



Extreme Risk Protection Orders

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This *issue brief* provides an overview of extreme risk protection orders, including what they are, how they are used, and how Colorado's proposed law compares to other states. It also addresses other types of protection orders authorized in Colorado law.

Protection Orders in Colorado Law

A protection order, or restraining order, is a legal tool used to prohibit specific acts by a restrained person.

Criminal protection orders. A mandatory criminal protection order restrains a defendant from having any contact with his or her victims. The order is in effect from a defendant's first appearance before the court until completion of the case.¹ The court can modify or dismiss the protection order, and it can enter further orders against the defendant.

Emergency protection orders. Emergency protection orders are usually issued in cases of immediate danger, to prevent abuse. Judges can enter them verbally, by telephone, if the court is not open. They expire the next day unless the court extends them in a hearing.

Civil protection orders. A temporary civil protection order can be issued against an adult or older juvenile to prevent any of the following:

- assaults and threatened bodily harm;
- domestic abuse;
- emotional abuse of the elderly or at-risk adults;

- sexual assault or abuse; and
- stalking.²

A temporary civil protection order is in effect for up to 14 days, at which point both parties must attend a hearing to determine whether to make the order permanent. After two years, an individual subject to a permanent civil protection order can petition the court to modify or dismiss the order.

Firearms restrictions in protection orders. Under current law, all civil protection orders prohibit the defendant from possessing or purchasing a firearm for the duration of the order. The defendant must also relinquish, for the duration of the order, any firearm or ammunition in his or her immediate possession or control.³ Criminal protection orders involving domestic violence require defendants to relinquish their firearms and refrain from purchasing or possessing firearms.⁴ Firearms prohibitions may also be included in other criminal protection orders, at the discretion of the judge.⁵

Extreme Risk Protection Orders

House Bill 19-1177 creates extreme risk protection orders (ERPOs) in Colorado. An ERPO requires an individual who poses a significant risk of causing personal injury or injury to others to surrender all his or her firearms. Law enforcement or members of the individual's family or household may petition the court for an ERPO.

Under HB 19-1177, a temporary ERPO, allowing for immediate seizure of firearms, can be issued for up

¹Section 18-1-1001, C.R.S.

²Section 13-14-104.5, C.R.S.

³Section 13-14-105.5 and Section 18-1-1001 (9), C.R.S.

⁴Section 18-1-1001 (9), C.R.S.

⁵Section 18-1-1001 (3), C.R.S.

to 14 days. The standard for issuance is a preponderance of evidence, presented by the petitioner, that the respondent poses significant risk. A temporary ERPO is issued ex parte, without the respondent's participation in the hearing.

The court must hold a hearing on whether to extend a temporary ERPO within 14 days. The respondent must attend this hearing and be represented by an attorney, who can be appointed and paid by the court. In addition to the ERPO, the court must also consider whether the respondent meets the standard for a court-ordered evaluation or for an emergency commitment. If the judge at the hearing finds there is clear and convincing evidence of the respondent's risk to himself or herself or others, an ERPO lasting up to 364 days can be issued. For the duration of the ERPO, the respondent may file a one-time written request with the court to terminate the order if he or she can show that there is no longer a significant risk of causing injury. ERPOs can be renewed within 63 days of their expiration.

Removal of firearms. Once an ERPO is issued, law enforcement must file for a search warrant to find any firearms that may be in the individual's possession but not surrendered.

Return of firearms. If a temporary ERPO or ERPO is terminated or expires, the law enforcement agency must confirm through a background check that the respondent is eligible to own or possess a firearm and return the respondent's firearms within three days. If the respondent surrendered a concealed carry permit, it must also be reissued within three days at no cost to the respondent.

ERPOs in Other States

Currently, there are 14 states with ERPO laws, which are also known as "red flag" laws. Most of these laws were enacted in 2018. Laws in New York and New Jersey will go into effect later in 2019.

A key difference among states is who can petition the court for an ERPO. All states allow law enforcement to petition, and some states allow others, including family members and medical professionals.

Table 1 details the states with ERPO laws, when those laws were enacted, and the petitioners available under the laws.

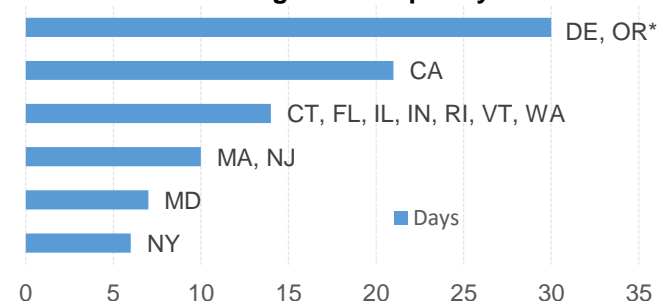
Table 1
State ERPO Laws

State	Year Enacted	Petitioners Allowed in Addition to Law Enforcement
California	2014	Close family members
Connecticut	1999	None
Delaware	2018	Family members
Florida	2018	None
Illinois	2018	Family members
Indiana	2005	None
Maryland	2018	Specified health professionals, family members, intimate partners, cohabitants, current or former legal guardians
Massachusetts	2018	Family or household members
New Jersey	2018	Family or household members
New York	2019	Family or household members, school administrators
Oregon	2017	Family or household members
Rhode Island	2018	None
Vermont	2018	None
Washington	2017	Family or household members

Source: National Conference of State Legislatures.

Another area where the law varies from state to state is the maximum length of a temporary ERPO, before a full hearing must be held. This is detailed in Figure 1. Some states allow a full ERPO to last indefinitely, but most set the maximum length at one year, with the ability to renew.

Figure 1
Maximum Length of Temporary ERPO



Source: Legislative Council Staff.

*In Oregon, if the respondent does not request a hearing within 30 days, the ERPO automatically extends to one year.