheriff shall provide the petitioner with a true copy of the proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable in any county in this state.

## Statutes

### **166.525 Definitions.**

As used in ORS 166.525 to 166.543:

**(1)** “Deadly weapon” means:

**(a)** Any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury; or

**(b)** A firearm, whether loaded or unloaded.

**(2)** “Family or household member” means a spouse, intimate partner, mother, father, child or sibling of the respondent, or any person living within the same household as the respondent.

**(3)** “Gun dealer” has the meaning given that term in ORS 166.412.

**(4)** “Law enforcement agency” means an agency or department of the State of Oregon or of a political subdivision of the State of Oregon whose principal function is the apprehension of criminal offenders.

**(5)** “Law enforcement officer” means a member of the Oregon State Police, a sheriff, a municipal police officer or an authorized tribal police officer as defined in ORS 181A.680.

**(6)** “Petitioner” means a person who petitions for an order under ORS 166.525 to 166.543.

**(7)** “Respondent” means a person against whom an order is filed under ORS 166.525 to 166.543.

### **166.527 Petition for ex parte order; issuance and service of order; request for hearing.**

**(1)** A law enforcement officer or a family or household member of a person may file a petition requesting that the court issue an extreme risk protection order enjoining the person from having in the person’s custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, a deadly weapon.

**(2)** An extreme risk protection order petition shall be heard by the court and issued or denied on the same day the petition is submitted to the court or on the judicial business day immediately following the day the petition is filed.

**(3)** The petition for an extreme risk protection order must be supported by a written affidavit signed by the petitioner under oath, or an oral statement taken under oath by the petitioner or any other witness the petitioner may produce.

**(4)** In determining whether to issue an extreme risk protection order, the court shall consider the following:

**(a)** A history of suicide threats or attempts or acts of violence by the respondent directed against another person;

**(b)** A history of use, attempted use or threatened use of physical force by the respondent against another person;

**(c)** A previous conviction for:

- (A)** A misdemeanor involving violence as defined in ORS 166.470;
- (B)** A stalking offense under ORS 163.732 or 163.750, or a similar offense in another jurisdiction;
- (C)** An offense constituting domestic violence as defined in ORS 135.230;
- (D)** Driving under the influence of intoxicants under ORS 813.010 or 813.011; or
- (E)** An offense involving cruelty or abuse of animals;
- (d)** Evidence of recent unlawful use of controlled substances;
- (e)** Previous unlawful and reckless use, display or brandishing of a deadly weapon by the respondent;
- (f)** A previous violation by the respondent of a court order issued pursuant to ORS 107.716 or 107.718;
- (g)** Evidence of an acquisition or attempted acquisition within the previous 180 days by the respondent of a deadly weapon; and
- (h)** Any additional information the court finds to be reliable, including a statement by the respondent.

**(5)**

- (a)** The petitioner has the burden of proof at the ex parte hearing.
- (b)** The petitioner may appear in person or by electronic video transmission.
- (c)** The court may continue a hearing under this section upon a showing of good cause.

**(6)**

- (a)** The court shall issue an extreme risk protection order if the court finds by clear and convincing evidence, based on the petition and supporting documentation and after considering a statement by the respondent, if provided, that the respondent presents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person. The court may not include in the findings any mental health diagnosis or any connection between the risk presented by the respondent and mental illness.
- (b)** Upon making the findings described in paragraph (a) of this subsection, the court shall issue an extreme risk protection order prohibiting the respondent from having in the respondent's custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, a deadly weapon.

**(7)** An extreme risk protection order issued under this section must include:

- (a)** A statement of the evidence and the court's findings supporting issuance of the order;
- (b)** The date and time the order was issued;
- (c)** A description of the manner in which the respondent may request a hearing described in subsection (9) of this section;
- (d)** The address of the court to which a request for a hearing must be sent;
- (e)** A description of the requirements for surrender of deadly weapons in the respondent's possession under ORS 166.537; and
- (f)** A statement in substantially the following form:

To the subject of this protection order: An extreme risk protection order has been issued by the court and is now in effect. You are required to surrender all deadly weapons in your custody, control or possession. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, deadly weapons while this order is in effect. You must, within 24 hours, surrender all deadly weapons in your

custody, control or possession to (insert name of local law enforcement agency), a gun dealer or a third party who may lawfully possess the deadly weapons. You must, within 24 hours, surrender to (insert name of local law enforcement agency) any concealed handgun license issued to you. You may request a hearing to contest this order. If you do not request a hearing, the extreme risk protection order against you will be in effect for one year unless terminated by the court. You have the right to request one hearing to terminate this order during the 12 months that this order is in effect starting from the date of this order. You may seek the advice of an attorney as to any matter connected with this order.

**(8)**

**(a)** The respondent shall be personally served with both a copy of the extreme risk protection order and a hearing request form described in subsection (9) of this section.

**(b)** Whenever an extreme risk protective order is served on a respondent, the person serving the order shall immediately deliver to the county sheriff a true copy of proof of service, on which it is stated that personal service of the order was made on the respondent, and a copy of the order. Proof of service may be made by affidavit or by declaration under penalty of perjury in the form required by ORCP 1 E.

**(c)** If the person serving the order cannot complete service within 10 days, the person shall notify the petitioner, at the address provided by the petitioner, that the documents have not been served. If the petitioner does not respond within 10 days, the person shall hold the order and petition for future service and file a return to the clerk of the court showing that service was not completed.

**(d)** Upon receipt of a copy of the order and notice of completion of service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police and request that the order be entered into the databases of the National Crime Information Center of the United States Department of Justice. If the order was served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System, and shall request that the information be entered into the databases of the National Crime Information Center, upon receipt of a true copy of proof of service. The sheriff shall provide the petitioner with a true copy of the proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable in any county in this state.

**(9)**

**(a)** Within 30 days after an extreme risk protection order is served on the respondent under this section, the respondent may request a court hearing using a form prescribed by the State Court Administrator.

**(b)** If the respondent requests a hearing under paragraph (a) of this subsection, the clerk of the court shall notify the petitioner and the respondent of the date and time of the hearing and shall supply the petitioner with a copy of the respondent's request for a hearing. The petitioner and the respondent shall give to the clerk of the court information sufficient to allow such notification.

**(c)** The hearing shall occur within 21 days of the date of the respondent's request for a hearing.

**(10)** If the respondent fails to request a hearing within 30 days after an extreme risk protection order is served, the protection order is confirmed by operation of law and is effective for a period of one year from the date the original order was issued or until the order is terminated, whichever is sooner.

**(11)** A filing fee, service fee or hearing fee may not be charged for proceedings under this section or ORS 166.530 or 166.533.

**(12)** If the court declines to issue an extreme risk protection order under this section, the court shall state with



particularity the reasons for the denial on the record.

### **166.530 Hearing on order; continuation or termination of order.**

**(1)** At a hearing on an extreme risk protection order requested by the respondent under ORS 166.527 (9), the court may:

**(a)** Examine under oath the petitioner, the respondent and any witness either party may produce, including a mental health professional selected by the respondent, or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent or a witness of either party; and

**(b)** Ensure that a reasonable search has been conducted for criminal history records related to the respondent.

**(2)**

**(a)** The Oregon Evidence Code shall apply in a hearing under this section.

**(b)** The court may continue a hearing under this section upon a showing of good cause. If the court continues a hearing under this paragraph, the extreme risk protection order shall remain in effect until the next hearing date.

**(3)**

**(a)** At the hearing, the court shall determine:

**(A)** Whether to terminate the extreme risk protection order or continue the order for a duration of one year; and

**(B)** Whether any deadly weapons surrendered to a law enforcement agency pursuant to ORS 166.537 shall be returned to the respondent or retained by the law enforcement agency.

**(b)** The petitioner has the burden of proving, by clear and convincing evidence, that the respondent presents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person.

**(c)** If the court finds that the petitioner has met the burden of proof, the court shall:

**(A)** Order that the extreme risk protection order continue for the duration of one year from the date the original order was issued.

**(B)** Order that any deadly weapons surrendered to a law enforcement agency pursuant to ORS 166.537 remain in the custody of the law enforcement agency while the order is in effect.

**(d)** The court may not include in findings made under this subsection any mental health diagnosis or any connection between the risk presented by the respondent and mental illness.

**(4)** An extreme risk protection order continued under this section must include:

**(a)** A statement of the evidence and the court's findings supporting issuance of the order;

**(b)** The date and time the order was issued;

**(c)** The date and time of the expiration of the order;

**(d)** A description of the requirements for surrender of deadly weapons in the respondent's possession under ORS 166.537; and

**(e)** A statement in substantially the following form:

To the subject of this protection order: This order is valid until the date and time noted above. If you have not done so already, you are required to surrender all deadly weapons in your custody. You must immediately

surrender all deadly weapons in your custody, control or possession to (insert name of local law enforcement agency), a gun dealer or a third party who may lawfully possess the deadly weapons. You must immediately surrender to (insert name of local law enforcement agency) any concealed handgun license issued to you. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a deadly weapon while this order is in effect. You have the right to request one hearing to terminate this order during the 12 months that this order is in effect starting from the date of this order. You may seek the advice of an attorney as to any matter connected with this order.

**(5)** When the court continues an extreme risk protection order under this section, the court shall inform the respondent that the respondent is entitled to request termination of the order in the manner described in ORS 166.533. The court shall provide the respondent with a form with which to request a termination hearing.

**(6)** The respondent need not be served if an order of the court indicates that the respondent appeared in person before the court.

**(7)** If the court terminates an extreme risk protection order after a hearing under this section:

**(a)** The court shall state with particularity the reasons for the termination on the record.

**(b)** The clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and shall request that the order be removed from the databases of the National Crime Information Center of the United States Department of Justice.

#### **166.533 Hearing to terminate order.**

**(1)** The petitioner or the respondent of an extreme risk protection order issued or continued under ORS 166.527 or 166.530 may each submit a written request once during the 12-month effective period of the order, and once during any 12-month effective period of an order renewed under ORS 166.535, for a hearing to terminate the order. A hearing under this section is in addition to any hearing requested under ORS 166.527.

**(2)** Upon receipt of a request described in subsection (1) of this section, the court shall schedule a termination hearing and provide notice of the hearing to both parties at least five days before the hearing.

**(3)**

**(a)** The person filing the termination request has the burden of proving, by clear and convincing evidence, that the respondent no longer presents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person.

**(b)** The Oregon Evidence Code shall apply in a hearing under this section.

**(c)** The court may continue a hearing under this section upon a showing of good cause. If the court continues a hearing under this paragraph, the extreme risk protection order shall remain in effect until the next hearing date.

**(4)**

**(a)** If the court finds that the petitioner has met the burden of proof as described in subsection (3) of this section, the court shall terminate the extreme risk protection order.

**(b)** The court may not include in findings made under this subsection any mental health diagnosis or any connection between the risk presented by the respondent and mental illness.

**(5)** When an extreme risk protection order is terminated by order of the court, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from

the Law Enforcement Data System and shall request that the order be removed from the databases of the National Crime Information Center of the United States Department of Justice.

### **166.535 Renewal of order**

**(1)** A law enforcement officer or a family or household member of a respondent, including but not limited to the law enforcement officer or family or household member who petitioned the court for the original extreme risk protection order issued under ORS 166.527, may request a renewal of the order within 90 days before the expiration date of the order by filing a written request with the court.

**(2)** Upon receipt of the request for renewal described in subsection (1) of this section, the court shall schedule a hearing and provide notice of the hearing to both parties at least 14 days before the hearing.

**(3)** At a hearing to determine whether to renew an extreme risk protection order under this section, the court may:

**(a)** Examine under oath the petitioner, the respondent and any witness either party may produce or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent or a witness of either party; and

**(b)** Ensure that a reasonable search has been conducted for criminal history records related to the respondent.

**(4)** The person requesting the renewal of the extreme risk protection order has the burden of proving, by clear and convincing evidence, that the respondent continues to present a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person.

**(5)**

**(a)** The Oregon Evidence Code shall apply in a hearing under this section.

**(b)** The court may continue a hearing under this section upon a showing of good cause. If the court continues a hearing under this paragraph, the original extreme risk protection order shall remain in effect until the next hearing date.

**(c)** The petitioner may appear in person or by electronic video transmission.

**(6)**

**(a)** If the court finds that the petitioner has met the burden of proof, the court may renew the extreme risk protection order for a duration of up to one year.

**(b)** The court may not include in findings made under this subsection any mental health diagnosis or any connection between the risk presented by the respondent and mental illness.

**(7)** An extreme risk protection order renewed under this section must include:

**(a)** A statement of the evidence and the court's findings supporting issuance of the order;

**(b)** The date and time the order was issued;

**(c)** The date and time of the expiration of the order;

**(d)** A description of the requirements for surrender of deadly weapons in the respondent's possession under ORS 166.537; and

**(e)** A statement in substantially the following form:

To the subject of this protection order: This renewed order is valid until the date and time noted above. If you have not done so already, you are required to surrender all deadly weapons in your custody. You must immediately surrender all deadly weapons in your custody, control or possession to (insert name of local

law enforcement agency), a gun dealer or a third party who may lawfully possess the deadly weapons. You must immediately surrender to (insert name of local law enforcement agency) any concealed handgun license issued to you. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a deadly weapon while this order is in effect. You have the right to request one hearing to terminate this renewed order every 12 months that this order is in effect, starting from the date of this order. You may seek the advice of an attorney as to any matter connected with this order.

**(8)** When the court renews an extreme risk protection order, the court shall inform the respondent that the respondent is entitled to request termination of the renewed order in the manner described in ORS 166.533. The court shall provide the respondent with a form with which to request a termination hearing.

**(9)**

**(a)** Service of a renewed extreme risk protective order shall be made by personal delivery of a copy of the order to the respondent. The respondent need not be served if an order of the court indicates that the respondent appeared in person before the court.

**(b)** Whenever a renewed extreme risk protective order is served on a respondent, the person serving the order shall immediately deliver to the county sheriff a true copy of proof of service, on which it is stated that personal service of the order was made on the respondent, and a copy of the order. Proof of service may be made by affidavit or by declaration under penalty of perjury in the form required by ORCP 1 E.

**(c)** If service of the order is not required under paragraph (a) of this subsection, a copy of the order must be delivered to the sheriff by the court.

**(d)** Upon receipt of a copy of the order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police and request that the order be entered into the databases of the National Crime Information Center of the United States Department of Justice. If the order was served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System and request that the order be entered into the databases of the National Crime Information Center upon receipt of a true copy of proof of service. The sheriff shall provide the petitioner with a true copy of any required proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable in any county in this state.

**(10)** If the court declines to renew an extreme risk protection order, the court shall state with particularity the reasons for the denial on the record.

**(11)** A renewed extreme risk protection order may be further renewed as described in this section.

### **166.537 Surrender of deadly weapons pursuant to order.**

**(1)** Upon issuance of an extreme risk protection order under ORS 166.527, the court shall further order that the respondent:

**(a)** Within 24 hours surrender all deadly weapons in the respondent's custody, control or possession to a law enforcement agency, a gun dealer or a third party who may lawfully possess the deadly weapons; and

**(b)** Within 24 hours surrender to a law enforcement agency any concealed handgun license issued to the respondent under ORS 166.291 and 166.292.

**(2)** Upon continuance of an extreme risk protection order after a hearing under ORS 166.530, or renewal of an extreme risk protection order under ORS 166.535, the court shall further order that the respondent:

- (a) Immediately surrender all deadly weapons in the respondent's custody, control or possession to a law enforcement agency, a gun dealer or a third party who may lawfully possess the deadly weapons; and
- (b) Immediately surrender to a law enforcement agency any concealed handgun license issued to the respondent under ORS 166.291 and 166.292.

**(3)**

(a) A law enforcement officer serving an extreme risk protection order issued under ORS 166.527 shall request that the respondent immediately surrender to the officer all deadly weapons in the respondent's custody, control or possession and any concealed handgun license issued to the respondent under ORS 166.291 and 166.292. The law enforcement officer shall take possession of all deadly weapons appearing to be in the custody, control or possession of the respondent that are surrendered by the respondent. If the respondent indicates an intention to surrender the deadly weapons to a gun dealer or a third party, the law enforcement officer shall request that the respondent identify the gun dealer or third party.

