

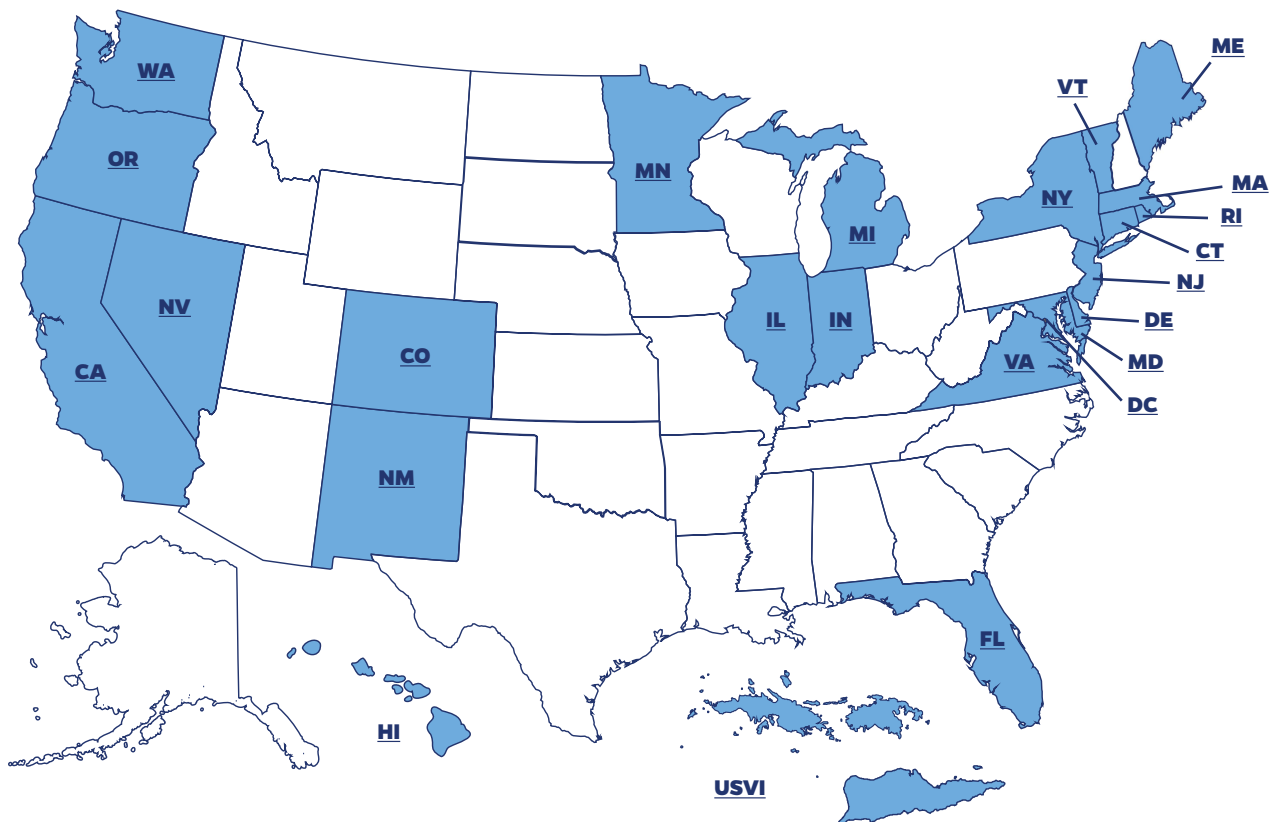
Important Considerations for Law Enforcement in States with Extreme Risk Protection Order (ERPO) Laws

What is an Extreme Risk Protection Order (ERPO)?¹

An Extreme Risk Protection Order (ERPO) is a civil court order that temporarily restricts firearm access for an individual who is behaving dangerously or presents a high risk of harm to themselves or others. ERPOs are valuable tools to reduce gun violence in your community by proactively and temporarily removing firearms from individuals who have a demonstrated risk of violence.

STATES WITH ERPO LAWS

ERPO laws exist in the District of Columbia (DC), the US Virgin Islands (USVI), and the following 22 states.



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What is the role of law enforcement in the ERPO process?

Law enforcement plays a critical role in the ERPO process. In every state with an ERPO law, law enforcement may petition the court for ERPOs, serve the order on the respondent, remove firearms from respondents once an ERPO has been granted by the court, store surrendered firearms for the duration of the order, and, when appropriate, petition for the continuation of an ERPO against an individual still behaving dangerously towards themselves or others.

