

# Extreme Risk Protection Orders

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# Scope of Presentation

Provide an Overview of:

- New statutory provisions
- Court processes and forms
- Early Observations
- Resources

# Extreme Risk Protection Orders (ERPO)

- Minn. Stat. §§ 624.7171 – 624.7178
- Court may issue order prohibiting someone from purchasing or possessing firearms, based on a finding that the person:
  - Poses a risk of bodily harm to others
  - Is at risk of suicide
- Went into effect, Jan. 1, 2024

# ERPO - Petitioners

- Minn. Stat. § 624.7171, subd. 4(b) permits petitions for an ERPO to be filed by:
  - A chief law enforcement officer or designee,
  - A city or county attorney,
  - A family or household member, or
  - A guardian as defined in section 524.1-201.

# ERPO - Petitioners

## Family or Household Members

- Minn. Stat. § 624.7171, subd. 1(b) defines family or household members more narrowly than the OFP statute. In ERPOs, family and household members include:
  - Spouses and former spouses of the respondent;
  - Parents and children of the respondent;
  - Persons presently residing with the respondent; or
  - A person involved in a significant romantic or sexual relationship with the respondent.

# ERPO – Case Filing

- **Venue:** An ERPO application may be filed in the respondent's county of residence EXCEPT:
  - if the court denies the petitioner's request to appear virtually at all proceedings, the petitioner may refile the petition in the county where the petitioner resides or is officed. (Minn. Stat. § 624.7171, subd. 2)
- **Fees:** No filing fees (Minn. Stat. § 624.7171, subd. 4(h))
- **Docket Priority:** ERPOs shall be given docket priority by the court (Minn. Stat. § 624.7171, subd. 2)
- **Forms & Clerical Assistance:** The court shall provide simplified forms and clerical assistance (Minn. Stat. § 624.7171, subd. 4(f) and (g))

# ERPO – Types of Orders Granting

- Emergency (Ex Parte) Extreme Risk Protection Order
- Long-Term Extreme Risk Protection Order
- Orders Extending Extreme Risk Protection Order

# ERPO – Emergency Orders

- Minn. Stat. § 624.7174
- Standard: Probable Cause
  - Finding must be made that respondent presents an *immediate and present danger* of bodily harm to others or taking their own life, in addition to posing a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm.
- Temporary 14-day ex parte order
- Can be extended, if needed
- Orders Immediate Firearm Surrender/Search Warrant



# ERPO – Long-Term Orders

- Minn. Stat. § 624.7172
- Standard: Clear and convincing evidence
  - Finding must be that respondent "poses a significant danger to other persons or is at significant risk of suicide by possessing a firearm."
- Issued after a hearing
- Duration: 6 months – 1 year
- Orders either:
  - Immediate Firearm Surrender/Search Warrant
    - If no prior order & current immediate and present danger of bodily harm
  - OR
  - Transfer of Firearms within 24 hours
    - If prior order OR no current immediate and present danger of bodily harm

# ERPO – Factors for Consideration

- Minn. Stat. § 624.7172, subd. 2(b) delineates factors for the court to consider, including:
  - History of threats/acts of violence or threats/use of physical force against another person
  - Violations of court orders or being named as the respondent in an existing protection order
  - Prior arrest for violent felony offense
  - Conviction for or prior arrest for a violent misdemeanor, stalking, or domestic assault
  - Conviction for an offense of cruelty to animals
  - Unlawful/reckless use, display, or brandishing of firearm
  - Suicide attempts or a serious mental illness

# Firearm Transfer – cases w/o immediate and present danger

- If court does not find that the respondent presents an "immediate and present danger" of bodily harm, the respondent has 24 hours to transfer all firearms they possess to either: a law enforcement agency or a federally licensed firearms dealer.
  - *Only antique/relic/curio firearms can be transferred to a relative.*
- Affidavits & compliance monitoring: affidavits must be filed with *law enforcement*, rather than the court. It is anticipated some affidavits will be filed, but it isn't required. The process in ERPO cases may very well end with the issuance of the order.

