



UNDERSTANDING THE **DIFFERENCE**

BETWEEN A DOMESTIC VIOLENCE PROTECTION ORDER AND AN EXTREME RISK PROTECTION ORDER

The National Resource Center on
Domestic Violence and Firearms

April 2024



UNDERSTANDING THE DIFFERENCE

Domestic Violence Protection Orders (DVPOs) and Extreme Risk Protection Orders (ERPOs) are types of injunctions, i.e., a court order that requires someone to do or not do something, issued by a civil court. Both can prohibit the person subject to the order from possessing or purchasing firearms or ammunition. However, DVPOs and ERPOs are not interchangeable, and there are a number of key distinctions between the two.

What is a DVPO?

A domestic violence protection order (DVPO) is issued by a court to protect a survivor of family or intimate partner abuse/violence. A DVPO requires the person subject to the order (i.e., the person who has committed the abuse/violence, often called “the respondent”) to do, or not do, certain actions. DVPOs might also be called restraining orders, protection orders, or protection from abuse orders. DVPOs can protect the survivor in many ways, including: ordering the respondent from coming near the survivor or their home or workplace, from communicating with the survivor, providing for custody or visitation, provisions related to housing, express prohibitions against further harassment, threats, stalking or other abusive behaviors against the survivor and their children. DVPOs can also prohibit the respondent from accessing firearms or ammunition—that is possessing or purchasing firearms/ammunition--during the time the DVPO is in effect. All U.S. states and territories have laws providing for DVPOs.

What is an ERPO?

An extreme risk protection order (ERPO) is a court order that requires the person subject to the order (often called “the respondent”) to turn in firearms and ammunition in their possession. An ERPO can also prohibit the respondent from purchasing firearms and ammunition while the order is in effect. Depending on the jurisdiction, ERPOs may also be called “red flag” laws, gun violence restraining order, substantial risk order, lethal violence protective order. As of March 2024, 21 U.S. states and Washington, D.C. have laws providing for ERPOs.

WHAT'S THE DIFFERENCE?

Domestic Violence Protection Order (DVPO)

OR

Extreme Risk Protection Order (ERPO)

What is the purpose?

To protect an intimate partner (and their children and/or pets and, in some states, certain close family members) from further abuse and harm.

OR

To prevent someone at risk of harm to themselves or others from possessing or purchasing firearms or ammunition.

Who can petition?

Survivors of intimate partner abuse and violence can petition on behalf of themselves and/ or their children (and, in some states, certain close family members). Varies by state but generally includes someone who is married or formerly married to, lives with or formerly lived with, has a child in common with, or is now or recently was in a dating relationship with the person they are seeking the order against.

OR

Varies by state. Generally, law enforcement, prosecutors, family/ household members, medical/ mental health professionals, and/ or school officials can petition for an ERPO.

What standard will the court apply when considering whether to issue the order?

Preponderance of the evidence: the court must find it “more likely than not” that the person seeking the protection order has been subjected to abuse and their safety is at risk.

OR

Varies by state. Usually a heightened standard of proof such as clear and convincing evidence (meaning “highly and substantially more likely to be true than untrue”) that the person against whom the order is sought is an immediate danger to themselves and/ or others.

Who is protected by the order?

The survivor (and may also include their children and/or pets and, in some states, certain close family members).

OR

The general public and the respondent (in the sense that the respondent is deemed a danger to themselves).

What protections can be included?

A wide range of protections are available and could include stay away and no communication provisions, child custody and visitation, housing, financial support, and prohibition against accessing firearms and ammunition (including relinquishment of firearms and ammunition already in their possession as well as prohibition against purchasing firearms and ammunition. The protected person would receive notice of any change or termination of the DVPO.

OR

Prohibition against accessing firearms and ammunition which can include ordering relinquishment of firearms and ammunition already in their possession as well as prohibition against purchasing firearms and ammunition.

A survivor of intimate partner violence, or any petitioner of an ERPO is not specifically protected by the ERPO the way they would be by a DVPO.

A survivor of intimate partner abuse by the person subject to the order generally would not receive notice of any change or termination of the ERPO.

How long is the order in effect?

Varies by state. Final orders range from 90 days to permanent (generally with the right to seek modification or termination from the court).

OR

Varies by state. Final orders range from 6 months to indefinite (generally with the person subject to the order having the right to seek modification or termination from the court).

How can the order be enforced?

The protected person can seek enforcement of the order (e.g., reporting a violation of the DVPO to law enforcement or notifying the court of a violation of the DVPO). DVPOs must be recognized and enforced in all U.S. states and territories, not just the state in which it was issued (pursuant to the full faith and credit provision of the Violence Against Women Act).

A qualifying DVPO triggers a federal law prohibiting possession and purchase of a firearm and may trigger similar state laws. A person possessing a firearm or ammunition can face criminal charges for unlawful possession of a firearm/ammunition under federal and/or state law.

OR

A survivor of intimate partner violence generally cannot seek enforcement of the ERPO if the respondent is in violation of the order.

While possessing a firearm or ammunition in violation of an ERPO will not trigger federal criminal charges, the respondent could face state criminal charges.

How does the order prevent the person subject to it from purchasing firearms/ ammunition?

Qualifying DVPOs are entered into state and federal databases which become part of a required background check when someone attempts to purchase a firearm from a licensed dealer.