LAW ENFORCEMENT MAY ALSO:

- Investigate potential ERPO cases, including interviewing family/household members or any concerned party that contacted law enforcement about the respondent's behavior that gave rise to the risk of harm.
- File for an ERPO petition and testify before a judicial officer regarding known threats.
- Coordinate with other law enforcement agencies to mitigate any risks that are presented by a respondent.
- Work with family or household members living with the respondent to encourage the respondent to be cooperative with the removal process, to share where firearms are located in the home during the removal, or to otherwise de-escalate the situation so that harm to the respondent and the officers on site are prevented.
- Serve the respondent with a copy of the ex parte and/or final ERPO.
- Dispossess the respondent of any firearms to which they have access and, if applicable, their firearm purchaser license.
- Safely and securely store the surrendered firearms and return or destroy them once the ERPO expires, depending on the situation.
- Ensure respondent compliance with the ERPO throughout its duration.
- Appear at any subsequent hearings, including compliance hearings and hearings for order termination or continuance.
- Input temporary and final ERPOs into the National Instant Criminal Background Check System (NICS) to prevent firearm purchase during the duration of the order.
- Collaborate with social service providers and others to monitor the respondent's progress as required by the court and ensure the individual gets connected to the resources they need.
- Determine whether there is cause to extend the ERPO, and if so, file the appropriate paperwork to extend the order.

Successful ERPO implementation requires law enforcement to coordinate closely with many other partners in their work on ERPOs:

- Prosecutors' offices
- Community organizations
- Courts
- Circuit clerk's offices
- Domestic violence advocates
- Victims' services providers
- Crisis intervention teams
- Families and household members of the respondent and petitioner
- Mental health co-responders
- And others

These collaborative efforts allow law enforcement to engage others to help file a petition, appear in court, safely serve the ERPO, remove firearms, and support the respondent.

What is the ERPO Process? ²

1. The petitioner files a temporary ERPO petition under penalty of perjury. (Many ERPO laws also prescribe criminal penalties for presenting false information to the court.)
2. After presenting the evidence in court, a judicial officer approves or rejects the temporary/ex parte ERPO petition.
3. If the court issues the temporary order, law enforcement serves the order, the petition, and related information on the respondent, including notice of the date of the hearing on the ERPO petition. Ideally, firearms are removed or surrendered at that time, and the ERPO is entered by the law enforcement agency into the NICS background check system. to prohibit gun purchases for the duration of the order. A temporary ERPO generally lasts for up to 14 days and only until a hearing on the final ERPO petition is held.
4. An ERPO hearing is held; the respondent and petitioner both attend the hearing, and both may testify and present evidence. The respondent has the right to counsel, at no expense to the government. Upon hearing from both of the parties and reviewing the evidence (including if there are firearms in the respondent's possession, what kind they are, how many they have, and where the firearms are located) a judge or judicial officer determines whether the legal burden of proof has been met and if there is sufficient evidence to issue an ERPO.
5. The court issues the ERPO for up to one year (timeline varies by state) or does not grant the petition. If the court issues the order, the respondent is advised of the requirements of complying with the order. To make sure the prohibitions are understood, the court provides the respondent with information about how the renewal process works, and how to request return of firearms when the ERPO has concluded. If the court does not issue the order, the respondent's firearms are returned and their purchasing prohibition in NICS is removed.
6. At the termination or expiration of the order, if a renewal has not been granted, and if the respondent is not otherwise prohibited, the firearms are returned (and, if applicable and depending on state law, permits are returned) and the background check system is updated.

What factors should be considered when determining if an ERPO is appropriate?

While the laws vary from state to state, law enforcement should consider the **totality** of the following factors or behaviors when deciding whether to petition for an ERPO:

- Recent verbal threats or acts of violence towards self or others (with or without a firearm)
- Recent physical acts of violence towards self or others (with or without a firearm)
- Patterns of violent acts or threats or other history of violence
- Violations of domestic violence protective orders or previous court orders
- Previous convictions for crimes prohibiting purchase and possession of firearms
- Previous felony convictions (particularly for violent acts)
- Behavior suggesting an imminent risk to others, such as brandishing a weapon, stalking, or making threats
- Unlawful or reckless use of firearms
- Access to firearms
- Ongoing alcohol and/or substance misuse
- Recent acquisition of weapons
- Recent acts of cruelty towards animals
- History of involuntary psychiatric disability hospital confinement

SPECIAL CONSIDERATIONS IN DOMESTIC VIOLENCE CASES:

In cases where there is a history of domestic violence, law enforcement should speak with victim(s)/ survivor(s) before pursuing any legal action in order to prioritize the safety of affected individuals.³ In some circumstances, it may be safer for a law enforcement officer, as opposed to a victim/survivor, to file for the ERPO. Either way, law enforcement should coordinate closely with a victim/survivor of domestic violence to ensure, first and foremost, that the course of action pursued considers their safety and wellbeing.