(b) A law enforcement officer serving an extreme risk protection order continued after a hearing under ORS 166.530, or renewed under ORS 166.535, shall request that the respondent immediately surrender to the officer all deadly weapons in the respondent's custody, control or possession and any concealed handgun license issued to the respondent under ORS 166.291 and 166.292. The officer may conduct any search permitted by law for deadly weapons in the custody, control or possession of the respondent and shall take possession of all deadly weapons appearing to be in the custody, control or possession of the respondent that are surrendered, in plain sight or discovered pursuant to a lawful search.

(4) At the time of the surrender of any deadly weapons or concealed handgun licenses under subsection (3) of this section, the law enforcement officer taking possession shall issue a receipt identifying all surrendered items and provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that the law enforcement agency employing the law enforcement officer retains a copy of the receipt.

(5) If a third party claims lawful ownership or right of possession of a deadly weapon surrendered pursuant to this section, the law enforcement agency may return the deadly weapon to the third party if the third party provides proof of lawful ownership or right of possession of the deadly weapon, in a sworn affidavit, affirms that:

- (a) The third party may lawfully possess the deadly weapon;
- (b) The third party did not consent to the prior possession of the deadly weapon by the respondent; and
- (c) The third party will prevent the respondent from accessing or possessing the deadly weapon in the future.

**166.540 Return of surrendered deadly weapons.**

(1) If an extreme risk protection order is terminated or expires without renewal, a law enforcement agency holding any deadly weapon or concealed handgun license that has been surrendered pursuant to the order shall return the surrendered items as requested by the respondent of the order only after:

- (a) Confirming through a criminal background check, if the deadly weapon is a firearm, that the respondent is legally eligible to own or possess firearms under state and federal law; and
- (b) Confirming that the extreme risk protection order is no longer in effect.

(2) The owner of a deadly weapon, if the deadly weapon is a firearm, in the custody of a law enforcement agency pursuant to ORS 166.537 who does not wish to have the firearm returned is entitled to sell or transfer title of any firearm to a licensed gun dealer as defined in ORS 166.412, provided that the firearm is lawful to own or possess and the person has a legal right to transfer title of the firearm.

**(3)** A deadly weapon surrendered by a person pursuant to ORS 166.537 that remains unclaimed by the owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of deadly weapons in the agency's custody.

**166.543 Criminal penalties.**

**(1)** A person commits a Class A misdemeanor if:

**(a)** The person knowingly possesses a deadly weapon; and

**(b)** The person is prohibited from possessing deadly weapons pursuant to an extreme risk protection order:

**(A)** Issued after notice and a hearing under ORS 166.530;

**(B)** Confirmed by operation of law after the person failed to request a hearing under ORS 166.527 (9); or

**(C)** Renewed under ORS 166.535.

**(2)** A person convicted under subsection (1) of this section shall be prohibited from having in the person's custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, any firearms for a five-year period beginning when the extreme risk protection order expires or is terminated, or the judgment of conviction is entered, whichever occurs later.

**(3)** A person who files a petition for any extreme risk protection order under ORS 166.525 to 166.543 with the intent to harass the respondent, or knowing that the information in the petition is false, is guilty of a Class A misdemeanor.

# Rhode Island

**Types of orders:** Temporary extreme risk protection order, One-year extreme risk protection order

**Citation:** R.I. Gen. Laws § 8-8.3-1 to 8-8.3-14

## Highlighted Provisions

### **Persons eligible to petition:**

Law enforcement agency

### **Standard of proof:**

Temporary order: probable cause

One-year order: clear and convincing evidence

### **Findings required:**

Temporary order: must show that respondent poses a significant danger of causing imminent personal injury to self or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm before notice can be served and a hearing held.

One-year order: must show that respondent poses a significant danger of causing imminent personal injury to self or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm.

### **Duration of order:**

Temporary order: up to 14 days, until a hearing is held to determine if a one-year order should be issued.

One-year order: one year

The court has discretion to continue the order if personal service upon the respondent cannot be made.

### **Service on respondent:**

Temporary order: First, petitioner should try to make timely personal service. If timely service can't be made, the hearing will be rescheduled and the court will either require additional attempts at personal service or will allow alternate service. Alternate service could be: regular and certified mail; leaving copies at respondent's home with a person of suitable age and discretion; or attaching the documents to respondent's door. However, notice by publication in a newspaper is not allowed.

One-year extreme risk protection order: First, the sheriff should try to make timely personal service. If that can't be done within 7 days, the sheriff will notify petitioner and the court. Petitioner then seeks an order for alternate service as described above.

Service of ERPOs has priority over service of other documents unless the other documents are of a similar emergency nature

### **Notification of persons at risk:**

If requested by petitioner or the court, the law enforcement agency holding respondent's firearms must notify family members and any other interested parties before returning any firearms to respondent. The notice follows the same procedures as service of one-year orders.

When the one-year ERPO is about to expire, the original petitioner should notify all interested parties, including but not limited to the respondent's household or family members.

### **Filing fees:**

A party filing a petition under this chapter may do so without payment of any filing fee.

(There are also no minimum residence requirements for the filing of a petition)

**Renewal/Termination:**

Termination: respondent can submit one written request in each 12-month period the order is in effect. If they do so, there will be a hearing at which respondent will have to prove by clear and convincing evidence that they do not pose a significant danger of causing imminent personal injury to self or others by having a firearm in his or her custody or control, or by purchasing, possessing, or receiving a firearm.

Renewal: petitioner can move to renew an order up to 14 days before the order is to expire. Respondent is to be personally served with notice of the motion unless the court orders otherwise. When considering whether to renew the order, the court generally follows the same procedures as they did when initially issuing the order. However, if the motion to renew is uncontested then the court may grant it based only on the motion and an affidavit from petitioner stating that there has been no material change in circumstances.

**Firearm prohibitions:**

Respondent cannot have any firearm in their possession, custody, or control, and cannot purchase, receive, or attempt to purchase or receive any firearm.

**Firearm relinquishment process:**

Respondent has a duty to immediately contact petitioner to arrange for the surrender of any firearms not seized during execution of the warrant. Respondent must surrender to the petitioner all firearms that s/he owns or are in his/her custody, control, or possession, and immediately surrender to the licensing authority or the attorney general any concealed carry permit.

**Firearm disposal process:**

State police are authorized to develop procedures for termination of seized firearms.

**Limitations on liability:**

Except in the case of filing a petition that is known to be materially false or is intended to harass, there is no liability for any action taken by law enforcement agency, law enforcement officer, or the attorney general in relation to obtaining an order. That includes but is not limited to reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition.

**Return/transfer of firearms:**

Respondent must contact the law enforcement agency holding the firearms. If respondent can provide documentation from the court saying that the order has expired or been terminated, then the agency has 10 days to return the firearms. Before returning the firearms, the agency must run a national criminal records check to determine if respondent is otherwise prohibited from receiving the firearms. The agency must also, if requested by petitioner or the court, notify family members or other interested parties before returning the firearms.

During the time of the order, respondent may also request that the agency transfer possession to a federally licensed firearms dealer chosen by respondent. Respondent may then instruct the dealer to sell the firearms to a qualified named individual who is not a member of respondent's dwelling. That individual is prohibited from giving the firearms to respondent until the order has expired or been terminated. The owner of the firearms will receive any money made from the sale.

**Warrant authority:**

When an order is issued, an accompanying warrant is also issued for search of all firearms in respondent's possession, custody, or control.

**Venue:**

Superior court in the respondent's county of residence

**Penalties:**

Any violation of an extreme risk protection order issued of which the respondent has actual notice shall be a felony; shall be punished by imprisonment up to 10 years, and/or a fine up to \$ 10,000.



### **Entry Registry/NCIC POF:**

**(a)** The clerk of the court shall enter any one-year extreme risk protection order or temporary extreme risk protection order issued pursuant to this chapter into a statewide judicial information system on the same day the order is issued.

**(b)** The clerk of the court shall forward a copy of any order issued, renewed, or terminated under this chapter the same day the order is issued to the appropriate law enforcement agency specified in the order and the attorney general.

**(1)** Upon receipt of the copy of an extreme risk protection order, the attorney general shall enter the order into:

**(i)** The National Instant Criminal Background Check System, also known as the NICS database.

**(ii)** All federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and

**(iii)** All computer-based criminal intelligence information systems and databases available in this state used by law enforcement agencies.

## **Statutes**

### **§ 8-8.3-1. Definitions**

When used in this chapter, the following words and phrases shall have the following meanings:

**(1)** “Court” means the superior court in the county in which the respondent resides.

**(2)** “Extreme risk protection order” means either a temporary order or a one-year order granted under this chapter.

**(3)** “Family or household member” means present and former family members (as defined in § 15-15-1), parents (as defined in § 15-15-1), stepparents, legal guardians, persons who are or have been in a substantive dating or engagement relationship within the past one year (as defined in § 15-15-1), and cohabitants (as defined in § 8-8.1-1).

**(4)** “Firearm” means and includes any machine gun, pistol, rifle, air rifle, air pistol, “blank gun”, “BB gun”, or other instrument from which steel or metal projectiles are propelled, or that may readily be converted to expel a projectile, except crossbows, recurve, compound, or longbows, and except instruments propelling projectiles that are designed or normally used for a primary purpose other than as a weapon. The frame or receiver of the weapon shall be construed as a firearm pursuant to the provisions of this section.

**(5)** “Law enforcement agency” means the police department of any city or town, and the division of the Rhode Island state police established pursuant to chapter 28 of title 42.

**(6)** “Law enforcement officer” means a sworn member of a law enforcement agency as defined herein.

**(7)** “One-year extreme risk protection order” means an extreme risk protection order granted pursuant to the provisions of § 8-8.3-5 or renewed pursuant to the provisions of § 8-8.3-7.

**(8)** “Petitioner” means a law enforcement agency that petitions for an order pursuant to this chapter.

**(9)** “Respondent” means the person who is identified as the respondent in a petition filed pursuant to this chapter.

**(10)** “Social media” means any cell phone- or internet-based tools and applications that are used to share and distribute information.

**(11)** “Temporary extreme risk protection order” means an extreme risk protection order issued pursuant to the provisions of § 8-8.3-4.

### **§ 8-8.3-2. Filing of petition**

Proceedings under this chapter shall be filed, heard, and determined in the superior court of the county in which the respondent resides. Any proceedings under this chapter shall not preclude any other available civil or criminal remedies. A party filing a petition under this chapter may do so without payment of any filing fee. There shall be no minimum residence requirements for the filing of a petition under this chapter. All matters filed under this chapter, as well as any documents submitted in conjunction with proceedings under this chapter, shall be maintained as confidential or non-public by the superior court.

### **§ 8-8.3-3. Contents of petition**

- (a)** A petition for an extreme risk protection order shall be filed only by a law enforcement agency.
- (b)** A petitioner may file a petition with the court requesting an extreme risk protection order that shall enjoin the respondent from having in his or her possession, custody, or control any firearms and shall further enjoin the respondent from purchasing, receiving, or attempting to purchase or receive, any firearms while the order is in effect. The petitioner shall concurrently file a sworn affidavit for a search warrant pursuant to chapter 5 of title 12 for the search of any firearms in the possession, custody, or control of the respondent.
- (c)** A petitioner shall file a petition upon receipt of credible information that the respondent poses a significant danger of causing imminent personal injury to self or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm.
- (d)** A petition must state the specific statements, actions, or facts that support the belief that the respondent poses a significant danger of causing imminent personal injury to self or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm.
- (e)** A petition for an extreme risk protection order must be supported by a written affidavit signed by the petitioner under oath. The petitioner may produce sworn statements or testimony of other witnesses to support the petition.
- (f)** If the petitioner believes there are firearms in the respondent's current ownership, possession, custody, or control, the petition and search warrant affidavit shall identify the number, types, and locations of all such firearms, if known.
- (g)** A petitioner for an extreme risk protection order, at the time of the filing, shall identify all known restraining orders, orders of protection, and pending lawsuits, complaints, petitions, or actions pending, active, or filed within one year prior to the petition involving the respondent, including, but not limited to, an order entered pursuant to chapter 8.1 of title 8 or chapter 15 of title 15.

### **§ 8-8.3-4. Temporary orders – Proceedings**

- (a)** Upon the filing of a petition under this chapter, the court may enter a temporary order if the court finds there is probable cause from specific facts shown by the petition that the respondent poses a significant danger of causing imminent personal injury to self or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm before notice can be served and a hearing held.
- (b)** If the court finds probable cause under subsection (a) of this section and from the sworn affidavit, a search warrant shall issue pursuant to chapter 5 of title 12 for the search for any firearms in the possession, custody, or control of the respondent. The warrant shall be executed pursuant to chapter 5 of title 12.
- (c)** When the court is unavailable after the close of business, a petition and affidavit may be filed before any available superior court judge.
- (d)** Any order and warrant issued under this section, and any documentation in support of an order and warrant, shall be filed immediately with the clerk of the superior court. The filing shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter.

**(e)** A temporary extreme risk protection order must include:

**(1)** A statement of the grounds supporting the issuance of the order;

**(2)** The date and time the order was issued;

**(3)** A statement that the order shall continue until such time as a court considers the petition pursuant to § 8-8.3-5 at a hearing;

**(4)** The address of the court that issued the order and in which any responsive pleading should be filed;

**(5)** The date and time of the scheduled hearing;

**(6)** The following statement: “To the subject of this protection order: This order will continue until the hearing scheduled on the date and time noted above. If any of your firearms have not been seized by the petitioner, you are under an obligation to immediately contact the petitioner to arrange for the surrender of any other firearms that you own and/or are in your custody, control, or possession, that have not been seized. You must surrender to the petitioner all firearms that you own and/or are in your custody, control, or possession, and also immediately surrender to the licensing authority or the attorney general any concealed carry permit issued to you pursuant to § 11-47-11 or § 11-47-18. While this order is in effect, it is illegal for you to have any firearm in your possession, custody, or control or for you to purchase, receive, or attempt to purchase or receive any firearm. You may seek the advice of an attorney as to any matter connected with this order. If you believe you cannot afford an attorney, you are hereby referred to the public defender for an intake interview, and if eligible, the court shall appoint an attorney for you.”

**(7)** Any temporary extreme risk protection order issued pursuant to this section shall continue until the time of the hearing pursuant to § 8-8.3-5. If the court continues a hearing pursuant to § 8-8.3-5, the temporary order shall remain in effect until the next hearing date.

**(f)** The court shall schedule a hearing within fourteen (14) days of the issuance of a temporary extreme risk protection order to determine if a one-year extreme risk protection order should be issued under this chapter.

**(g)** A temporary extreme risk protection order shall be immediately personally served by the petitioner along with supporting documents that formed the basis of the order, the notice of hearing, and the petition for the one-year extreme protection order. Alternative service shall be in accordance with § 8-8.3-6. Service issued under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature. If timely personal service cannot be made, the court shall set a new hearing date and shall require additional attempts at obtaining personal service or permit alternative service as provided in this chapter.

**(h)** If the court declines to issue a temporary extreme risk protection order, the court shall state in writing the reasons for the denial.

#### **§ 8-8.3-5. Hearings on petition -- Grounds for issuance -- Contents of order**

**(a)** Upon hearing the matter, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing imminent personal injury to self or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm, the court shall issue a one-year extreme risk protection order. An extreme risk protection order issued by the court shall be for a fixed period of one year, at the expiration of which time the court may renew the extreme risk protection order as set forth in § 8-8.3-7.

**(b)** In determining whether grounds for an extreme risk protection order exist, the court may consider any or all of the following, including, but not limited to:

**(1)** A recent act or threat of violence by the respondent against self or others, regardless of whether the act or threat of violence involves a firearm;

**(2)** A pattern of acts or threats of violence by the respondent within the past twelve (12) months, including,

but not limited to, acts or threats of violence against self or others;

**(3)** The respondent's mental health history;

**(4)** Evidence of the respondent's abuse of controlled substances or alcohol;

**(5)** Previous violations by the respondent of any court order including, but not limited to, restraining orders, no-contact orders issued pursuant to chapter 29 of title 12, and protective orders issued pursuant to chapter 8.1 of title 8 or chapter 15 of title 15;

**(6)** Previous extreme risk protection orders issued against the respondent;

**(7)** The unlawful, threatening, or reckless use or brandishing of a firearm by the respondent, including, but not limited to, such act taken or displayed through social media;

**(8)** The respondent's ownership of, access to, or intent to possess firearms;

**(9)** The respondent's criminal history, including, but not limited to, arrests and convictions for felony offenses, crimes of violence as defined in § 11-47-2, violent misdemeanor offenses, crimes involving domestic violence as defined in § 12-29-2, and stalking;

**(10)** The history, use, attempted use, or threatened use of physical violence by the respondent against another person, or the respondent's history of stalking another person, or evidence of cruelty to animals by the respondent, including, but not limited to, evidence of violations or convictions pursuant to the provisions of chapter 1 of title 4; and

**(11)** Evidence of recent acquisition or attempts at acquisition of firearms by the respondent.

**(c)** In determining whether grounds for a one-year extreme risk protection order exist, the court may also consider any other relevant and credible evidence presented by the petitioner, respondent, and any witnesses they may produce.

