

A QUICK GUIDE TO EXTREME RISK FIREARM PROTECTION ORDERS *prepared by Sheila Lewis, JD ERFPO Trainer*

WHAT IS AN EXTREME RISK FIREARM PROTECTION ORDER?

An Extreme Risk Firearm Protection Order prohibits possession or purchase of a firearm by a person who is experiencing a mental health crisis. An ERFPO requires the gun owner to relinquish all of their firearms to law enforcement or to a federal firearm licensee within 48 hours of service of the order or sooner at the discretion of the court. The initial order is entered *ex parte* (without a hearing.) Ten days later, the court holds a full evidentiary hearing. A final order lasts for one year but can be renewed or shortened by a court order.

HOW DOES A DOMESTIC VIOLENCE (DV) PROTECTION ORDER DIFFER FROM AN ERPO?

DV Protection Orders and ERPO's share many of the same provisions, but there are some important differences. A DV Protection Order is filed in family court. The person seeking the order (the petitioner) must be a family member and must appear in court. An ERPO is filed in civil court by a law enforcement officer on behalf of the person seeking the order (the reporting party). If the gun owner refuses to relinquish their firearm, they are in violation of a court order and they are subject to criminal prosecution.

WHO CAN ACT AS A REPORTING PARTY FOR AN ERPO?

On the face of the law, only a family member (a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship) or an employer or a school administrator can start the process. But courts have been interpreting the law to allow anyone with direct information to serve as a reporting party. Most courts allow law enforcement to start the process. But some law enforcement officers are reluctant to start the process because they are not explicitly named as potential reporting parties.

WHEN SHOULD A PERSON SEEK AN ERFPO?

When someone has probable cause to believe that a gun owner "poses a significant danger of causing imminent personal injury to self or others" by having or receiving a firearm, they should go to the police immediately so that the law enforcement agency can start the paperwork. This law can only be used in emergency situations.

WHAT DOES THE COURT CONSIDER IN DECIDING WHETHER TO GRANT AN ERFPO?

The court looks at any act or threat of violence by the gun owner within the past year, the gun owner's mental health history and criminal record, any evidence of cruelty to animals and any recent acquisition or attempts at acquisition of a firearm. The person who wants the court to grant the ERPO needs to provide the officer with this information to help the judge decide if the gun owner "poses a significant danger of causing imminent personal injury to self or others" by having or receiving a firearm.

WHAT HAPPENS IF THE COURT ISSUES AN ERFPO?

The gun owner must relinquish all firearms in his possession in a safe manner to a law enforcement officer or to a federal firearms licensee (FFL) within forty-eight hours of service of the order or sooner if the judge believes immediate relinquishment is appropriate. The gun owner brings all of their firearms to any law enforcement officer or FFL for storage. The officer or FFL prepares a receipt, provides a copy of the receipt to the gun owner, and provides a copy of the receipt to the law enforcement agent who filed for the ERFPO.

WHAT HAPPENS TO THE FIREARM WHEN THE ORDER ENDS?

The law enforcement officer or agency must locate the firearm owner and return it if the owner is still eligible to possess a firearm. If the owner is not, or the owner does not claim the firearm, the agency must obtain a court order to destroy the firearm.

HOW DOES THE ISSUANCE OF A PROTECTION ORDER KEEP US SAFE FROM GUN VIOLENCE?

When a court issues an ERPO, the information is entered into several national databases, including the NICS system. No legitimate firearms dealer will sell a firearm to anyone under an order of protection. If the subject of the ERFPO is found in possession of a firearm anywhere in the country, they can be arrested for violating the order of protection.