What else should law enforcement consider when developing or enhancing ERPO infrastructure?



PERSONNEL

Law enforcement should consider who in the agency oversees gun violence reduction efforts and consider how ERPOs could support their mission.

- Violent crimes and homicide detectives could use ERPOs to remove additional firearms from shooting suspects as the criminal case progresses, reducing the potential for further violence.
- Patrol officers can leverage ERPOs to intervene in domestic violence cases when the victim/survivor may be unable to secure a DVPO themselves. However, as discussed above, law enforcement should always consult with the victim/survivor and prioritize their safety and autonomy.
- Crisis intervention team members can use ERPOs to remove firearms from a person who makes a credible threat of suicide.



TRAINING

Department-wide training on ERPOs is essential for all members of an agency to understand when and how an ERPO can be used to save lives. Basic ERPO training for new officers establishes a process for officers and deputies to recognize dangerous behavior and access to firearms as indicators that an ERPO may be useful. Ongoing rollcall trainings are also essential to educate officers about this tool, any changes to law or policies around ERPO, and ensure that it remains front of mind for officers as a tool to prevent both homicide and suicide by firearm.

- Visit [ERPO.org](https://www.ERPO.org) to learn more about your state's ERPO law and the specific factors that should be considered.



SPECIALIZATION

Specialized training and multidisciplinary teams who can investigate and manage ERPO cases are beneficial.

- Existing crisis intervention team members, experienced investigators, and the incorporation of clinicians and emergency medical technicians (EMTs) should be considered for any new multidisciplinary efforts.



PARTNERSHIPS

In successful cases, law enforcement often coordinates closely with many other partners throughout the ERPO process. As noted above, coordinating with prosecutors' offices, community organizations, families of the respondent and petitioner, and co-responders, among others, can improve the safety and impact of the ERPO process.



COORDINATION

Coordination among law enforcement officers is also key. Sometimes, an ERPO may be served by someone other than the petitioner (including, potentially, a different law enforcement officer or agency such as a sheriff's office). In that case, communication and coordination are paramount to the safety and security of both the respondent and the officers.

Can Minors be Respondents to ERPOs?

Many jurisdictions allow minors to be respondents in ERPO cases.⁴ While most states require individuals to be at least 18 or 21 years of age to purchase firearms, depending on that state's minimum purchasing age, minors are often permitted to possess a family firearm or to use one under familial supervision for hunting. Furthermore, a minor presenting a risk to themselves or others may be a respondent in an ERPO case before turning 18 years old so that the ERPO is already in place at the time they become legally able to purchase firearms. Some jurisdictions are also implementing ERPOs with minor respondents (usually 15-17 year olds) in order to respond to threats of school shootings, to prevent suicides, and to prevent other interpersonal violence.

When working on ERPOs with minor respondents, it is important that law enforcement closely coordinates with the minor's family/household members. Case law around minor respondents is also still developing, particularly as more states adopt ERPO policies.

What do enhanced background checks, as established by the 2022 Bipartisan Safer Communities Act, entail?

The Bipartisan Safer Communities Act (BSCA) has new requirements for background checks run for purchasers under the age of 21. Specifically, "in addition to running names through NICS databases, a select group of examiners is now reaching out to state juvenile justice, mental health, and local law enforcement agencies to see if their backgrounds contain potentially disqualifying information that isn't in the databases automatically queried by NICS. Another provision in the new law extends, where cause to do so is established, the time examiners have to investigate under-21 cases from 3 to 10 business days."⁵

What do co-responders or multidisciplinary teams do as it relates to ERPOs? Why are they important?

Mental health counselors and clinicians have specific training and expertise in evaluating certain markers for risk and are best suited for long-term case management of individuals in crisis. These professionals may serve as a critical resource on multidisciplinary teams, working in close partnership with law enforcement to identify and pursue an ERPO in a way that de-escalates the situation and may help connect the respondent to other resources.

As many ERPO cases start with a crisis in the respondent's life, a response team including law enforcement and mental health providers can jointly support the investigation and ERPO process. Expanding teams to include EMTs and agency attorneys builds greater depth of process and ensures a more thorough and human-centered response, investigation, and management plan.

How do you safely handle service of orders and firearm removal?