**(d)** The court may continue a hearing under this section upon a showing of good cause, including, but not limited to, whether service was effectuated less than seven **(7)** days from the date of the scheduled hearing. If the court continues a hearing under this subsection in a matter in which a temporary extreme risk protection order has been issued under § 8-8.3-4, the temporary extreme risk protection order shall remain in effect until the next hearing date.

**(e)** During the hearing the court may consider whether a mental health evaluation or substance abuse evaluation is appropriate, and may recommend that the respondent seek the evaluation if appropriate.

**(f)** An extreme risk protection order must include:

**(1)** A statement of the grounds supporting the issuance of the order;

**(2)** The date and time the order was issued;

**(3)** The date and time the order expires;

**(4)** Information pertaining to any recommendation by the court for mental health and/or substance abuse evaluations, if applicable;

**(5)** The address of the court that issued the order and in which any responsive pleading should be filed; and

**(6)** The following statement: "To the subject of this protection order: This order will continue until the date and time noted above unless terminated earlier by court order. If any of your firearms have not been seized by the petitioner, you are under an obligation to immediately contact the petitioner to arrange for the surrender of any other firearms that you own and/or are in your custody, control, or possession, that have not been seized. You must surrender to the petitioner all firearms that you own and/or are in your custody, control, or

possession, and also immediately surrender to the licensing authority or the attorney general any concealed carry permit issued to you pursuant to § 11-47-11 or § 11-47-18. While this order is in effect, it is illegal for you to have any firearm in your possession, custody, or control or for you to purchase, receive, or attempt to purchase or receive any firearm. You have the right to request one hearing to terminate this order within each twelve-month (12) period that this order, or any renewal order, is in effect. You may seek the advice of an attorney as to any matter connected with this order. If you believe you cannot afford an attorney, you are hereby referred to the public defender for an intake interview, and if eligible, the court shall appoint an attorney for you.”

**(g)** Upon the issuance of a one-year extreme risk protection order, the court shall inform the respondent that he or she is entitled to request termination of the order in the manner prescribed by § 8-8.3-7. The court shall provide the respondent with a form to request a termination hearing. The court shall also schedule a review hearing of the matter, which hearing shall be scheduled within thirty (30) calendar days before the date the one-year extreme risk protection order is set to expire.

**(h)** If the court declines to issue a one-year extreme risk protection order, the court shall state in writing the particular reasons for the court’s denial and shall also order the return of weapons to the respondent. The return should be effectuated consistent with the provisions of § 8-8.3-8.

#### **§ 8-8.3-6. Service of one-year extreme risk protection orders**

**(a)** A one-year extreme risk protection order issued under this chapter shall be personally served upon the respondent by the division of sheriffs. Provided, the division of sheriffs may request the assistance of the state police with the service as needed. If the division of sheriffs cannot complete service of the one-year extreme risk protection order upon the respondent within seven (7) days of the order’s issuance, the deputy sheriff shall notify the petitioner and the court. The petitioner shall then seek an order for alternative service pursuant to this chapter.

**(b)** If the court determines that after diligent effort, personal service on the respondent with or of any documents as required pursuant to this chapter cannot be made, then the court may order an alternative method of service designed to give reasonable notice to the respondent. Alternative service may include, but shall not be limited to: service by certified and regular mail at respondent’s last-known address or place of employment; leaving copies at the respondent’s dwelling or usual place of abode with a person of suitable age and discretion residing therein; or by affixing a summons to the door of the respondent’s residence. Provided, due to the nature of these proceedings, notice shall not be given by publication in a newspaper.

**(c)** In the event personal service of any order, notice, or other document issued pursuant to this chapter cannot be obtained, the court shall have discretion to continue any extreme risk protection order, and hearing thereon, as the court deems appropriate, until service can be made upon the respondent.

**(d)** Upon receipt of alternative service of any order, notice, or other document issued pursuant to this chapter, the respondent shall comply with the order, notice, or document as if personally served.

#### **§ 8-8.3-7. Termination -- Expiration -- Renewal of orders**

**(a)** Termination of order. The respondent may submit a single written request for a hearing to terminate a one-year extreme risk protection order issued under this chapter within the twelve-month (12) period that the order, or any renewal order, is in effect.

**(1)** Upon receipt of the request for a hearing to terminate a one-year extreme risk protection order, the court shall set a date for a hearing. The respondent shall cause a copy of the notice of the request to be served on the original petitioner. A hearing on this motion shall be scheduled not later than thirty (30) days from the date of filing the request.

**(2)** At a hearing to terminate a one-year extreme risk protection order prior to its scheduled date of expiration,

the respondent shall have the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger of causing imminent personal injury to self or others by having a firearm in his or her custody or control, or by purchasing, possessing, or receiving a firearm. The court may consider any relevant evidence, including evidence of the considerations enumerated in § 8-8.3-5. In addition, the court may consider whether the respondent complied with the court's recommendation that the respondent undergo a mental health and/or substance abuse evaluation.

**(3)** If the court finds after the hearing that the respondent has met his or her burden by clear and convincing evidence, the court shall terminate the one-year order and order return of the firearms consistent with the provisions of § 8-8.3-8.

**(b)** Notice of impending expiration. The original petitioner shall notify in writing all interested parties, including but not limited to family or household members of the respondent, of the impending expiration of any one-year extreme risk protection order within fourteen (14) calendar days before the date the order expires.

**(c)** Motion for renewal of order. The petitioner may by motion request a renewal of a one-year extreme risk protection order at any time within fourteen (14) calendar days before the date the order expires.

**(1)** Upon receipt of a motion to renew a one-year extreme risk protection order, the court shall order that a hearing be held not later than fourteen (14) days from the date the motion is filed. The respondent shall be personally served with notice of the motion, unless otherwise ordered by the court.

**(2)** In determining whether to renew a one-year extreme risk protection order under this section, the court shall consider all relevant evidence presented by the petitioner and follow the same procedures provided in § 8-8.3-5. The court may also consider whether the respondent complied with any court recommendation for a mental health and/or substance abuse evaluation.

**(3)** If the court finds by clear and convincing evidence that the requirements for issuance of a one-year extreme risk protection order as provided in § 8-8.3-5 continue to be met, the court shall renew the order for another year. Further, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion and affidavit stating that there has been no material change in relevant circumstances since entry of the order that is subject to renewal.

**(4)** A renewal of a one-year extreme risk protection order shall be for another fixed period of one year, subject to termination as provided in subsection (a) of this section or future renewal by order of the court pursuant to this subsection.

#### **§ 8-8.3-8. Firearms return – Disposal**

**(a)** Any firearm seized or surrendered in accordance with this chapter shall be returned to the respondent upon his or her request, within ten (10) days, when:

**(1)** The respondent produces documentation issued by the court indicating that any extreme risk protective order issued pursuant to this chapter has expired, terminated, or has not been renewed. Respondent shall not be required to acquire any additional court order granting the return of seized or surrendered firearms; and

**(2)** The law enforcement agency in possession of the firearms conducts a national criminal records check and determines that the respondent is not otherwise prohibited from possessing a firearm under state or federal law.

**(b)** A law enforcement agency shall, if requested by the court or the petitioner, provide prior notice to any interested party, including but not limited to family or household members of the respondent, of the impending return of a firearm to a respondent, in the manner provided in § 8-8.3-6.

**(c)** Upon written request of the respondent, any law enforcement agency storing firearm(s) shall transfer possession of the firearm(s) to a federally licensed firearms dealer, who or that may be designated by the respondent if so desired.

**(1)** The respondent may instruct the federally licensed firearms dealer designated by the respondent where applicable to sell the firearm(s) or to transfer ownership or possession in accordance with state and federal law, to a qualified named individual who is not a member of the person's dwelling house, and who is not prohibited from possessing firearms under state or federal law. The owner of any firearm(s) sold shall receive any financial value received from its sale, less the cost associated with taking possession of, storing, and transferring of the firearm(s).

**(2)** Any individual to whom possession of a firearm(s) is transferred pursuant to this subsection shall be prohibited from transferring or returning any firearm(s) to the respondent while the extreme risk protective order is in effect and shall be informed of this prohibition. Any knowing violation of this subsection is a felony that shall be punishable by imprisonment for a term of not more than five (5) years, or by a fine of not more than one thousand dollars (\$ 1,000), or both.

**(3)** An individual to whom possession of a firearm(s) is transferred pursuant to this subsection shall only return a firearm(s) to the respondent if the respondent provides court documentation that the extreme risk protection order issued pursuant to this chapter has expired or been withdrawn or terminated and has not been renewed.

**(d)** The Rhode Island state police are authorized to develop rules and procedures pertaining to the storage and return of firearms seized by or surrendered to the local law enforcement agency or the state police pursuant to the provisions of this chapter or chapter 8.1 of title 8. The state police may consult with the Rhode Island Police Chiefs' Association in developing rules and procedures to effectuate this section.

#### **§ 8-8.3-9. Reporting of orders**

**(a)** The clerk of the court shall enter any one-year extreme risk protection order or temporary extreme risk protection order issued pursuant to this chapter into a statewide judicial information system on the same day the order is issued.

**(b)** The clerk of the court shall forward a copy of any order issued, renewed, or terminated under this chapter the same day the order is issued to the appropriate law enforcement agency specified in the order and the attorney general.

**(1)** Upon receipt of the copy of an extreme risk protection order, the attorney general shall enter the order into:

**(i)** The National Instant Criminal Background Check System, also known as the NICS database;

**(ii)** All federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and

**(iii)** All computer-based criminal intelligence information systems and databases available in this state used by law enforcement agencies.

**(2)** The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems upon notice that they have been terminated or expired. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order shall be fully enforceable in any city or town in the state.

**(c)** The issuing court shall, within three (3) business days after issuance of a one-year extreme risk protection order or temporary extreme risk protection order, forward a copy of the respondent's driver's license, or comparable information, along with the date of order issuance, to the attorney general and the appropriate licensing authority. Upon receipt of the information, the attorney general or the appropriate licensing

authority shall determine if the respondent has a concealed carry permit. If the respondent does have a concealed carry permit, the attorney general or the appropriate licensing authority shall immediately revoke the license.

(d) If any extreme risk protection order is terminated before its expiration date, the clerk of the court shall forward, on the same day, a copy of the termination order to the office of the attorney general and the petitioner. Upon receipt of the order, the attorney general shall promptly remove the order from any computer-based system into which it was entered pursuant to subsection (b) of this section.

#### **§ 8-8.3-10. Penalties**

(a) Any violation of any extreme risk protection order shall subject the violator to being found in contempt of court. The contempt order shall not be exclusive and shall not preclude any other available civil or criminal remedies.

(b) Any violation of an extreme risk protection order issued under this chapter of which the respondent has actual notice shall be a felony and, upon conviction, shall be punished by imprisonment for not more than ten (10) years, or a fine of not more than ten thousand dollars (\$ 10,000), or both.

(c) Filing a petition or providing information pursuant to this chapter knowing the information in or for such petition to be materially false, or with intent to harass the respondent, shall be a felony that shall be punished by imprisonment for not more than five (5) years, or a fine of not more than five thousand dollars (\$ 5,000), or both.

#### **§ 8-8.3-11. Liability**

Except as provided in §§ 8-8.3-8 and 8-8.3-10, this chapter does not impose criminal or civil liability on a law enforcement agency, law enforcement officer, or the attorney general or a member of that department, for acts or omissions related to obtaining any extreme risk protection order including, but not limited to, reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition under this chapter.

#### **§ 8-8.3-12. Required notice on orders -- Confidentiality of proceedings**

(a) Any extreme risk protection order form shall include, in a conspicuous location, notice of penalties resulting from violation of the order, and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written application."

(b) All filings, petitions, orders, warrants, affidavits, evidence, and any other document filed pursuant to this chapter shall be deemed confidential documents and shall not be available for public inspection or disclosure absent a court order. This section shall not prohibit the entry of orders into appropriate databases as required pursuant to § 8-8.3-9.

#### **§ 8-8.3-13. Appeal**

Any order under this chapter shall remain in effect during the pendency of an appeal to the supreme court unless the order is stayed by a justice of the supreme court.

#### **§ 8-8.3-14. Severability**

If any section of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the chapter and the application of the section to other persons or circumstances shall not be affected. The invalidity or unconstitutionality of any section or sections or part of any section or sections of this chapter shall not affect the validity of the remainder of this chapter and to this end the sections of this chapter are severable.



# Vermont

**Types of orders:** Temporary Ex Parte Extreme Risk Protection Order (ERPO), Final ERPO

**Citation:** Vt. Stat. Ann. tit. 13, §§ 4051 – 4062

## Highlighted Provisions

### Persons eligible to petition:

A State's Attorney or the Office of the Attorney General or a family or household member

### Standard of proof:

Temporary Ex Parte:

If Petitioner is State's Attorney or the Office of the Attorney General: preponderance of the evidence

If the Petitioner is family or household member: Clear and Convincing

Final: clear and convincing evidence

### Findings required:

Temporary: the respondent poses an **imminent** and extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control

Final: Must show that the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

### Duration of the order:

Temporary Ex Parte: up to 14 days until hearing date

(The prosecutor may voluntarily dismiss a motion at any time prior to the hearing if they determine that the respondent no longer poses an extreme risk)

Final: up to 6 months

### Service on respondent:

Extreme risk protection orders shall be served at the earliest possible time and shall take precedence over other summonses and orders and may be served by law enforcement.

Orders shall be served in a manner calculated to ensure the safety of the parties. Methods of service that include advance notification to the respondent shall not be used.

If respondent is present at a hearing and is given notice on the record, they are considered served.

### Notification of persons at risk:

Statute is silent.

### Filing fees:

No filing fee shall be required for an ERPO petition

### Renewal/Termination of the order:

Termination: respondent can move to terminate up to once within an order's effective period. The state has the burden of proving by clear and convincing evidence that respondent continues to pose a risk.

Renewal: a State's Attorney or the Office of the Attorney General can move to renew the order for another 6 months. The motion must be made at least 14 days and no more than 30 days before the order is to expire. The state has the burden of proving by clear and convincing evidence that respondent continues to pose a risk.

**Firearm prohibitions:**

Respondent is not allowed to purchase, possess, or receive a dangerous weapon, attempt to purchase, possess, or receive a dangerous weapon, or have a dangerous weapon in their custody or control.

**Firearm relinquishment process:**

Generally, respondent must immediately surrender all firearms to law enforcement or federally licensed firearms dealers once they are served with the order. The court may order the respondent to surrender the firearms to another third party unless the court finds that doing so would not adequately protect the safety of any person.

Law enforcement officers are authorized to collect firearms or make arrests as needed to enforce these orders.

**Firearm disposal process:**

If respondent fails to claim their firearms 90 days after a court order releasing them, they may be sold for fair market value.

**Limitations on liability:**

There will be no liability for any damage done to firearms while they are in law enforcement custody unless the damage was intentional or a result of recklessness or gross negligence.

**Return/transfer of firearms:**

Firearms can only be released with a court order.

Notwithstanding any other provision of this chapter:

(1) A dangerous weapon shall not be returned to the respondent if the respondent's possession of the weapon would be prohibited by state or federal law.

(2) A dangerous weapon shall not be taken into possession pursuant to this section if it is being or may be used as evidence in a pending criminal matter.

**Warrant authority:**

A warrant may be granted if necessary to enforce an order.

**Venue:**

The petition must be filed in the Family division of the Superior Court in the county where the law enforcement agency is located, the county where the respondent resides, or the county where the events giving rise to the petition occur.

However, emergency orders under section 4054 (emergency relief; temporary ex parte order) may be issued by a judge of the Criminal, Civil, or Family Division of the Superior Court in the county where the law enforcement agency is located, where the respondent resides, or where the events giving rise to the petition occur.