# Firearm Surrender – cases with immediate and present danger

- Under Minn. Stat. § 624.7175(d), when the court finds that the respondent presents an "immediate and present danger" of bodily harm, the respondent must immediately surrender any firearms they possess. The law also states the court *shall* issue a search warrant.
- Respondent must be given a chance to voluntarily comply. Otherwise, law enforcement may execute a search warrant.

# ERPO – Relationship between Orders & Search Warrant

- The statute appears to require the issuance of a search warrant when predicate findings are made.
- However, for both practical and legal reasons, law enforcement must separately apply for and obtain a search warrant following existing processes.
  - Petitioner may be a family or household member
  - Firearms might need to be seized in other jurisdictions and warrants must be issued by a judge with jurisdiction over location where search/seizure will occur. *See Minn. Stat. § 626.06.*

# ERPO – Relationship between Orders & Search Warrant

- For those reasons, issuance of a search warrant within orders themselves is not feasible.
- Orders granting include predicate findings necessary for warrants.
- The BCA is working on a form and process within its eCharging eSearch Warrant module specific for ERPO Search Warrants.

# ERPO – Service by Petitioning Agency

- Minn. Stat. § 624.7172, subd. 1(c): service provisions differ, depending on who petitions the court.
  - Petitioning agency is responsible for service of ERPO and for execution of legal process required for seizure and storage of firearms. Law enforcement agency may cooperate with other law enforcement entities.

# ERPO – Service when Petitioner is not an agency

- Minn. Stat. § 624.7172, subd. 1(c): service provisions differ, depending on who petitions the court.
  - When petitioner is a family or household member, primary *law enforcement agency serving jurisdiction of respondent's residence* is responsible for execution of legal process required for the seizure and storage of firearms.



# Responsible Agency Designation

## 5. Responsible Agency.

If Petitioner is a chief law enforcement officer/designee or city/county attorney, they are the **Responsible Agency**.

OR

If Petitioner is a family/household member or guardian:

- a.  \_\_\_\_\_, which is the primary law enforcement agency serving the jurisdiction where Respondent resides, is the **Responsible Agency**.

OR

- b.  The \_\_\_\_\_ County Sheriff's Office, which has jurisdiction in the county where Respondent resides, is the **Responsible Agency**.

OR

- c.  Other. The **Responsible Agency** is: \_\_\_\_\_  
\_\_\_\_\_

If no agency is listed in paragraphs a through c above, the **county sheriff** where the case was filed is the **Responsible Agency**.



# Coordination/Cooperation

9. The Responsible Agency shall coordinate and cooperate with any other law enforcement agencies as necessary to carry out this order, including but not limited to:
  - a. any law enforcement agencies with jurisdiction where Respondent resides or is present; or
  - b. the appropriate Tribal police department if Respondent resides on Tribal territory; or
  - c. any law enforcement agencies with jurisdiction in any other location(s) where Respondent possesses firearms.

All such agencies are ordered to coordinate and cooperate with the Responsible Agency and each other in serving and executing this order.

10. The Responsible Agency, and any other law enforcement agency acting in coordination and cooperation, shall comply with the provisions of Minn. Stat. §§ 624.7171-.7176 in serving and executing this order.

# ERPO – Alternate Service

- Minn. Stat. § 624.7172, subd. 1(e): alternate service provision differs from other statutes. Service by first class mail is favored over service by publication.
  - Court must make findings that means of service might reasonably reach the respondent
  - Service is deemed complete 14 days after mailing or publication

# ERPO – Extension/Termination

- Minn. Stat. § 624.7173 (a): party may petition for an extension of an ERPO within the three months before expiration of an existing order.
  - Court must hold a hearing.
  - Same clear and convincing evidence standard as standard ERPO hearing.
- Minn. Stat. § 624.7173 (b): Respondent may file a request to terminate an ERPO one time for each six months that an ERPO is in effect.
  - Court must hold a hearing.
  - Respondent bears burden of proving by clear and convincing evidence that they do not pose a significant danger to other persons and/or are not at significant risk of suicide by possessing a firearm.

# ERPO – Criminal Penalties

- Minn. Stat. § 624.7177 makes it a gross misdemeanor to provide false info with intent to harass, etc. Also makes it a misdemeanor to violate an ERPO by possessing a firearm, and adds a 5-year prohibition.
- Minn. Stat. § 624.713, subd. 1 amended to provide that anyone subject to an ERPO is ineligible to possess firearms or ammunition, making possession a gross misdemeanor under subdivision 2(c).

