

Extreme Risk Protection Orders VS Domestic Violence Protection Orders

WHAT YOU SHOULD KNOW



Extreme Risk Protection Orders and Domestic Violence Protection Orders



What are Domestic Violence Protection Orders (DVPOs)?

- A DVPO is a civil order designed to provide many kinds of protection for survivors of domestic violence, assault, harassment, stalking, or sexual assault and their children from further physical, sexual, financial or other abuse.
- DVPOs provide protections and resources specific to the petitioner's situation, such as housing, child custody, visitation, economic relief and addressing the respondent's firearm access and other safety issues such as threats, stalking, harassment, or assault.



What is an Extreme Risk Protection Order (ERPO)?

- An Extreme Risk Protection Order (ERPO) is a civil order that restricts individuals at risk of harming themselves or others from purchasing and possessing firearms. Because it only manages threats of or actual firearms violence, it is not a substitute for a DVPO.
- ERPOs do not provide specific protections to the petitioner and cannot restrict communication, or prevent threats, stalking, harassment, or assault. Additionally, they lack comprehensive remedies to address the safety and stability concerns of survivors.

Overview

All U.S. jurisdictions possess some form of a DVPO, but by 2024, only 22 jurisdictions will have adopted ERPOs. Extreme risk laws permit the removal of guns from individuals deemed a potential threat to themselves or others until the order expires and is not renewed. Although these laws vary in aspects like who can file petitions, required evidence, and order duration, their framework largely resembles DVPOs.



Differences between DVPOs and ERPOs

DVPO statutes empower survivors of intimate partner violence (IPV) to obtain a court order which, among other safeguards and relief, can prohibit the respondent from possessing firearms under state or federal laws or regulations, such as 18 U.S.C. § 922(g)(8), or in the terms of the order. On the other hand, extreme risk laws primarily focus on addressing concerns of mental health and immediate risks to oneself or others. It's essential to clearly differentiate between the ERPO system and the domestic violence system. Though both systems address safety, conflating them could be harmful for IPV survivors. Specifically, ERPOs should not be seen as a substitute for firearm removal mechanisms provided under DVPOs.

To seek a DVPO, a petitioner must meet the statutory requirements for domestic abuse. In some jurisdictions, there is no need to prove a separate risk linked to firearm possession during a DVPO hearing: a firearm prohibition is a direct result once the standard of proof is met for a DVPO. In other jurisdictions the petitioner must provide proof of a credible threat, or fear of future harm.

Why Combining ERPO and DVPO Proceedings May Cause Further Harm

Both ERPOs and DVPOs are forms of injunctive relief, offering preventative measures to avoid imminent harm; however, their foundational issues and mechanisms differ significantly. A DVPO is always preferable to an ERPO in a domestic violence/IPV case because it offers so many broad protections, while still addressing the issue of firearms violence in the situation. An ERPO may end up being a supplementary tool in some specific instances: for example, where an abuser attempts to harm the petitioner’s family members, neighbors, or work colleagues in addition to harming the petitioner.

Research shows that firearm prohibitions in DVPOs reduce intimate partner homicide,¹ and DVPOs are the appropriate civil remedy in situations involving intimate partner violence, including firearm-involved intimate partner violence. ERPOs should not be inappropriately marketed as a foundational tool to intervene in domestic violence situations involving firearms. However, if the immediate response to an IPV crisis is to resort to an ERPO, there is a potential risk that courts may not find the need to also issue a DVPO, potentially depriving victims of crucial protections and resources. A survivor might also be required to go through multiple emotionally taxing, time consuming, and potentially prohibitively expensive court processes to obtain the full relief that should be available in a DVPO.

Another unintentional consequence is courts may insist on an ERPO or ERPO-like review before including a firearms prohibition in a CPO. In many states the standard of proof for an ERPO is “clear and convincing evidence” for final orders, which is more stringent than the “preponderance of the evidence” standard in DVPOs. Improperly applying the ERPO standard of proof, will lead to fewer DVPOs containing firearm removal provisions or even their dismissal due to not meeting this heightened standard. Similarly, DVPOs can be issued based on evidence of past harm, which is sufficient to establish the existence of a current or future threat, whereas ERPOs often require specific evidence of future risk.