**Communications:**

Ex Parte: The Court Administrator has a duty to establish procedures to ensure access to relief after regular court hours or on weekends and holidays. The Court Administrator should also ensure that other courts know about the ERPO in relevant criminal proceedings.

**Penalties:**

A person violating an extreme risk protection order (besides criminal contempt) after being served shall be imprisoned for up to one year and/or fined up to \$1,000.

**Entry Registry/NCIC POF:**

Silent

**Others:**

Ex Parte: The court may issue an ex parte extreme risk protection order by telephone or by reliable electronic means if requested by the petitioner.

### § 4051. Definitions

As used in this subchapter:

- (1) “Court” means the Family Division of the Superior Court.
- (2) “Dangerous weapon” means an explosive or a firearm.
- (3) “Explosive” means dynamite, or any explosive compound of which nitroglycerin forms a part, or fulminate in bulk or dry condition, or blasting caps, or detonating fuses, or blasting powder or any other similar explosive. The term does not include a firearm or ammunition therefor or any components of ammunition for a firearm, including primers, smokeless powder, or black gunpowder.
- (4) “Federally licensed firearms dealer” means a licensed importer, licensed manufacturer, or licensed dealer required to conduct national instant criminal background checks under 18 U.S.C. § 922(t).
- (5) “Firearm” shall have the same meaning as in subsection 4017(d) of this title.
- (6) “Law enforcement agency” means the Vermont State Police, a municipal police department, or a sheriff’s department.
- (7) “Household members” means persons who are living together, are sharing occupancy of a dwelling, are engaged in a sexual relationship, or minors or adults who are dating. “Dating” means a social relationship of a romantic nature. Factors that the court may consider when determining whether a dating relationship exists include:
  - (A) the nature of the relationship;
  - (B) the length of time the relationship has existed; and
  - (C) the frequency of interaction between the parties.

### § 4052. Jurisdiction and venue

- (a) The Family Division of the Superior Court shall have jurisdiction over proceedings under this subchapter.
- (b) Emergency orders under section 4054 of this title may be issued by a judge of the Criminal, Civil, or Family Division of the Superior Court.
- (c) Proceedings under this chapter shall be commenced in the county where the law enforcement agency is located, the county where the respondent resides, or the county where the events giving rise to the petition occur.

### § 4053. Petition for extreme risk protection order

- (a) A State’s Attorney, the Office of the Attorney General, or a family or household member may file a petition requesting that the court issue an extreme risk protection order prohibiting a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person’s custody or control. The petitioner shall submit an affidavit in support of the petition.
- (b)
  - (1) Except as provided in section 4054 of this title, the court shall grant relief only after notice to the respondent and a hearing. The petitioner shall have the burden of proof by clear and convincing evidence.
  - (2) When a petition has been filed by a family or household member, the State’s Attorney of the county where the petition was filed shall be substituted as the plaintiff in the action upon the issuance of an

ex parte order under section 4054 of this title or at least seven days prior to the hearing for a petition filed under this section. Upon substitution of the State's Attorney as the plaintiff, the family or household member shall no longer be a party.

**(c)**

**(1)** A petition filed pursuant to this section shall allege that the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

**(2)**

**(A)** An extreme risk of harm to others may be shown by establishing that:

**(i)** the respondent has inflicted or attempted to inflict bodily harm on another; or

**(ii)** by his or her threats or actions the respondent has placed others in reasonable fear of physical harm to themselves; or

**(iii)** by his or her actions or inactions the respondent has presented a danger to persons in his or her care.

**(B)** An extreme risk of harm to himself or herself may be shown by establishing that the respondent has threatened or attempted suicide or serious bodily harm.

**(3)** The affidavit in support of the petition shall state:

**(A)** the specific facts supporting the allegations in the petition;

**(B)** any dangerous weapons the petitioner believes to be in the respondent's possession, custody, or control; and

**(C)** whether the petitioner knows of an existing order with respect to the respondent under 15 V.S.A. chapter 21 (abuse prevention orders) or 12 V.S.A. chapter 178 (orders against stalking or sexual assault).

**(d)**

**(1)** The court shall hold a hearing within 14 days after a petition is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the petition and any ex parte order issued under section 4054 of this title.

**(2)** If a petition is filed by a family or household member under this section, the court shall transmit a copy of the petition to the State's Attorney of the county where the petition was filed, along with all supporting documents and the notice of the initial status conference or hearing.

**(e)**

**(1)** The court shall grant the petition and issue an extreme risk protection order if it finds by clear and convincing evidence that the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

**(2)** An order issued under this subsection shall prohibit a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control for a period of up to six months. The order shall be signed by the judge and include the following provisions:

**(A)** A statement of the grounds for issuance of the order.

**(B)** The name and address of the court where any filings should be made, the names of the parties, the date of the petition, the date and time of the order, and the date and time the order expires.

**(C)** A description of how to appeal the order.

**(D)** A description of the requirements for relinquishment of dangerous weapons under section 4059 of this title.

**(E)** A description of how to request termination of the order under section 4055 of this title. The court shall include with the order a form for a motion to terminate the order.

**(F)** A statement directing the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of the firearm to release it to the owner upon expiration of the order.

**(G)** A statement in substantially the following form:

“To the subject of this protection order: This order shall be in effect until the date and time stated above. If you have not done so already, you are required to surrender all dangerous weapons in your custody, control, or possession to [insert name of law enforcement agency], a federally licensed firearms dealer, or a person approved by the court. While this order is in effect, you are not allowed to purchase, possess, or receive a dangerous weapon; attempt to purchase, possess, or receive a dangerous weapon; or have a dangerous weapon in your custody or control. You have the right to request one hearing to terminate this order during the period that this order is in effect, starting from the date of this order. You may seek the advice of an attorney regarding any matter connected with this order.”

**(f)** If the court denies a petition filed under this section, the court shall state the particular reasons for the denial in its decision.

**(g)** No filing fee shall be required for a petition filed under this section.

**(h)** Form petitions and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

**(i)** When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

**(j)** Every final order issued under this section shall bear the following language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

**(k)** Affidavit forms required pursuant to this section shall bear the following language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

#### **§ 4054. Emergency relief; temporary ex parte order**

**(a)**

**(1)** A State’s Attorney, the Office of the Attorney General, or a family or household member may file a motion requesting that the court issue an extreme risk protection order ex parte, without notice to the respondent. A law enforcement officer may notify the court that an ex parte extreme risk protection order is being requested pursuant to this section, but the court shall not issue the order until after the motion is submitted.

**(2)** The petitioner shall submit an affidavit in support of the motion alleging that the respondent poses an imminent and extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent’s custody or control. The affidavit shall state:

**(A)** the specific facts supporting the allegations in the motion, including the imminent danger posed by the respondent; and

**(B)** any dangerous weapons the petitioner believes to be in the respondent's possession, custody, or control.

**(b)**

**(1)**

**(A)** The court shall grant the motion and issue a temporary ex parte extreme risk protection order if it finds by a preponderance of the evidence, or by clear and convincing evidence if the petition was filed by a family or household member, that at the time the order is requested the respondent poses an imminent and extreme risk of causing harm to themselves or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title, and the court shall deliver a copy to the holding station.

**(B)** If a motion is filed by a family or household member under this section and the court has issued an ex parte order, the court shall transmit a copy of the motion to the State's Attorney of the county where the petition was filed, along with all supporting documents and the notice of the initial status conference or hearing.

**(2)**

**(A)** An extreme risk of harm to others may be shown by establishing that:

**(i)** the respondent has inflicted or attempted to inflict bodily harm on another; or

**(ii)** by his or her threats or actions the respondent has placed others in reasonable fear of physical harm to themselves; or

**(iii)** by his or her actions or inactions the respondent has presented a danger to persons in his or her care.

**(B)** An extreme risk of harm to himself or herself may be shown by establishing that the respondent has threatened or attempted suicide or serious bodily harm.

**(c)**

**(1)** Unless the petition is voluntarily dismissed pursuant to subdivision **(2)** of this subsection, the court shall hold a hearing within 14 days after the issuance of a temporary ex parte extreme risk protection order to determine if a final extreme risk protection order should be issued. If not voluntarily dismissed, the temporary ex parte extreme risk protection order shall expire when the court grants or denies a motion for an extreme risk protection order under section 4053 of this title.

**(2)** The prosecutor may voluntarily dismiss a motion filed under this section at any time prior to the hearing if the prosecutor determines that the respondent no longer poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. If the prosecutor voluntarily dismisses the motion pursuant to this subdivision, the court shall vacate the temporary ex parte extreme risk protection order and direct the person in possession of the dangerous weapon to return it to the respondent consistent with section 4059 of this title.

**(d)**

**(1)** An order issued under this section shall prohibit a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control for a period of up to 14 days. The order shall be in writing and signed by the judge and shall include the following provisions:

**(A)** A statement of the grounds for issuance of the order.

**(B)** The name and address of the court where any filings should be made, the names of the parties, the date

of the petition, the date and time of the order, and the date and time the order expires.

**(C)** The date and time of the hearing when the respondent may appear to contest the order before the court. This opportunity to contest shall be scheduled as soon as reasonably possible, which in no event shall be more than 14 days after the date of issuance of the order.

**(D)** A description of the requirements for relinquishment of dangerous weapons under section 4059 of this title.

**(E)** A statement in substantially the following form:

**(2)**

**(A)** The court may issue an ex parte extreme risk protection order by telephone or by reliable electronic means pursuant to this subdivision if requested by the petitioner.

**(B)** Upon receipt of a request for electronic issuance of an ex parte extreme risk protection order, the judicial officer shall inform the petitioner that a signed or unsigned motion and affidavit may be submitted electronically. The affidavit shall be sworn to or affirmed by administration of the oath over the telephone to the petitioner by the judicial officer. The administration of the oath need not be made part of the affidavit or recorded, but the judicial officer shall note on the affidavit that the oath was administered.

**(C)** The judicial officer shall decide whether to grant or deny the motion and issue the order solely on the basis of the contents of the motion and the affidavit or affidavits provided. If the motion is granted, the judicial officer shall immediately sign the original order, enter on its face the exact date and time it is issued, and transmit a copy to the petitioner by reliable electronic means. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title.

**(D)** On or before the next business day after the order is issued:

**(i)** the petitioner shall file the original motion and affidavit with the court; and

**(ii)** the judicial officer shall file the signed order, the motion, and the affidavit with the clerk. The clerk shall enter the documents on the docket immediately after filing.

**(e)** Form motions and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

**(f)** Every order issued under this section shall bear the following language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

**(g)** Affidavit forms required pursuant to this section shall bear the following language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

**(h)** If the court denies a petition filed under this section, the court shall state the particular reasons for the denial in its decision.

#### **§ 4055. Termination and renewal motions**

**(a)**

**(1)** The respondent may file a motion to terminate an extreme risk protection order issued under section 4053 of this title or an order renewed under subsection **(b)** of this section. A motion to terminate shall not be filed more than once during the effective period of the order. The State shall have the burden of proof by clear and convincing evidence.

**(2)** The court shall grant the motion and terminate the extreme risk protection order unless it finds by clear and convincing evidence that the respondent continues to pose an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

**(b)**

**(1)** A State's Attorney or the Office of the Attorney General may file a motion requesting that the court renew an extreme risk protection order issued under this section or section 4053 of this title for an additional period of up to six months. The motion shall be accompanied by an affidavit and shall be filed not more than 30 days and not less than 14 days before the expiration date of the order. The motion and affidavit shall comply with the requirements of subsection 4053(c) of this title, and the moving party shall have the burden of proof by clear and convincing evidence.

**(2)** The court shall grant the motion and renew the extreme risk protection order for an additional period of up to six months if it finds by clear and convincing evidence that the respondent continues to pose an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The order shall comply with the requirements of subdivision 4053(e)(2) and subsections 4053(j) and (k) of this title.

**(c)** The court shall hold a hearing within 14 days after a motion to terminate or a motion to renew is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the motion.

**(d)** If the court denies a motion filed under this section, the court shall state the particular reasons for the denial in its decision.

**(e)** Form termination and form renewal motions shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

**(f)** When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

**§ 4056. Service**

**(a)** A petition, ex parte temporary order, or final order issued under this subchapter shall be served in accordance with the Vermont Rules of Civil Procedure and may be served by any law enforcement officer. A court that issues an order under this chapter during court hours shall promptly transmit the order electronically or by other means to a law enforcement agency for service, and shall deliver a copy to the holding station.

**(b)** A respondent who attends a hearing held under section 4053, 4054, or 4055 of this title at which a temporary or final order under this subchapter is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served. A respondent notified by the court on the record shall be required to adhere immediately to the provisions of the order. However, even when the court has previously notified the respondent of the order, the court shall transmit the order for additional service by a law enforcement agency.

**(c)** Extreme risk protection orders shall be served by the law enforcement agency at the earliest possible time and shall take precedence over other summonses and orders. Orders shall be served in a manner calculated to ensure the safety of the parties. Methods of service that include advance notification to the respondent shall not be used. The person making service shall file a return of service with the court stating the date, time, and place at which the order was delivered personally to the respondent.

**(d)** If service of a notice of hearing issued under section 4053 or 4055 of this title cannot be made before the scheduled hearing, the court shall continue the hearing and extend the terms of the order upon request of the petitioner for such additional time as it deems necessary to achieve service on the respondent.



## § 4057. Procedure

**(a)** Except as otherwise specified, proceedings commenced under this subchapter shall be in accordance with the Vermont Rules for Family Proceedings and shall be in addition to any other available civil or criminal remedies.

**(b)** The Court Administrator shall establish procedures to ensure access to relief after regular court hours or on weekends and holidays. The Court Administrator is authorized to contract with public or private agencies to assist petitioners to seek relief and to gain access to Superior Courts. Law enforcement agencies shall assist in carrying out the intent of this section.

**(c)** The Court Administrator shall ensure that the Superior Court has procedures in place so that the contents of orders and pendency of other proceedings can be known to all courts for cases in which an extreme risk protection order proceeding is related to a criminal proceeding.

**(d)**

**(1)** For purposes of a petition filed pursuant to this subchapter, a health care provider may notify a law enforcement officer when the provider believes in good faith that disclosure of the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

**(2)** As used in this subsection:

**(A)** “Health care provider” has the same meaning as in 18 V.S.A. § 9402.

**(B)** “Necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public” includes circumstances when the health care provider reasonably believes that the patient poses an extreme risk of causing harm to themselves or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the patient’s custody or control. § 4058. Enforcement; criminal penalties

## § 4058. Enforcement; criminal penalties.

**(a)** Law enforcement officers are authorized to enforce orders issued under this chapter. Enforcement may include collecting and disposing of dangerous weapons pursuant to section 4059 of this title and making an arrest in accordance with the provisions of Rule 3 of the Vermont Rules of Criminal Procedure.

**(b)**

**(1)** A person who intentionally commits an act prohibited by a court or fails to perform an act ordered by a court, in violation of an extreme risk protection order issued pursuant to section 4053, 4054, or 4055 of this title, after the person has been served with notice of the contents of the order as provided for in this subchapter, shall be imprisoned not more than one year or fined not more than \$ 1,000.00, or both.

**(2)** A person who files a petition for an extreme risk protection order under this subchapter, or who submits an affidavit accompanying the petition, knowing that information in the petition or the affidavit is false, or that the petition or affidavit is submitted with the intent to harass the respondent, shall be imprisoned for not more than one year or fined not more than \$ 1,000.00, or both.

**(c)** In addition to the provisions of subsections **(a)** and **(b)** of this section, violation of an order issued under this subchapter may be prosecuted as criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure. The prosecution for criminal contempt may be initiated by the State’s Attorney in the county in which the violation occurred. The maximum penalty that may be imposed under this subsection shall be a fine of \$ 1,000.00 or imprisonment for six months, or both. A sentence of imprisonment upon conviction for criminal contempt may be stayed, in the discretion of the court, pending the expiration of the time allowed for filing notice of appeal or pending appeal if any appeal is taken.

## § 4059. Relinquishment, storage, and return of dangerous weapons

**(a)** A person who is required to relinquish a dangerous weapon other than a firearm in the person's possession, custody, or control by an extreme risk protection order issued under section 4053, 4054, or 4055 of this title shall upon service of the order immediately relinquish the dangerous weapon to a cooperating law enforcement agency. The law enforcement agency shall transfer the weapon to the Bureau of Alcohol, Tobacco, Firearms and Explosives for proper disposition.