# ERPO – Court Record Access

- These are public, remotely accessible, “civil” case records.
- Despite language in law purporting to make portions of a petition or a case nonpublic, the Chief Justice signed two Orders clarifying the process and directing that the Rules of Public Access apply.
  - [Supreme Court Order – Aug. 8, 2023](#) (health information)
  - [Supreme Court Order – Dec. 31, 2023](#) (confidential/sealing)

# ERPO – Court Record Access

- The **records will be available** in MCRO, and in MGA for court partners, **only IF filings remain public** (i.e. only if a filer does not request and a court does not grant a confidential status).
- Some supporting documentation submitted such as medical records will be nonpublic under court rules if submitted correctly, and will not be available to the public in MCRO or court partners in MGA.

# Early Observations

- As of the end of last week 14 ERPO cases had been filed across the state.
- Petitioners have included law enforcement, city/county attorneys, and family/household members.
- The majority of petitioners have been agencies.



# ERPO Court Forms & Resources

- Forms are available to the public on the website:
  - [mncourts.gov](http://mncourts.gov) - “Get Forms” Heading
- The court created over 30 forms for use in ERPO proceedings.

## Court Forms Category List

### Firearms

Please go to the [Firearms Help Topics](#) page to learn more about what forms you may need and find other resources related to this topic.

**Note: Blank order forms for Extreme Risk Protection Order cases are not posted on the Minnesota Judicial Branch website.**

#### Firearms Forms

[Restoration of Firearm and Ammunition Rights](#)

[Permit to Carry](#)

[ERPO - Petition for Extreme Risk Protection Order](#)

[ERPO - Hearing Requests for Extreme Risk Protection Order](#)

[ERPO - Transfer of Firearms for Extreme Risk Protection Order](#)

[ERPO - Request to Extend Extreme Risk Protection Order](#)

[ERPO - Request to Terminate Extreme Risk Protection Order](#)

# Petition/Affidavit

- The court’s petition form is an affidavit.
- Minn. Stat. § 358.116 authorizes sworn statements to be submitted to the court without notarization:

“provided that the signature, as defined by court rules, is affixed immediately below a declaration using substantially the following language: ‘I declare under penalty of perjury that everything I have stated in this document is true and correct.’ In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.”
- Rule 15 of the Minnesota General Rules of Practice defines “affidavit” to include:

“a document that has been signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, provided that the signature is affixed immediately below a declaration using substantially the following language: ‘I declare under penalty of perjury that everything I have stated in this document is true and correct.’ In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.”

# ERPO Resources/Information

- Firearms Help Topic [FAQs](#)

Overview   Definitions   **FAQs**   Forms   Rules & Laws   Tools & Resources

**Extreme Risk Protection Order (ERPO)**

- › What is an Extreme Risk Protection Order (ERPO)?
- › Who can apply for an ERPO?
- › How can I ask for an ERPO?
- › How long does an ERPO last?
- › Where does an ERPO get filed?
- › How do you get notice of an ERPO?
- › What happens if I am served with a Petition for ERPO or an Order granting an ERPO?
- › What happens after an ERPO is granted?
- › How are Firearms Transferred after an ERPO is granted?

- ERPO [Fast Facts Resource](#) – which links to the court forms, firearms help topic, ERPO laws, and Supreme Court Orders

## Firearms

Contact a Self-Help Center

Help Topics Homepage

Overview

Definitions

FAQs

Forms

Rules & Laws

Tools & Resources

- **Fast Facts - Extreme Risk Protection Orders** ←
- **MN Bureau of Criminal Apprehension - Firearms** - Information and resources provided by the MN Bureau of Criminal Apprehension (BCA) regarding firearm permit applications, annual reports, and permit tracking system.
- **MN Sheriff's Office Locations** - A comprehensive list of the Minnesota Sheriff's Office Locations, including address and phone number.

# For More Court Information

[www.mncourts.gov](http://www.mncourts.gov)

- Get Forms (Firearms)
- Firearms Help Topic
- [Government Partners](#)
  - Criminal Justice System Resources

Any questions?

Thank you!