OR

Varies by state law. Some ERPOs are entered into state and federal databases and some are included in the federal firearm purchasing background check system. However, an ERPO might not be enforced in a state other than the one which issued it.

The Bottom Line

ERPOs are not a substitute for DVPOs. DVPOs are a well-established legal tool for providing for a range of safety issues faced by an individual survivor of intimate partner violence, often including restrictions regarding access to firearms. The DVPO process centers the needs and experience of the survivor while the ERPO process is not equipped to be responsive to the survivor individually. However, given the demonstrated link between domestic violence and violence against third parties as well as community violence, there may be situations in which an ERPO is a valuable supplemental legal tool to protect the broader community or to address the specific risk of firearm violence where a DVPO does not.

For more information please visit:

The National Resource Center on Domestic Violence and Firearms at

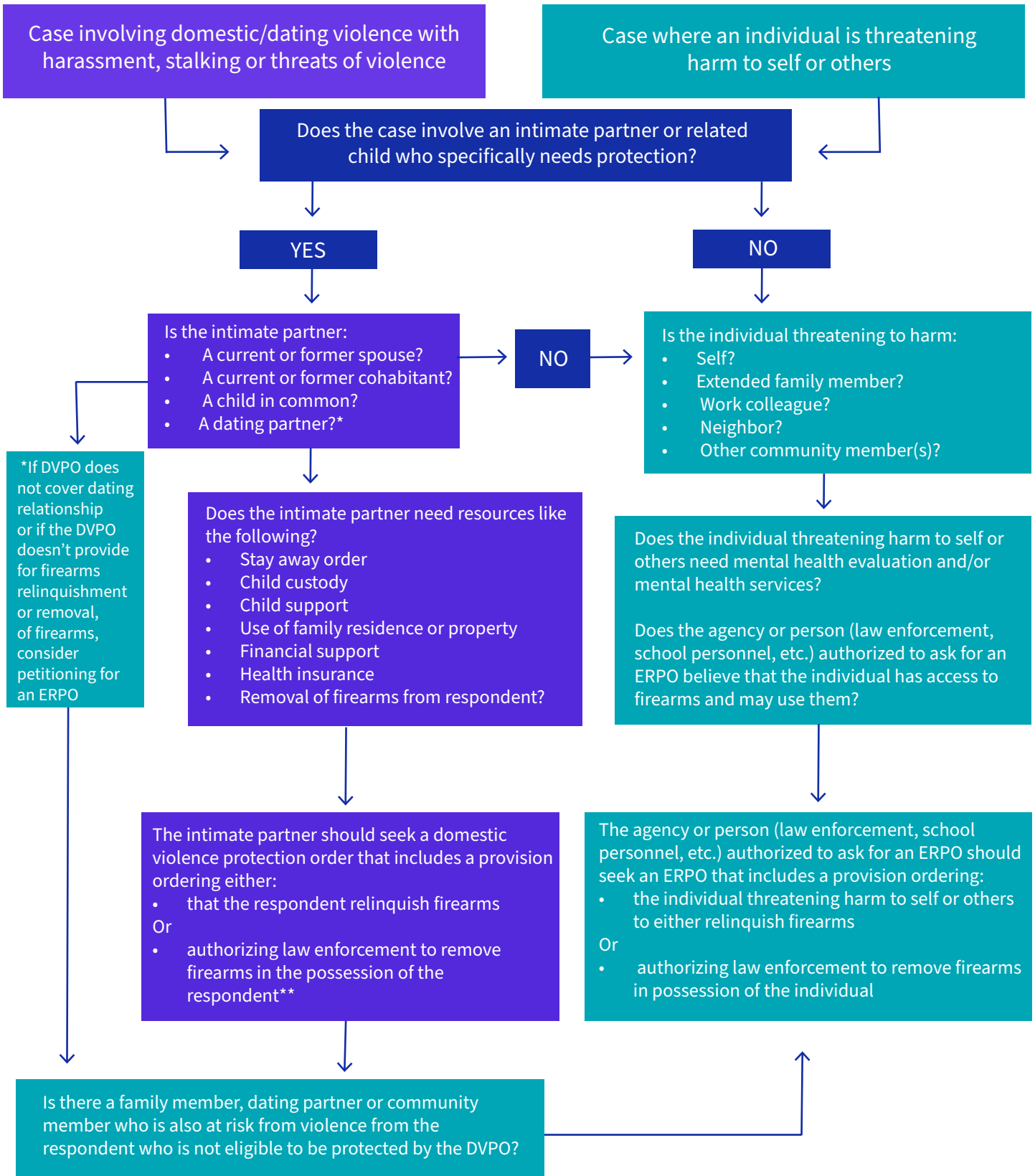
www.preventdvgunviolence.org

and

The National Center on Protection Orders and Full Faith and Credit at

<https://bwjp.org/section/protection-orders-and-full-faith-credit/>

Domestic/Dating Violence Protection Order (DVPO) or Extreme Risk Protection Order (ERPO)?



**The court's authority to order relinquishment or removal of firearms arises out of express statutory authority or a catch all provision in the statute authorizing any remedy or relief needed for the safety of the petitioner.



www.preventdvgunviolence.org

This project was supported by Grant No. 15JOVW-23-GK-05140-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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