### **(b)**

**(1)** A person who is required to relinquish a firearm in the person's possession, custody, or control by an extreme risk protection order issued under section 4053, 4054, or 4055 of this title shall, unless the court orders an alternative relinquishment pursuant to subdivision (2) of this subsection, upon service of the order immediately relinquish the firearm to a cooperating law enforcement agency or an approved federally licensed firearms dealer.

### **(2)**

**(A)** The court may order that the person relinquish a firearm to a person other than a cooperating law enforcement agency or an approved federally licensed firearms dealer unless the court finds that relinquishment to the other person will not adequately protect the safety of any person.

**(B)** A person to whom a firearm is relinquished pursuant to subdivision (A) of this subdivision (2) shall execute an affidavit on a form approved by the Court Administrator stating that the person:

**(i)** acknowledges receipt of the firearm;

**(ii)** assumes responsibility for storage of the firearm until further order of the court and specifies the manner in which he or she will provide secure storage;

**(iii)** is not prohibited from owning or possessing firearms under State or federal law; and

**(iv)** understands the obligations and requirements of the court order, including the potential for the person to be subject to civil contempt proceedings pursuant to subdivision (C) of this subdivision (2) if the person permits the firearm to be possessed, accessed, or used by the person who relinquished the item or by any other person not authorized by law to do so.

**(C)** A person to whom a firearm is relinquished pursuant to subdivision (A) of this subdivision (2) shall be subject to civil contempt proceedings under 12 V.S.A. chapter 5 if the person permits the firearm to be possessed, accessed, or used by the person who relinquished the item or by any other person not authorized by law to do so. In the event that the person required to relinquish the firearm or any other person not authorized by law to possess the relinquished item obtains access to, possession of, or use of a relinquished item, all relinquished items shall be immediately transferred to the possession of a law enforcement agency or approved federally licensed firearms dealer pursuant to subdivision (b)(1) of this section.

**(c)** A law enforcement agency or an approved federally licensed firearms dealer that takes possession of a firearm pursuant to subdivision (b)(1) of this section shall photograph, catalogue, and store the item in accordance with standards and guidelines established by the Department of Public Safety pursuant to 20 V.S.A. § 2307(i)(3).

**(d)** Nothing in this section shall be construed to prohibit the lawful sale of firearms or other items.

**(e)** An extreme risk protection order issued pursuant to section 4053 of this title or renewed pursuant to section 4055 of this title shall direct the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of a firearm under subsection (b) of this section to release it to the owner upon

expiration of the order.

**(f)**

**(1)** A law enforcement agency, an approved federally licensed firearms dealer, or any other person who takes possession of a firearm for storage purposes pursuant to this section shall not release it to the owner without a court order unless the firearm is to be sold pursuant to subdivision (2)(A) of this subsection. If a court orders the release of a firearm stored under this section, the law enforcement agency or firearms dealer in possession of the firearm shall make it available to the owner within three business days after receipt of the order and in a manner consistent with federal law.

**(2)**

**(A)**

**(i)** If the owner fails to retrieve the firearm within 90 days after the court order releasing it, the firearm may be sold for fair market value. Title to the firearm shall pass to the law enforcement agency or firearms dealer for the purpose of transferring ownership, except that the Vermont State Police shall follow the procedure described in 20 V.S.A. § 2305.

**(ii)** The law enforcement agency or firearms dealer shall make a reasonable effort to notify the owner of the sale before it occurs. In no event shall the sale occur until after the court issues a final extreme risk protection order pursuant to section 4053 of this title.

**(iii)** As used in this subdivision (2)(A), “reasonable effort” shall mean notice shall be served as provided for by Rule 4 of the Vermont Rules of Civil Procedure.

**(B)** Proceeds from the sale of a firearm pursuant to subdivision (A) of this subdivision (2) shall be apportioned as follows:

**(i)** associated costs, including the costs of sale and of locating and serving the owner, shall be paid to the law enforcement agency or firearms dealer that incurred the cost; and

**(ii)** any proceeds remaining after payment is made to the law enforcement agency or firearms dealer pursuant to subdivision (i) of this subdivision (2)(B) shall be paid to the original owner.

**(g)** A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of a firearm stored or transported pursuant to this section. This subsection shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

**(h)** This section shall be implemented consistent with the standards and guidelines established by the Department of Public Safety under 20 V.S.A. § 2307(i).

**(i)** Notwithstanding any other provision of this chapter:

**(1)** A dangerous weapon shall not be returned to the respondent if the respondent’s possession of the weapon would be prohibited by state or federal law.

**(2)** A dangerous weapon shall not be taken into possession pursuant to this section if it is being or may be used as evidence in a pending criminal matter.

#### **§ 4060. Appeals**

An extreme risk protection order issued by the court under section 4053 or 4055 of this title shall be treated as a final order for the purposes of appeal. Appeal may be taken by either party to the Supreme Court under the Vermont Rules of Appellate Procedure, and the appeal shall be determined forthwith.

### **§ 4061. Effect on other laws**

This chapter shall not be construed to prevent a court from prohibiting a person from possessing firearms under any other provision of law.

### **§ 4062. Annual reporting; Office of Court Administrator and Agency of Human Services**

**(a)** On or before September 1, 2022 and annually thereafter, the Court Administrator, with the assistance of the Agency of Human Services, shall report data on the use of extreme risk protection orders during the previous year to the Senate and House Committees on Judiciary.

**(b)** The reports required by this section shall include the following data for the previous year:

**(1)** the number of extreme risk protection order petitions filed and the number of orders issued;

**(2)** geographical data indicating the county where the petition was filed; and

**(3)** follow-up information describing whether the order was renewed or terminated pursuant to section 4055 of this title and whether the subject of the order was charged with violating it under section 4058 of this title.

**(c)** The Agency of Human Services shall include in the reports required by this section an analysis of the impact of extreme risk prevention orders on Vermont suicide rates, including any relevant data relied on or utilized by the Agency for purposes of providing the information required by 2017 Acts and Resolves No. 34, An act relating to evaluation of suicide profiles.

# Virginia

**Types of Orders:** Emergency Substantial Risk Order, Substantial Risk Order

**Citation:** Va. Code Ann. §§ 19.2-152.13 — 19.2-152.17

## Highlighted Provisions

### **Persons eligible to petition:**

An attorney for the Commonwealth or a law-enforcement officer

### **Standard of proof:**

Emergency: probable cause

Final ERPO: clear and convincing evidence

### **Findings required:**

Persons poses a substantial risk of personal injury to himself or others in the near future by such person's possession or acquisition of a firearm

### **Duration of the order:**

Emergency order: An emergency substantial risk order issued pursuant to this section shall expire at 11:59 p.m. on the fourteenth day following issuance of the order. (If the expiration occurs when the issuing circuit court is not in session, the order will be extended until 11:59 pm on the next day that the circuit court is in session)

The emergency order may be extended for up to 14 days if the person fails to appear at the hearing because s/he was not personally served with notice of the hearing, or if personally served was incarcerated and not transported to the hearing

Final Order: The substantial risk order may be issued for a specified period of time up to a maximum of 180 days. The order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the 180-day period if no date is specified.

### **Service on respondent:**

Emergency Order: **(1)** if ordered by the circuit court, the clerk shall forthwith forward the order to primary law-enforcement agency for service; **(2)** if ordered by other courts and magistrate, the court/ magistrate shall forthwith the order to Virginia Criminal Information Network (VCIN) maintained by the State Police, which then shall forward the order to primary law enforcement agency for service.

Upon service, the servicing agency shall enter the date and time of service and other appropriate information required into the VCIN and make return to the court with a written inventory of all firearms relinquished voluntarily by the respondent.

### **Notification of persons at risk:**

Statute is silent

### **Filing fees:**

Statute is silent

### **Firearm prohibitions:**

Such order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of the order

### **Firearm disposal process:**

A firearm taken into custody pursuant to pursuant to § 19.2-152.13 (emergency substantial risk order) or 19.2-152.14 (substantial risk order) and held by a law-enforcement agency may be disposed of

in accordance with the provisions of § 15.2-1721 (disposal of unclaimed firearms or other weapons in possession of sheriff or police.) if **(i)** the person from whom the firearm was taken provides written authorization for such disposal or **(ii)** the firearm remains in the possession of the agency more than 120 days after such person is no longer subject to an emergency substantial risk order or substantial and such person has not submitted a request for the return of the firearm.

Va. Code Ann. § 15.2-1721

Any locality may destroy unclaimed firearms and other weapons which have been in the possession of law-enforcement agencies for a period of more than 120 days.

**Return/transfer of firearms:**

Any firearm taken into custody and held by a law-enforcement agency shall be returned upon a court order or the expiration/dissolution of emergency substantial risk order/substantial risk order.

The agency shall return the firearm to the respondent within five days of receiving a written request.

Law-enforcement agency holding the firearm shall confirm that such person is no longer subject to an emergency substantial risk order or substantial risk order

**Renewal/Termination:**

The court may extend the order for a period not longer than 180 days if the court finds by clear and convincing evidence that the person continues to pose a substantial risk of personal injury to himself or to other individuals in the near future by such person's possession or acquisition of a firearm at the time the request for an extension is made. The extension of the order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the 180-day period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued. The person who is subject to the order may file a motion to dissolve the order one time during the duration of the order; however, such motion may not be filed earlier than 30 days from the date the order was issued.

Transfer: Any person whose firearm has been voluntarily relinquished pursuant to § 19.2-152.13 (emergency substantial risk order), or such person's legal representative, may transfer the firearm to another individual 21 years of age or older who is not otherwise prohibited by law from possessing such firearm, provided that:

1. The person subject to the order and the transferee appear at the hearing;
2. At the hearing, the attorney for the Commonwealth advises the court that a law-enforcement agency has determined that the transferee is not prohibited from possessing or transporting a firearm;
3. The transferee does not reside with the person subject to the order;
4. The court informs the transferee of the requirements and penalties under § 18.2-308.2:1; and
5. The court, after considering all relevant factors and any evidence or testimony from the person subject to the order, approves the transfer as the court deems necessary.

The law-enforcement agency holding the firearm shall deliver the firearm to the transferee within five days after receiving the court's approval of the transfer.

**Limitation on Liabilities:**

An attorney for the Commonwealth or a law-enforcement officer shall be immune from civil liability for any act or omission related to petitioning or declining to petition for a substantial risk order.

Any law-enforcement agency or law-enforcement officer that takes into custody, stores, possesses, or transports a firearm or by a search warrant for a person who has failed to voluntarily relinquish his firearm, shall be immune from civil or criminal liability for any damage to or deterioration, loss, or theft of such firearm.

Nothing in this chapter precludes a law-enforcement officer from conducting a search for a

firearm or removing a firearm from a person under any other lawful authority.

**Warrant authority:**

Emergency Order: A law-enforcement officer may obtain a search warrant to search for any firearms from such person if such law-enforcement officer has reason to believe that such person has not relinquished all firearms in his possession

**Venue:**

The substantial risk order shall be heard by the circuit court for the jurisdiction where the emergency order was issued. Otherwise, statute is silent.

**Penalties:**

(For complainant) Any person who knowingly and willfully makes materially false statements or representations to a law-enforcement officer or attorney for the Commonwealth during investigation is guilty of a Class 1 misdemeanor.

**Entry Registry/NCIC POF:**

Enter and transfer electronically to the Virginia Criminal Information Network (VCIN) established and maintained by the Department of State Police (Department)

## Statutes

### § 19.2-152.13. Emergency substantial risk order

**A.** Upon the petition of an attorney for the Commonwealth or a law-enforcement officer, a judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate, upon a finding that there is probable cause to believe that a person poses a substantial risk of personal injury to himself or others in the near future by such person's possession or acquisition of a firearm, shall issue an ex parte emergency substantial risk order. Such order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of the order. In determining whether probable cause for the issuance of an order exists, the judge or magistrate shall consider any relevant evidence, including any recent act of violence, force, or threat as defined in § 19.2-152.7:1 by such person directed toward another person or toward himself. No petition shall be filed unless an independent investigation has been conducted by law enforcement that determines that grounds for the petition exist. The order shall contain a statement (i) informing the person who is subject to the order of the requirements and penalties under § 18.2-308.1:6, including that it is unlawful for such person to purchase, possess, or transport a firearm for the duration of the order and that such person is required to surrender his concealed handgun permit if he possesses such permit, and (ii) advising such person to voluntarily relinquish any firearm within his custody to the law-enforcement agency that serves the order.

**B.** The petition for an emergency substantial risk order shall be made under oath and shall be supported by an affidavit.

**C.** Upon service of an emergency substantial risk order, the person who is subject to the order shall be given the opportunity to voluntarily relinquish any firearm in his possession. The law-enforcement agency that executed the emergency substantial risk order shall take custody of all firearms that are voluntarily relinquished by such person. The law-enforcement agency that takes into custody a firearm pursuant to the order shall prepare a written receipt containing the name of the person who is subject to the order and the manufacturer, model, condition, and serial number of the firearm and shall provide a copy thereof to such person. Nothing in this subsection precludes a law-enforcement officer from later obtaining a search warrant for any firearms if the law-enforcement officer has reason to believe that the person who is subject to an emergency substantial risk order has not relinquished all firearms in his possession.

**D.** An emergency substantial risk order issued pursuant to this section shall expire at 11:59 p.m. on the fourteenth day following issuance of the order. If the expiration occurs on a day that the circuit court for the jurisdiction where the order was issued is not in session, the order shall be extended until 11:59 p.m. on the next day that the circuit court is in session. The person who is subject to the order may at any time file with the circuit court a motion to dissolve the order.

**E.** An emergency substantial risk order issued pursuant to this section is effective upon personal service on the person who is subject to the order. The order shall be served forthwith after issuance. A copy of the order, petition, and supporting affidavit shall be given to the person who is subject to the order together with a notice informing the person that he has a right to a hearing under § 19.2-152.14 and may be represented by counsel at the hearing.

**F.** The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the emergency substantial risk order was issued, enter and transfer electronically to the Virginia Criminal Information Network (VCIN) established and maintained by the Department of State Police (Department) pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 the identifying information of the person who is subject to the order provided to the court or magistrate. A copy of an order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department into the VCIN, and the order shall be served forthwith upon the person who is subject to the order. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the identifying information of the person who is subject to the order provided to the court to the primary law-enforcement agency providing service and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department into the VCIN and the order shall be served forthwith upon the person who is subject to the order. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the VCIN and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested and forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the dissolution or modification order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department into the VCIN and the order shall be served forthwith.

**G.** The law-enforcement agency that serves the emergency substantial risk order shall make due return to the circuit court, which shall be accompanied by a written inventory of all firearms relinquished.

**H.** Proceedings in which an emergency substantial risk order is sought pursuant to this section shall be commenced where the person who is subject to the order **(i)** has his principal residence or **(ii)** has engaged in any conduct upon which the petition for the emergency substantial risk order is based.

**I.** A proceeding for a substantial risk order shall be a separate civil legal proceeding subject to the same rules as civil proceedings.

#### **§ 19.2-152.14. Substantial risk order**

**A.** Not later than 14 days after the issuance of an emergency substantial risk order pursuant to § 19.2-152.13, the circuit court for the jurisdiction where the order was issued shall hold a hearing to determine whether a substantial risk order should be entered. The attorney for the Commonwealth for the jurisdiction that issued the emergency substantial risk order shall represent the interests of the Commonwealth. Notice of the hearing shall be given to the person subject to the emergency substantial risk order and the attorney for the Commonwealth. Upon motion of the respondent and for good cause shown, the court may continue the hearing, provided that the order shall remain in effect until the hearing. The Commonwealth shall have the



burden of proving all material facts by clear and convincing evidence. If the court finds by clear and convincing evidence that the person poses a substantial risk of personal injury to himself or to other individuals in the near future by such person's possession or acquisition of a firearm, the court shall issue a substantial risk order. Such order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of the order. In determining whether clear and convincing evidence for the issuance of an order exists, the judge shall consider any relevant evidence including any recent act of violence, force, or threat as defined in § 19.2-152.7:1 by such person directed toward another person or toward himself. The order shall contain a statement (i) informing the person who is subject to the order of the requirements and penalties under § 18.2-308.1:6, including that it is unlawful for such person to purchase, possess, or transport a firearm for the duration of the order and that such person is required to surrender his concealed handgun permit if he possesses such permit, and (ii) advising such person to voluntarily relinquish any firearm that has not been taken into custody to the law-enforcement agency that served the emergency substantial risk order.