It is essential to understand the distinct nature of both order types and the need for separate systems to handle ERPO and DVPO requests. The following chart provides a side-by-side comparison highlighting the key differences and similarities between ERPOs and DVPOs. Please refer to the [ERPO Frequently Asked Questions](#) to obtain specific jurisdictional information.

	DVPO	ERPO
Purpose	To protect named survivors, including specific parties such as minor children, from harm and ensure stability in financial, housing, and custody matters. Grounded in family law.	Exclusively focused on the temporary removal of firearms to ensure the safety of the respondent and the general public. Based in mental health law.
Petitioners²	Survivors can file both for themselves and on the behalf of minors or vulnerable adults.	Petitions can be initiated by law enforcement, family/household members, legal guardians, prosecutors, healthcare professionals, school administrators (or their representatives), and co-workers (differs by state).
Government Role	Government role is secondary, with the survivor’s needs taking precedence. The survivor maintains autonomy and drives the DVPO process.	Government involvement is more prominent; in many cases, only law enforcement or other state actors can initiate the petition.

	DVPO	ERPO
Standard	Preponderance of the evidence in most jurisdictions.	Heightened standard of proof. Most requests for final ERPOs require clear and convincing evidence.
Duration	Final DVPOs can range from 90 days (Arkansas) ³ to permanent (New Jersey) ⁴ .	Final ERPOs can range from 6 months (Vermont) ⁵ to indefinite (Indiana) ⁶ .
Relief⁷	DVPOs offer a wide array of protections. This can encompass no-contact and stay-away provisions, directives to cease abuse, mandates for spousal support, exclusive rights to the home, restitution for property damages, firearm restrictions and relinquishment, mandates for the respondent to attend mental health treatments or counseling, decisions on child custody, visitation, child support, and even the custody of pets.	ERPOs primarily focus on preventing the individual from buying, owning, or receiving firearms, ammunition, or related components for the duration of the order. They do not provide specific protection to the petitioner.
Enforcement	Entitled to enforcement within the issuing jurisdiction and across jurisdictional lines under the full faith and credit provision of the Violence Against Women Act. Enforceable on military installations under the Armed Forces Domestic Security Act, provided they meet the federal definition of a protection order.	Typically, ERPOs are enforceable solely within the issuing jurisdiction. However, some jurisdictions, like Illinois, will enforce foreign out-of-state ERPOs ⁸ .
Support for the Petitioner	Advocacy and legal service agencies available to provide support, guidance, and legal advice. Petitioner is notified of all proceedings.	Unlike DVPOs, there is no designated support or protection provided to survivors, even if they stand as witnesses in court. Notifications about the termination of an ERPO or the return of firearms to the respondent are only mandated in a few jurisdictions.
State and Federal Registries	Eligible for entry into state and federal databases/registries, like the National Instant Criminal Background Check System (NICS).	Not all jurisdictions have statutory requirements that ERPOs are entered into a state databases/registrations and/or NICS.
Activate 18 U.S.C. § 922(g)(8)	Qualifying protection orders will activate 18 U.S.C. § 922(g)(8).	ERPOs do not activate 18 U.S.C. § 922(g)(8).

Endnotes

- 1 <https://www.preventdvgunviolence.org/dv-and-firearms-zeoli.pdf>
- 2 Eligible petitioners vary by jurisdiction.
- 3 Ark. Code. Ann. § 9-15-205(b).
- 4 N.J. Stat. Ann. § 2C:25-29(d).
- 5 Vt. Stat. Ann. tit. 13, § 4053(e)(2).
- 6 Ind. Code Ann. § 35-47-14-8.
- 7 Not all jurisdictions mention ammunition or other related parts, like a magazine (California) or parts that could be assumed to be make an operable firearm (Illinois) in their statutes.
- 8 430 Ill. Comp. Stat. Ann. 67/60.

National Center on Protection Orders and Full Faith & Credit, Extreme Risk Protection Orders vs Domestic Violence Protection Orders, What You Should Know, BATTERED WOMEN’S JUSTICE PROJECT, (July 2023).

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