**B.** If the court issues a substantial risk order pursuant to subsection A, the court shall (i) order that any firearm that was previously relinquished pursuant to § 19.2-152.13 from the person who is subject to the substantial risk order continue to be held by the agency that has custody of the firearm for the duration of the order and (ii) advise such person that a law-enforcement officer may obtain a search warrant to search for any firearms from such person if such law-enforcement officer has reason to believe that such person has not relinquished all firearms in his possession.

If the court finds that the person does not pose a substantial risk of personal injury to himself or to other individuals in the near future, the court shall order that any firearm that was previously relinquished be returned to such person in accordance with the provisions of § 19.2-152.15.

**C.** The substantial risk order may be issued for a specified period of time up to a maximum of 180 days. The order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the 180-day period if no date is specified. Prior to the expiration of the order, an attorney for the Commonwealth or a law-enforcement officer may file a written motion requesting a hearing to extend the order. Proceedings to extend an order shall be given precedence on the docket of the court. The court may extend the order for a period not longer than 180 days if the court finds by clear and convincing evidence that the person continues to pose a substantial risk of personal injury to himself or to other individuals in the near future by such person's possession or acquisition of a firearm at the time the request for an extension is made. The extension of the order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the 180-day period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued. The person who is subject to the order may file a motion to dissolve the order one time during the duration of the order; however, such motion may not be filed earlier than 30 days from the date the order was issued.

**D.** Any person whose firearm has been voluntarily relinquished pursuant to § 19.2-152.13 or this section, or such person's legal representative, may transfer the firearm to another individual 21 years of age or older who is not otherwise prohibited by law from possessing such firearm, provided that:

1. The person subject to the order and the transferee appear at the hearing;
2. At the hearing, the attorney for the Commonwealth advises the court that a law-enforcement agency has determined that the transferee is not prohibited from possessing or transporting a firearm;
3. The transferee does not reside with the person subject to the order;
4. The court informs the transferee of the requirements and penalties under § 18.2-308.2:1; and
5. The court, after considering all relevant factors and any evidence or testimony from the person subject to the order, approves the transfer of the firearm subject to such restrictions as the court deems necessary.

The law-enforcement agency holding the firearm shall deliver the firearm to the transferee within five days of receiving a copy of the court's approval of the transfer.

**E.** The court shall forthwith, but in all cases no later than the end of the business day on which the substantial risk order was issued, enter and transfer electronically to the Virginia Criminal Information Network (VCIN) established and maintained by the Department of State Police (Department) pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 the identifying information of the person who is subject to the order provided to the court and shall forthwith forward the attested copy of the order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department into the VCIN and the order shall be served forthwith upon the person who is subject to the order and due return made to the court. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department into the VCIN and make due return to the court. If the person who is subject to an emergency substantial risk order fails to appear at the hearing conducted pursuant to this section because such person was not personally served with notice of the hearing pursuant to subsection A, or if personally served was incarcerated and not transported to the hearing, the court may extend the emergency substantial risk order for a period not to exceed 14 days. The extended emergency substantial risk order shall specify a date for a hearing to be conducted pursuant to this section and shall be served forthwith on such person and due return made to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested and forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the dissolution or modification order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network, and the order shall be served forthwith and due return made to the court.

#### **§ 19.2-152.15. Return or disposal of firearms**

**A.** Any firearm taken into custody pursuant to § 19.2-152.13 or 19.2-152.14 and held by a law-enforcement agency shall be returned by such agency to the person from whom the firearm was taken upon a court order for the return of the firearm issued pursuant to § 19.2-152.14 or the expiration or dissolution of an order issued pursuant to § 19.2-152.13 or 19.2-152.14. Such agency shall return the firearm within five days of receiving a written request for the return of the firearm by the person from whom the firearm was taken and a copy of the receipt provided to such person pursuant to § 19.2-152.13. Prior to returning the firearm to such person, the law-enforcement agency holding the firearm shall confirm that such person is no longer subject to an order issued pursuant to § 19.2-152.13 or 19.2-152.14 and is not otherwise prohibited by law from possessing a firearm.

**B.** A firearm taken into custody pursuant to § 19.2-152.13 or 19.2-152.14 and held by a law-enforcement agency may be disposed of in accordance with the provisions of § 15.2-1721 if (i) the person from whom the firearm was taken provides written authorization for such disposal to the agency or (ii) the firearm remains in the possession of the agency more than 120 days after such person is no longer subject to an order issued pursuant to § 19.2-152.13 or 19.2-152.14 and such person has not submitted a request in writing for the return of the firearm.

#### **§ 19.2-152.16. False statement to law-enforcement officer, etc.; penalty** **Any person who knowingly and willfully makes any materially false statement or representation to a law-enforcement officer or attorney for the Commonwealth who is in the course of conducting an investigation undertaken pursuant to this chapter is guilty of a Class 1 misdemeanor.**

#### **§ 19.2-152.17. Immunity of law-enforcement officers, etc.; chapter not exclusive**

**A.** An attorney for the Commonwealth or a law-enforcement officer shall be immune from civil liability for any act or omission related to petitioning or declining to petition for a substantial risk order pursuant to this chapter.

- B.** Any law-enforcement agency or law-enforcement officer that takes into custody, stores, possesses, or transports a firearm pursuant to § 19.2-152.13 or 19.2-152.14, or by a search warrant for a person who has failed to voluntarily relinquish his firearm, shall be immune from civil or criminal liability for any damage to or deterioration, loss, or theft of such firearm.
- C.** Nothing in this chapter precludes a law-enforcement officer from conducting a search for a firearm or removing a firearm from a person under any other lawful authority.

# Washington

**Types of orders:** Temporary extreme risk protection order, Full Extreme risk protection order

**Citation:** Wash. Rev. Code §§ 7.105.010; 7.105.100-7.105.120, 7.105.330 - 7.105.375, 7.105.410, 7.105.505

## Highlighted Provisions

### **Persons eligible for petition:**

An intimate partner or a family or household member of the respondent; or a law enforcement agency.

### **Standard of proof:**

Temporary: reasonable cause

Extreme risk protection order: preponderance of the evidence that Respondent poses a significant danger of causing personal injury to self or others by having in the respondent's custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive, a firearm

### **Duration of order:**

Extreme risk protection order: one year

Temporary extreme risk protection order: up to 14 days, until a hearing is held

### **Service on respondent:**

A temporary extreme risk protection order must be served by a law enforcement officer in the same manner as provided for in RCW 7.105.155 for service of the notice of hearing and petition, and must be served concurrently with the notice of hearing and petition

If the respondent refuses to accept a copy, an agent of the court may indicate on the record that the respondent refused to accept a copy of the order. If the respondent appears remotely for the hearing, or leaves the hearing before a final ruling is issued or order signed, and the court believes the respondent has sufficient notice such that additional service is not necessary, the order must recite that the respondent appeared before the court, has actual notice of the order, the necessity for further service is waived, and proof of service of the order is not necessary.

### **Notification of persons at risk:**

If petitioner is law enforcement, petitioner shall make a good faith effort to notify respondent's intimate partner, family or household member that petitioner intends to petition the court for an ERPO or has already done so.

Notification of expiration of ERPO

### **Renewal/Termination:**

Termination:

This section applies to the termination of extreme risk protection orders.

**(1)** The respondent may submit one written request for a hearing to terminate an extreme risk protection order issued under this chapter every 12-month period that the order is in effect, starting from the date of the order and continuing through any renewals.

**(2)** Upon receipt of the request for a hearing to terminate an extreme risk protection order, the court shall set a date for a hearing. The hearing must occur no sooner than 14 days and no later than 30 days from the date of service of the request upon the petitioner.

**(3)** The respondent shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing personal injury to self or others by having in his or her custody or control, accessing, possessing, purchasing, receiving, or

attempting to purchase or receive, a firearm or other dangerous weapons. The court may consider any relevant evidence, including evidence of the considerations listed in RCW 7.105.215.

**(4)** If the court finds after the hearing that the respondent has met his or her burden, the court shall terminate the order.

**Renewal:**

The court must notify the petitioner of the impending expiration of an extreme risk protection order. Notice must be received by the petitioner 105 calendar days before the date the order expires.

**(2)** An intimate partner or family or household member of a respondent, or a law enforcement agency, may by motion request a renewal of an extreme risk protection order at any time within 90 days before the expiration of the order.

**(a)** Upon receipt of the motion to renew, the court shall order that a hearing be held not later than 14 days from the date the order issues.

**(b)** In determining whether to renew an extreme risk protection order issued under this section, the court shall consider all relevant evidence presented by the petitioner and follow the same procedure as provided in RCW 7.105.215.

**(c)** If the court finds by a preponderance of the evidence that the requirements for the issuance of an extreme risk protection order as provided in RCW 7.105.215 continue to be met, the court shall renew the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion and statement of the reason for the requested renewal.

**(d)** The renewal of an extreme risk protection order has a duration of one year, subject to termination as provided in RCW 7.105.505 or further renewal by order of the court.

**Filing fees:**

**(a)** No fees for service of process may be charged by a court or any public agency to petitioners seeking relief under this chapter. Except as provided in **(b)** of this subsection, courts may not charge petitioners any fees or surcharges the payment of which is a condition precedent to the petitioner's ability to secure access to relief under this chapter. Petitioners shall be provided the necessary number of certified copies, forms, and instructional brochures free of charge, including a copy of the service packet that consists of all documents that are being served on the respondent. A respondent who is served electronically with a protection order shall be provided a certified copy of the order free of charge upon request.

**(b)** A filing fee may be charged for a petition for an antiharassment protection order except as follows:

**(i)** No filing fee may be charged to a petitioner seeking an antiharassment protection order against a person who has engaged in acts of stalking as defined in RCW 9A.46.110, a hate crime under RCW 9A.36.080(1)(c), or a single act of violence or threat of violence under RCW 7.105.010(36)(b), or from a person who has engaged in nonconsensual sexual conduct or penetration or conduct that would constitute a sex offense as defined in RCW 9A.44.128, or from a person who is a family or household member or intimate partner who has engaged in conduct that would constitute domestic violence; and

**(ii)** The court shall waive the filing fee if the court determines the petitioner is not able to pay the costs of filing.

**Firearm prohibitions:**

Respondent cannot have custody or control, purchase, possess, or receive a firearm.

**Firearm relinquishment process:**

The law enforcement officer serving any extreme risk protection order under this chapter, including a temporary

extreme risk protection order, shall request that the respondent immediately surrender all firearms in his or her custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.

**Firearm disposal process:**

Any firearm surrendered by a respondent that remains unclaimed by the lawful owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

**Limitations on liability:**

**(1)** Except as provided in RCW 7.105.460, this chapter does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining an extreme risk protection order or a temporary extreme risk protection order including, but not limited to, reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition under this chapter.

**(2)** No law enforcement officer may be held criminally or civilly liable for making an arrest under RCW 7.105.450 if the officer acts in good faith.

Neither the department nor the state of Washington is liable for seeking or failing to seek relief on behalf of any persons under this section. The vulnerable adult shall not be held responsible for any violations of the order by the respondent.

**Return/transfer of firearms:**

If an extreme risk protection order is terminated or expires without renewal, a law enforcement agency holding any firearm that has been surrendered pursuant to this chapter shall return any surrendered firearm requested by a respondent only after confirming, through a background check, that the respondent is currently eligible to own or possess firearms under federal and state law, and after confirming with the court that the extreme risk protection order has terminated or has expired without renewal.

A law enforcement agency must, if requested, provide prior notice of the return of a firearm to a respondent to family or household members and to an intimate partner of the respondent in the manner provided in RCW 9.41.340 and 9.41.345.

**Warrant authority:**

If probable cause for a violation of the order exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

**Venue:**

The superior courts have jurisdiction over extreme risk protection order proceedings under this chapter. The juvenile court may hear an extreme risk protection order proceeding under this chapter if the respondent is under the age of 18 years. Additionally, district courts have limited jurisdiction over the issuance and enforcement of temporary extreme risk protection orders issued under RCW 7.105.330. The district court shall set the full hearing in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court has concurrent jurisdiction with the superior court to extend the temporary extreme risk protection order. The superior court to which the case is being transferred shall determine whether to grant any request for a continuance.

The order is fully enforceable in any county in the state.

**Penalties:**

If the court finds the respondent in contempt, the court may impose remedial sanctions designed to ensure swift compliance with the order to surrender and prohibit weapons.

**(f)** The court may order a respondent found in contempt of the order to pay for any losses incurred

by a party in connection with the contempt proceeding, including reasonable attorneys' fees, service fees, and other costs. The costs of the proceeding must not be borne by the petitioner.

### **Entry Registry/NCIC POF:**

Upon receipt of the order, the law enforcement agency shall immediately enter the order into the national instant criminal background check system, any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants.

## **Statutes**

### **Wash. Rev. Code Ann. § 7.105.010. Definitions**

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**(13)** “Family or household members” means: (a) Persons related by blood, marriage, domestic partnership, or adoption; (b) persons who currently or formerly resided together; (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren, or a parent’s intimate partner and children; and (d) a person who is acting or has acted as a legal guardian.

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**(20)** “Intimate partner” means: (a) Spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time, unless the child is conceived through sexual assault; or (d) persons who have or have had a dating relationship where both persons are at least 13 years of age or older.

### **7.105.100. Filing — Types of petitions.**

**(e)** A petition for an extreme risk protection order, which must allege that the respondent poses a significant danger of causing personal injury to self or others by having in the respondent’s custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive, a firearm. The petition must also identify information the petitioner is able to provide about the firearms, such as the number, types, and locations of any firearms the petitioner believes to be in the respondent’s current ownership, possession, custody, access, or control. A petition for an extreme risk protection order may be filed by (i) an intimate partner or a family or household member of the respondent; or (ii) a law enforcement agency.

### **7.105.105. Filing — Provisions governing all petitions.**

The following apply to all petitions for protection orders under this chapter.

#### **(1)**

**(a)** By January 1, 2023, county clerks on behalf of all superior courts and, by January 1, 2026, all courts of limited jurisdiction, must permit petitions for protection orders and all other filings in connection with the petition to be submitted as preferred by the petitioner either: (i) In person; (ii) remotely through an electronic submission process; or (iii) by mail for persons who are incarcerated or who are otherwise unable to file in person or remotely through an electronic system. The court or clerk must make available electronically to judicial officers any protection orders filed within the state. Judicial officers may not be charged for access to such documents. The electronic submission system must allow for petitions for protection orders and supportive documents to be submitted at any time of the day. When a petition and supporting documents for a protection order are submitted to the clerk after business hours, they must be processed as soon as possible on the next judicial day. Petitioners and respondents should not incur additional charges for electronic submission for petitions and documents filed pursuant to this section.

**(b)** By January 1, 2023, all superior courts' systems and, by January 1, 2026, all limited jurisdiction courts' systems, should allow for the petitioner to electronically track the progress of the petition for a protection order. Notification may be provided by text messaging or email, and should provide reminders of court appearances and alert the petitioner when the following occur: (i) The petition has been processed and is under review by a judicial officer; (ii) the order has been signed; (iii) the order has been transmitted to law enforcement for entry into the Washington crime information center system; (iv) proof of service upon the respondent has been filed with the court or clerk; (v) a receipt for the surrender of firearms has been filed with the court or clerk; and (vi) the respondent has filed a motion for the release of surrendered firearms. Respondents, once served, should be able to sign up for similar electronic notification. Petitioners and respondents should not be charged for electronic notification.

**(2)** The petition must be accompanied by a confidential document to be used by the courts and law enforcement to fully identify the parties and serve the respondent. This record will be exempt from public disclosure at all times, and restricted access to this form is governed by general rule 22 provisions governing access to the confidential information form. The petitioner is required to fill out the confidential party information form to the petitioner's fullest ability. The respondent should be provided a blank confidential party information form at the time of service, and when the respondent first appears, the respondent must confirm with the court the respondent's identifying and current contact information, including electronic means of contact, and file this with the court.

**(3)** A petition must be accompanied by a declaration signed under penalty of perjury stating the specific facts and circumstances for which relief is sought. Parties, attorneys, and witnesses may electronically sign sworn statements in all filings.

**(4)** The petitioner and the respondent must disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties, to the extent that such information is known by the petitioner and the respondent. To the extent possible, the court shall take judicial notice of any existing restraining, protection, or no-contact orders between the parties before entering a protection order. The court shall not include provisions in a protection order that would allow the respondent to engage in conduct that is prohibited by another restraining, protection, or no-contact order between the parties that was entered in a different proceeding. The obligation to disclose the existence of any other litigation includes, but is not limited to, the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in [RCW 26.27.281](#). The court administrator shall verify for the court the terms of any existing protection order governing the parties.

**(5)** The petition may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties, except in cases where the court has realigned the parties in accordance with [RCW 7.105.210](#).

**(6)** Relief under this chapter must not be denied or delayed on the grounds that the relief is available in another action. The court shall not defer acting on a petition for a protection order nor grant a petitioner less than the full relief that the petitioner is otherwise entitled to under this chapter because there is, or could be, another proceeding involving the parties including, but not limited to, any potential or pending family law matter or criminal matter.

**(7)** A person's right to petition for relief under this chapter is not affected by the person leaving his or her residence or household.

**(8)** A petitioner is not required to post a bond to obtain relief in any proceeding for a protection order.

**(9)**

**(a)** No fees for service of process may be charged by a court or any public agency to petitioners seeking relief under this chapter. Except as provided in (b) of this subsection, courts may not charge petitioners any fees or surcharges the payment of which is a condition precedent to the petitioner's ability to secure access to



relief under this chapter. Petitioners shall be provided the necessary number of certified copies, forms, and instructional brochures free of charge, including a copy of the service packet that consists of all documents that are being served on the respondent. A respondent who is served electronically with a protection order shall be provided a certified copy of the order free of charge upon request.

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**(10)** If the petition states that disclosure of the petitioner’s address or other identifying location information would risk harm to the petitioner or any member of the petitioner’s family or household, that address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address or email address at which the respondent may serve the petitioner.

**(11)** Subject to the availability of amounts appropriated for this specific purpose, or as provided through alternative sources including, but not limited to, grants, local funding, or pro bono means, if the court deems it necessary, the court may appoint a guardian ad litem for a petitioner or a respondent who is under 18 years of age and who is not represented by counsel. If a guardian ad litem is appointed by the court for either or both parties, neither the petitioner nor the respondent shall be required by the court to pay any costs associated with the appointment.

**(12)** If a petitioner has requested an ex parte temporary protection order, because these are often emergent situations, the court shall prioritize review, either entering an order without a hearing or scheduling and holding an ex parte hearing in person, by telephone, by video, or by other electronic means on the day the petition is filed if possible. Otherwise, it must be heard no later than the following judicial day. The clerk shall ensure that the request for an ex parte temporary protection order is presented timely to a judicial officer, and signed orders will be returned promptly to the clerk for entry and to the petitioner as specified in this section.

**(13)** Courts shall not require a petitioner to file duplicative forms.

**(14)** The Indian child welfare act applies in the following manner.

**(a)** In a proceeding under this chapter where the petitioner seeks to protect a minor and the petitioner is not the minor’s parent as defined by RCW 13.38.040, the petition must contain a statement alleging whether the minor is or may be an Indian child as defined in RCW 13.38.040. If the minor is an Indian child, chapter 13.38 RCW and the federal Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., shall apply. A party should allege in the petition if these laws have been satisfied in a prior proceeding and identify the proceeding.

**(b)** Every order entered in any proceeding under this chapter where the petitioner is not a parent of the minor or minors protected by the order must contain a finding that the federal Indian child welfare act or chapter 13.38 RCW does or does not apply, or if there is insufficient information to make a determination, the court must make a finding that a determination must be made before a full protection order may be entered. If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, 25 C.F.R. Sec. 23.107(b) applies. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does apply, the order must also contain a finding that all notice, evidentiary requirements, and placement preferences under the federal Indian child welfare act and chapter 13.38 RCW have been satisfied, or a finding that removal or placement of the child is necessary to prevent imminent physical damage or harm to the child pursuant to 25 U.S.C. Sec. 1922 and RCW 13.38.140. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does not apply, the order must also contain a finding as to why there is no reason to know the child may be an Indian child.

#### **7.105.110. Filing — Provisions applicable to specified orders.**

The following apply only to the specific type of protection orders referenced in each subsection.

**(1)** The department of social and health services, in its discretion, may file a petition for a vulnerable adult

protection order or a domestic violence protection order on behalf of, and with the consent of, any vulnerable adult. When the department has reason to believe a vulnerable adult lacks the ability or capacity to consent, the department, in its discretion, may seek relief on behalf of the vulnerable adult. Neither the department nor the state of Washington is liable for seeking or failing to seek relief on behalf of any persons under this section. The vulnerable adult shall not be held responsible for any violations of the order by the respondent.

**(2)**

**(a)** If the petitioner for an extreme risk protection order is a law enforcement agency, the petitioner shall make a good faith effort to provide notice to an intimate partner or family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for an extreme risk protection order or has already done so, and include referrals to appropriate resources, including behavioral health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice, or attest to the steps that will be taken to provide such notice.

**(b)** Recognizing that an extreme risk protection order may need to be issued outside of normal business hours, courts shall allow law enforcement petitioners to petition after hours for a temporary extreme risk protection order using an on-call, after-hours judge, as is done for approval of after-hours search warrants.

**7.105.115. Forms, instructions, etc. — Duties of the administrative office of the courts — Recommendations for filing and data collection.**

**(1)** By December 30, 2022, the administrative office of the courts shall:

**(a)** Develop and distribute standard forms for petitions and orders issued under this chapter, and facilitate the use of online forms for electronic filings.

**(i)** For all protection orders except extreme risk protection orders, the protection order must include, in a conspicuous location, a notice of criminal penalties resulting from a violation of the order, and the following statement: “You can be arrested even if the protected person or persons invite or allow you to violate the order. You alone are responsible for following the order. Only the court may change the order. Requests for changes must be made in writing.”

**(ii)** For extreme risk protection orders, the protection order must include, in a conspicuous location, a notice of criminal penalties resulting from a violation of the order, and the following statement: “You have the sole responsibility to avoid or refrain from violating this order’s provisions. Only the court may change the order. Requests for changes must be made in writing.”;

**(b)** Develop and distribute instructions and informational brochures regarding protection orders and a court staff handbook on the protection order process, which shall be made available online to view and download at no cost. Developing additional methods to inform the public about protection orders in understandable terms and in languages other than English through videos and social media should also be considered. The instructions, brochures, forms, and handbook must be prepared in consultation with civil legal aid, culturally specific advocacy programs, and domestic violence and sexual assault advocacy programs. The instructions must be designed to assist petitioners in completing the petition, and must include a sample of standard petition and protection order forms. The instructions and standard petition must include a means for the petitioner to identify, with only lay knowledge, the firearms the respondent may own, possess, receive, have access to, or have in the respondent’s custody or control. The instructions must provide pictures of types of firearms that the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow petitioners to identify firearms without requiring specific or technical knowledge regarding the firearms. The court staff handbook must allow for the addition of a community resource list by the court clerk. The informational brochure must describe the use of, and the process for, obtaining, renewing, modifying, terminating, and enforcing protection orders as provided under this chapter, as well as the process for obtaining, modifying, terminating, and enforcing an antiharassment no-contact order as provided under

chapter 9A.46 RCW, a domestic violence no-contact order as provided under chapter 10.99 RCW, a restraining order as provided under chapters 26.09, 26.26A, 26.26B, and 26.44 RCW, a foreign protection order as defined in chapter 26.52 RCW, and a Canadian domestic violence protection order as defined in RCW 26.55.010;

**(c)** Determine the significant non-English-speaking or limited English-speaking populations in the state. The administrative office of the courts shall then arrange for translation of the instructions and informational brochures required by this section, which must contain a sample of the standard petition and protection order forms, into the languages spoken by at least the top five significant non-English-speaking populations, and shall distribute a master copy of the translated instructions and informational brochures to all court clerks and to the Washington supreme court’s interpreter commission, minority and justice commission, and gender and justice commission. Such materials must be updated and distributed if needed due to relevant changes in the law;

**(d)**

**(i)** Distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks, and distribute a master copy of the petition and order forms to all superior, district, and municipal courts;

**(ii)** In collaboration with civil legal aid attorneys, domestic violence advocates, sexual assault advocates, elder abuse advocates, clerks, and judicial officers, develop and distribute a single petition form that a petitioner may use to file for any type of protection order authorized by this chapter, with the exception of extreme risk protection orders;

**(iii)** For extreme risk protection orders, develop and prepare:

**(A)** A standard petition and order form for an extreme risk protection order, as well as a standard petition and order form for an extreme risk protection order sought against a respondent under 18 years of age, titled “Extreme Risk Protection Order - Respondent Under 18 Years”;

**(B)** Pattern forms to assist in streamlining the process for those persons who are eligible to seal records relating to an order under (d)(i) of this subsection, including:

**(I)** A petition and declaration the respondent can complete to ensure that requirements for public sealing have been met; and

**(II)** An order sealing the court records relating to that order; and

**(C)** An informational brochure to be served on any respondent who is subject to a temporary or full protection order under (d)(iii)(A) of this subsection;

**(e)** Create a new confidential party information form to satisfy the purposes of the confidential information form and the law enforcement information sheet that will serve both the court’s and law enforcement’s data entry needs without requiring a redundant effort for the petitioner, and ensure the petitioner’s confidential information is protected for the purpose of safety. The form should be created with the presumption that it will also be used by the respondent to provide all current contact information needed by the court and law enforcement, and full identifying information for improved data entry. The form should also prompt the petitioner to disclose on the form whether the person who the petitioner is seeking to restrain has a disability, brain injury, or impairment requiring special assistance; and

**(f)** Update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary.

**(2)** By July 1, 2022, the administrative office of the courts, through the gender and justice commission of the Washington state supreme court, and with the support of the Washington state women’s commission, shall work with representatives of superior, district, and municipal court judicial officers, court clerks, and administrators,

including those with experience in protection order proceedings, as well as advocates and practitioners with expertise in each type of protection order, and others with relevant expertise, to develop for the courts:

- (a) Standards for filing evidence in protection order proceedings in a manner that protects victim safety and privacy, including evidence in the form of text messages, social media messages, voice mails, and other recordings, and the development of a sealed cover sheet for explicit or intimate images and recordings; and
- (b) Requirements for private vendors who provide services related to filing systems for protection orders, as well as what data should be collected.

#### **7.105.120. Filing – Court clerk duties.**

(1) All court clerks' offices shall make available the standardized forms, instructions, and informational brochures required by this chapter, and shall keep current specific program names and telephone numbers for community resources, including civil legal aid and volunteer lawyer programs. Any assistance or information provided by clerks under this chapter, or any assistance or information provided by any person, including court clerks, employees of the department of social and health services, and other court facilitators, to complete the forms provided by the court, does not constitute the practice of law, and clerks are not responsible for incorrect information contained in a petition.

(2) All court clerks shall accept and provide community resource lists as described in (a) and (b) of this subsection, which the court shall make available as part of, or in addition to, the informational brochures described in RCW 7.105.115.

(a) The court clerk shall accept an appropriate community resource list from a domestic violence program and from a sexual assault program serving the county in which the court is located. The community resource list must include the names, telephone numbers, and, as available, website links of domestic violence programs, sexual assault programs, and elder abuse programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, civil legal aid programs, elder abuse programs, interpreters, multicultural programs, and batterers' treatment programs. The list must be made available in print and online.

(b) The court clerk may create a community resource list of crisis intervention, behavioral health, interpreter, counseling, and other relevant resources serving the county in which the court is located. The clerk may also create a community resource list for respondents to include suicide prevention, treatment options, and resources for when children are involved in protection order cases. Any list must be made available in print and online.

(c) Courts may make the community resource lists specified in (a) and (b) of this subsection available as part of, or in addition to, the informational brochures described in subsection (1) of this section, and should accept from the programs that provided the resource lists translations of them into the languages spoken by the county's top five significant non-English-speaking populations.

(3) Court clerks should not make an assessment of the merits of a petitioner's petition for a protection order or refuse to accept for filing any petition that meets the basic procedural requirements.

#### **7.105.225. Grant of order, denial of order, and improper grounds.**

(1) The court shall issue a protection order if it finds by a preponderance of the evidence that the petitioner has proved the required criteria specified in (a) through (f) of this subsection for obtaining a protection order under this chapter.

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(e) For an extreme risk protection order, that the respondent poses a significant danger of causing personal injury to self or others by having in the respondent's custody or control, purchasing, possessing, accessing,

receiving, or attempting to purchase or receive, a firearm.

**(2)** The court may not deny or dismiss a petition for a protection order on the grounds that:

- (a)** The petitioner or the respondent is a minor, unless provisions in this chapter specifically limit relief or remedies based upon a party's age;
- (b)** The petitioner did not report the conduct giving rise to the petition to law enforcement;
- (c)** A no-contact order or a restraining order that restrains the respondent's contact with the petitioner has been issued in a criminal proceeding or in a domestic relations proceeding;
- (d)** The relief sought by the petitioner may be available in a different action or proceeding, or criminal charges are pending against the respondent;
- (e)** The conduct at issue did not occur recently or because of the passage of time since the last incident of conduct giving rise to the petition; or
- (f)** The respondent no longer lives near the petitioner.

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**(5)** If the court declines to issue a protection order, the court shall state in writing the particular reasons for the court's denial. If the court declines a request to include one or more of the petitioner's family or household member who is a minor or a vulnerable adult in the order, the court shall state the reasons for that denial in writing. The court shall also explain from the bench:

- (a)** That the petitioner may refile a petition for a protection order at any time if the petitioner has new evidence to present that would support the issuance of a protection order;
- (b)** The parties' rights to seek revision, reconsideration, or appeal of the order; and
- (c)** The parties' rights to have access to the court transcript or recording of the hearing.

**(6)** A court's ruling on a protection order must be filed by the court in writing and must be made by the court on the mandatory form developed by the administrative office of the courts.

### **7.105.330. Temporary protection orders — Extreme risk protection orders.**

**(1)** In considering whether to issue a temporary extreme risk protection order, the court shall consider all relevant evidence, including the evidence described in RCW 7.105.215.

**(2)** If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to self or others in the near future by having in the respondent's custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive, a firearm, the court shall issue a temporary extreme risk protection order.

**(3)** A temporary extreme risk protection order must include:

- (a)** A statement of the grounds asserted for the order;
- (b)** The date and time the order was issued;
- (c)** The date and time the order expires;
- (d)** The address of the court in which any responsive pleading should be filed;
- (e)** The date and time of the scheduled hearing;
- (f)** A description of the requirements for the surrender of firearms under RCW 7.105.340; and

(g) The following statement: “To the subject of this protection order: This order is valid until the date and time noted above. You are required to surrender all firearms in your custody, control, or possession. You may not have in your custody or control, access, possess, purchase, receive, or attempt to purchase or receive, a firearm, or a concealed pistol license, while this order is in effect. You must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession, and any concealed pistol license issued to you under RCW 9.41.070 immediately. A hearing will be held on the date and at the time noted above to determine if an extreme risk protection order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with this order.”

(4) A temporary extreme risk protection order issued expires upon the full hearing on the petition for an extreme risk protection order, unless reissued by the court.

(5) A temporary extreme risk protection order must be served by a law enforcement officer in the same manner as provided for in RCW 7.105.155 for service of the notice of hearing and petition, and must be served concurrently with the notice of hearing and petition.

(6) If the court declines to issue a temporary extreme risk protection order, the court shall state the particular reasons for the court’s denial.

#### **7.105.335. Full orders — Extreme risk protection orders.**

(1) An extreme risk protection order issued after notice and a hearing must include:

(a) A statement of the grounds supporting the issuance of the order;

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) Whether a behavioral health evaluation of the respondent is required;

(e) The address of the court in which any responsive pleading should be filed;

(f) A description of the requirements for the surrender of firearms under RCW 7.105.340; and

(g) The following statement: “To the subject of this protection order: This order will last until the date and time noted above. If you have not done so already, you must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession, and any concealed pistol license issued to you under RCW 9.41.070 immediately. You may not have in your custody or control, access, possess, purchase, receive, or attempt to purchase or receive, a firearm, or a concealed pistol license, while this order is in effect. You have the right to request one hearing to terminate this order every 12-month period that this order is in effect, starting from the date of this order and continuing through any renewals. You may seek the advice of an attorney as to any matter connected with this order.”

(2) When the court issues an extreme risk protection order, the court shall inform the respondent that the respondent is entitled to request termination of the order in the manner prescribed by RCW 7.105.505. The court shall provide the respondent with a form to request a termination hearing.

#### **7.105.340. Surrender of firearms — Extreme risk protection orders.**

(1) Upon the issuance of any extreme risk protection order under this chapter, including a temporary extreme risk protection order, the court shall:

(a) Order the respondent to surrender to the local law enforcement agency all firearms in the respondent’s custody, control, or possession, or subject to the respondent’s immediate possession or control, and any concealed pistol license issued under RCW 9.41.070; and

**(b)** Other than for ex parte temporary protection orders, direct law enforcement to revoke any concealed pistol license issued to the respondent.

**(2)** The law enforcement officer serving any extreme risk protection order under this chapter, including a temporary extreme risk protection order, shall request that the respondent immediately surrender all firearms in the respondent's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. If the order is entered in open court and the respondent appears in person, the respondent must be provided a copy and further service is not required. If the respondent refuses to accept a copy, an agent of the court may indicate on the record that the respondent refused to accept a copy of the order. If the respondent appears remotely for the hearing, or leaves the hearing before a final ruling is issued or order signed, and the court believes the respondent has sufficient notice such that additional service is not necessary, the order must recite that the respondent appeared before the court, has actual notice of the order, the necessity for further service is waived, and proof of service of the order is not necessary. The court shall enter the service and receipt into the record. A copy of the order and service must be transmitted immediately to law enforcement. The respondent must immediately surrender all firearms and any concealed pistol license, not previously surrendered, in a safe manner to the control of the local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely. If the respondent is in custody, arrangements to recover the firearms must be made prior to release. Alternatively, if personal service by a law enforcement officer is not possible, and the respondent did not appear in person or remotely at the hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 24 hours of being served with the order by alternate service.

**(3)** At the time of surrender, a law enforcement officer taking possession of a firearm or concealed pistol license shall issue a receipt identifying all firearms that have been surrendered and provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the officer serving the order shall file the original receipt with the court and shall ensure that the officer's law enforcement agency retains a copy of the receipt.

**(4)** Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms as required by an order issued under this chapter, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in the respondent's possession, custody, or control. If probable cause for a violation of the order exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

**(5)** If a person other than the respondent claims title to any firearms surrendered pursuant to this section, and that person is determined by the law enforcement agency to be the lawful owner of the firearm, the firearm must be returned to that person, provided that:

**(a)** The firearm is removed from the respondent's custody, control, or possession, and the lawful owner provides written verification to the court regarding how the lawful owner will safely store the firearm in a manner such that the respondent does not have access to, or control of, the firearm for the duration of the order;

**(b)** The court advises the lawful owner of the penalty for failure to do so; and

**(c)** The firearm is not otherwise unlawfully possessed by the owner.

**(6)** Upon the issuance of a one-year extreme risk protection order, the court shall order a new compliance review hearing date and require the respondent to appear not later than three judicial days from the issuance of the order. The court shall require a showing that the respondent has surrendered any firearms in the respondent's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070 to a law enforcement agency. The compliance review hearing is not required upon a satisfactory showing on

which the court can otherwise enter findings on the record that the respondent has timely and completely surrendered all firearms in the respondent's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070 to a law enforcement agency, and is in compliance with the order. If the court does not have a sufficient record before it on which to make such a finding, the court must set a review hearing to occur as soon as possible, at which the respondent must be present and provide proof of compliance with the court's order.

**(7)**

**(a)** If a court finds at the compliance review hearing, or any other hearing where compliance with the order is addressed, that there is probable cause to believe the respondent was aware of, and failed to fully comply with, the order, failed to appear at the compliance review hearing, or violated the order after the court entered findings of compliance, pursuant to its authority under chapter 7.21 RCW, the court may initiate a contempt proceeding on its own motion, or upon the motion of the prosecutor, city attorney, or the petitioner's counsel, to impose remedial sanctions, and issue an order requiring the respondent to appear, provide proof of compliance with the order, and show cause why the respondent should not be held in contempt of court.

**(b)** If the respondent is not present in court at the compliance review hearing or if the court issues an order to appear and show cause after a compliance review hearing, the clerk of the court shall electronically transmit a copy of the order to show cause to the law enforcement agency where the respondent resides for personal service or service in the manner provided in the civil rules of superior court or applicable statute.

**(c)** The order to show cause served upon the respondent shall state the date, time, and location of the hearing, and shall include a warning that the respondent may be held in contempt of court if the respondent fails to promptly comply with the terms of the extreme risk protection order and a warning that an arrest warrant could be issued if the respondent fails to appear on the date and time provided in the order to show cause.

**(d)**

**(i)** At the show cause hearing, the respondent must be present and provide proof of compliance with the extreme risk protection order and demonstrate why the relief requested should not be granted.

**(ii)** The court shall take judicial notice of the receipt filed with the court by the law enforcement agency pursuant to subsection (3) of this section. The court shall also provide sufficient notice to the law enforcement agency of the hearing. Upon receiving notice pursuant to this subsection, a law enforcement agency must:

**(A)** Provide the court with a complete list of firearms surrendered by the respondent or otherwise belonging to the respondent that are in the possession of the law enforcement agency; and

**(B)** Provide the court with verification that any concealed pistol license issued to the respondent has been surrendered and that a law enforcement agency with authority to revoke the license has been notified.

**(iii)** If the law enforcement agency has a reasonable suspicion that the respondent is not in full compliance with the terms of the order, the law enforcement agency must submit the basis for its belief to the court, and may do so through the filing of an affidavit.

**(e)** If the court finds the respondent in contempt, the court may impose remedial sanctions designed to ensure swift compliance with the order to surrender and prohibit weapons.

**(f)** The court may order a respondent found in contempt of the order to pay for any losses incurred by a party in connection with the contempt proceeding, including reasonable attorneys' fees, service fees, and other costs. The costs of the proceeding must not be borne by the petitioner.

**(8)**

**(a)** To help ensure that accurate and comprehensive information about firearms compliance is provided to



judicial officers, a representative from either the prosecuting attorney's office or city attorney's office, or both, from the relevant jurisdiction may appear and be heard or submit written information at any hearing that concerns compliance with an extreme risk protection order.

**(b)** Either the prosecuting attorney's office or city attorney's office, or both, from the relevant jurisdiction may designate an advocate or a staff person from their office who is not an attorney to appear on behalf of their office. Such appearance does not constitute the unauthorized practice of law.

**(9)**

**(a)** An extreme risk protection order must state that the act of voluntarily surrendering firearms, or providing testimony relating to the surrender of firearms, pursuant to such an order, may not be used against the respondent in any criminal prosecution under this chapter, chapter 9.41 RCW, or RCW 9A.56.310.

**(b)** To provide relevant information to the court to determine compliance with the order, the court may allow the prosecuting attorney or city attorney to question the respondent regarding compliance.

**(10)** All law enforcement agencies must develop and implement policies and procedures regarding the acceptance, storage, and return of firearms required to be surrendered under this chapter. Any surrendered firearms must be handled and stored properly to prevent damage or degradation in appearance or function, and the condition of the surrendered firearms documented, including by digital photograph. A law enforcement agency holding any surrendered firearm or concealed pistol license shall comply with the provisions of RCW 9.41.340 and 9.41.345 before the return of the firearm or concealed pistol license to the owner or individual from whom it was obtained.

#### **7.105.345. Firearms return and disposal — Extreme risk protection orders.**

**(1)** If an extreme risk protection order is terminated or expires without renewal, a law enforcement agency holding any firearm that has been surrendered pursuant to this chapter shall return any surrendered firearm requested by a respondent only after confirming, through a background check, that the respondent is currently eligible to own or possess firearms under federal and state law, and after confirming with the court that the extreme risk protection order has terminated or has expired without renewal.

**(2)** A law enforcement agency must, if requested, provide prior notice of the return of a firearm to a respondent to family or household members and to an intimate partner of the respondent in the manner provided in RCW 9.41.340 and 9.41.345.

**(3)** Any firearm surrendered by a respondent pursuant to RCW 7.105.340 that remains unclaimed by the lawful owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

#### **7.105.350. Reporting of orders — Extreme risk protection orders.**

**(1)** The clerk of the court shall enter any extreme risk protection order, including temporary extreme risk protection orders, issued under this chapter into a statewide judicial information system on the same day such order is issued, if possible, but no later than the next judicial day.

**(2)** A copy of an extreme risk protection order granted under this chapter, including temporary extreme risk protection orders, must be forwarded immediately by the clerk of the court, by electronic means if possible, to the law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall immediately enter the order into the national instant criminal background check system, any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only expunge orders from the systems that have expired or terminated. Entry into the computer-based criminal intelligence information system constitutes notice to all

law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

**(3)** The information entered into the computer-based criminal intelligence information system must include notice to law enforcement whether the order was personally served, served by electronic means, served by publication, or served by mail.

**(4)** If a law enforcement agency receives a protection order for entry or service, but the order falls outside the agency's jurisdiction, the agency may enter and serve the order or may immediately forward it to the appropriate law enforcement agency for entry and service, and shall provide documentation back to the court verifying which law enforcement agency has entered and will serve the order.

**(5)** The issuing court shall, within three judicial days after the issuance of any extreme risk protection order, including a temporary extreme risk protection order, forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of order issuance, to the department of licensing. Upon receipt of the information, the department of licensing shall determine if the respondent has a concealed pistol license. If the respondent does have a concealed pistol license, the department of licensing shall immediately notify a law enforcement agency that the court has directed the revocation of the license. The law enforcement agency, upon receipt of such notification, shall immediately revoke the license.

**(6)** If an extreme risk protection order is terminated before its expiration date, the clerk of the court shall forward on the same day a copy of the termination order to the department of licensing and the law enforcement agency specified in the termination order. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to subsection (2) of this section.

#### **7.105.355. Sealing of records — Extreme risk protection orders.**

**(1)** A respondent under the age of 18, or a respondent whose extreme risk protection order was based solely on threats of self-harm by the respondent, may petition the court to have the court records sealed from public view at the time of the issuance of the full order, at any time during the life of the order, or at any time after its expiration.

**(2)** The court shall seal the court records from public view if there are no other active protection orders against the restrained party, there are no pending violations of the order, and there is evidence of full compliance with the surrender of firearms as ordered by the extreme risk protection order.

**(3)** Nothing in this section changes the requirement for the order to be entered into, and maintained in, computer-based systems as required in RCW 7.105.350.

#### **7.105.360. Certain findings and information in orders.**

**(1)** Orders issued by the court following a hearing must identify the persons who participated in the hearing and whether each person appeared in person, by telephone, by video, or by other electronic means. If the respondent appeared at the hearing, the order must identify that the respondent has knowledge of the court's order.

**(2)** Courts shall not accept agreed orders unless there are findings indicating whether the respondent is a credible threat to the physical safety of the protected person or child.

**(3)** The court shall ensure that in issuing protection orders, including, but not limited to, orders to reissue temporary protection orders and orders to renew protection orders, the court specifies whether the respondent is ordered to surrender, and prohibited from possessing, firearms and dangerous weapons.

**(4)** If the court issued a temporary protection order that included a temporary order to surrender and prohibit weapons, the temporary order to surrender and prohibit weapons must automatically reissue with the temporary protection order. If the court determines by a preponderance of the evidence that irreparable injury to the petitioner will not result through the modification or termination of the order to surrender and prohibit

weapons as originally entered, then the court must make specific findings.

(5) If the court has information regarding any of the respondent's known aliases, that information must be included in the protection order.

#### **7.105.365. Errors in protection orders.**

After a protection order is issued, the court may correct clerical or technical errors in the order at any time. The court may correct errors either on the court's own initiative or upon notice to the court of an error. If the court corrects an error in an order, the court shall provide notice of the correction to the parties and the person who notified the court of the error, and shall provide a copy of the corrected order. The court shall direct the clerk to forward the corrected order on or before the next judicial day to the law enforcement agency specified in the order.

#### **7.105.370. Sealing of records — Recommendations.**

The judicial information system committee's data dissemination committee shall develop recommendations on best practices for courts to consider for whether and when the sealing of records in protection order cases is appropriate or necessary under this chapter. The committee shall also consider methods to ensure compliance with the provisions of the federal violence against women act under 18 U.S.C. Sec. 2265(d)(3) that prohibit internet publication of filing or registration information of protection orders when such publication is likely to reveal the identity or location of the person protected by the order.

#### **7.105.375. Dismissal or suspension of criminal prosecution in exchange for protection order.**

The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a protection order undermines the purposes of this chapter. Nothing in this chapter shall be construed as encouraging that practice.

#### **7.105.410. Renewal — Extreme risk protection orders.**

The following provisions apply to the renewal of extreme risk protection orders.

(1) The court must notify the petitioner of the impending expiration of an extreme risk protection order. Notice must be received by the petitioner 105 calendar days before the date the order expires.

(2) An intimate partner or family or household member of a respondent, or a law enforcement agency, may by motion request a renewal of an extreme risk protection order at any time within 90 days before the expiration of the order.

(a) Upon receipt of the motion to renew, the court shall order that a hearing be held not later than 14 days from the date the order issues.

(b) In determining whether to renew an extreme risk protection order issued under this section, the court shall consider all relevant evidence presented by the petitioner and follow the same procedure as provided in RCW 7.105.215.

(c) If the court finds by a preponderance of the evidence that the requirements for the issuance of an extreme risk protection order as provided in RCW 7.105.215 continue to be met, the court shall renew the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion and statement of the reason for the requested renewal.

(d) The renewal of an extreme risk protection order has a duration of one year, subject to termination as provided in RCW 7.105.505 or further renewal by order of the court.

#### **7.105.505. Termination — Extreme risk protection orders.**

This section applies to the termination of extreme risk protection orders.

**(1)** The respondent may submit one written request for a hearing to terminate an extreme risk protection order issued under this chapter every 12-month period that the order is in effect, starting from the date of the order and continuing through any renewals.

**(2)** Upon receipt of the request for a hearing to terminate an extreme risk protection order, the court shall set a date for a hearing. The hearing must occur no sooner than 14 days and no later than 30 days from the date of service of the request upon the petitioner.

**(3)** The respondent shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing personal injury to self or others by having in his or her custody or control, accessing, possessing, purchasing, receiving, or attempting to purchase or receive, a firearm or other dangerous weapons. The court may consider any relevant evidence, including evidence of the considerations listed in RCW 7.105.215.

**(4)** If the court finds after the hearing that the respondent has met his or her burden, the court shall terminate the order.

# West Virginia

W. Va. Code §§ 61-7B-3, 5-6

## Highlighted Provisions



“Red Flag” Law Preemption

## Statutes

### § 61-7B-3. Definitions.

“Red flag law” means a law under which a person may petition for a court to temporarily take away another person’s right to possess a firearm which it is otherwise lawful under the law of West Virginia for the respondent to possess.

### § 61-7B-5. Prohibitions on police activity.

- a. No police agency, department, or officer of this state may participate in the execution of a federal search warrant when the only property sought to be taken and seized under the warrant is firearms, firearms accessories, or ammunition which is lawful for the person, whose premises are to be searched, to possess under the laws of this state.
- b. No police department, agency or officer of this state may participate in the execution of a federal arrest warrant of a citizen of this state or a person subject to the protections of the state constitution and the laws of West Virginia when the federal arrest warrant charges no crime other than the crime of the possession of firearms, firearm accessories, or ammunition which is lawful for the person who is to be arrested under the warrant to possess under the laws of this state.
- c. No police department, agency, or officer of the state may enforce an order under a red flag law against a citizen of this state or a person subject to the protections of the laws of this state when the person against whom the order is directed has the lawful right under the laws of this state to possess firearms.
- d. No police department, agency, or officer of this state engaged in a traffic stop or in response to a noise complaint may arrest or detain a person who is subject to the protection of the Constitution and laws of this state for the violation of a new inconsistent federal firearms law or inconsistent presidential executive order or action.

### § 61-7B-6. Prohibition on court action.

No court of this state has authority or jurisdiction to issue an order depriving a citizen of this state of his or her right to possess firearms, firearms accessories, or ammunition under any red flag law.

National Center on Protection Orders and Full Faith & Credit, Extreme Risk Protection Orders - Statutes, BATTERED WOMEN’S JUSTICE PROJECT, (July 2023).

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