Like service of a search warrant or arrest warrant, serving an ERPO requires conducting background research on the respondent and other residents at the service location, careful safety planning, and coordination of resources. In many ERPO cases, there are no criminal charges, no arrest is made at the time of service, and the respondent is not taken into custody or involuntarily committed. While some situations may require the use of tactical teams (based on the specific facts of the case, including weapons present, the nature of the threats, and the criminal history of the respondent), many ERPOs can be served without the use of tactical teams. **Wherever possible, law enforcement should limit the use of tactical teams and focus on de-escalation.**

Consider whether the respondent has been cooperative through the process and whether you have reason to believe the re-spondent is still in possession of firearms. It may also be safer to contact the subject away from their home to serve the order and coordinate a safe approach to complete any required searches. Law enforcement should also consider involving supportive family members or friends to assist the respondent, encourage cooperation, provide insights into whether all the firearms were removed, and reduce the potential for escalation.

Violent confrontations with law enforcement during the service of ERPO are exceedingly rare. When an agency provides training, establishes consistent guidelines for use of ERPO, coordinates with other law enforcement agencies involved, is trans-parent and respectful of the respondent from the start of an investigation, and provides clear information to the respondent about the nature of the proceedings (including the process for regaining possession of firearms after the ERPO has terminated), you can build trust with the respondent and gain compliance with the process.

What happens when an order expires, or you extend an order?

It is important to know the process in your state around the expiration of an ERPO. Generally, as the expiration date approaches, law enforcement should update their investigation to determine if the dangerous behavior or crisis that necessitated the use of an ERPO has, in fact, passed. If there is evidence that the respondent still poses a danger to themselves or others, law enforcement can file to renew the ERPO through the same or similar process to the original order. It is important to note that ERPO laws require that new evidence of the respondent's current dangerousness be presented to the court to renew an ERPO. If the court extends the order, the ERPO remains in effect until a new expiration date (typically 6 months to one year from the issuance of the extension), as determined by the court. If the extension is denied, the ERPO will expire.

If and when an ERPO expires, the respondent's firearm rights are restored. Your agency may be required to inform the respondent at the time of expiration if your agency has possession of their firearms. Upon expiration, you are required to return the firearms to the respondent unless it is determined that the respondent is otherwise prohibited under state or federal law or confirm that they do not want their firearms returned.

Consult your state's ERPO law and your agency's policy around return of firearms (and licenses) and any background checks that may be required.

ERPO Case Studies

ERPO HAVE BEEN USED IN A VARIETY OF WAYS, INCLUDING TO PREVENT SUICIDES AND MASS SHOOTINGS. BELOW ARE A FEW EXAMPLES OF HOW ERPOs HAVE BEEN USED TO PREVENT VIOLENCE.



In Washington state, a father contacted the Regional Domestic Violence Firearms Enforcement Unit's ERPO email address expressing concern that his son was actively suicidal, had access to firearms, was emotionally unstable, and had a substance use disorder. An ERPO was filed to temporarily remove the firearms from the home. The father testified at the hearing and told the court that he "believes in the law of common sense" and that the ERPO was needed to protect his son and family. Because of the ERPO, his son is still alive today. As many experts in suicide prevention share, suicidal thoughts are often temporary and attempts impulsive, but having access to a firearm during that period of crisis, however fleeting, is fatal most of the time because attempts with firearms are almost always fatal (compared to other means).



Also in Washington state, law enforcement responded to a crisis call of an individual who had displayed over 20 firearms with loaded magazine clips on his front lawn. Most troubling to law enforcement was the fact that the firearms were within reach of a well populated residential street where children were playing. The individual was experiencing delusions and believed that he was 700 billion years old. An ERPO was obtained, and the firearms were secured by law enforcement while the individual was evaluated for a mental health hold.



In Washington, D.C., the Metropolitan Police Department (MPD) was notified by a police department in Maine that someone residing in D.C. made concerning statements on Discord to a person in Maine about hurting himself and others. MPD immediately went to speak to the respondent in-person. The respondent confirmed that he had threatened to blow up the Department of Motor Vehicles, and that he said he would create a mass casualty event and then kill himself. He also confirmed he had said he would shoot up a school and a post office. The respondent also told MPD about his history of mental illness. He had attempted to kill himself multiple times and had longtime suicidal ideation and an affinity for serial killers. The respondent was temporarily committed to the hospital. The Washington D.C. Office of the Attorney General (OAG) produced a detailed petition for an ERPO and filed it with the court, including a request for a search warrant to determine if the respondent had guns in his residence. After an emergency hearing, at which the temporary ERPO and the search warrant request were granted, the OAG coordinated with MPD and the hospital to ensure that the respondent was served and that the search warrant was executed immediately. After a trial in this matter, the court issued a one-year ERPO.



In Florida, a 30-year-old subject in crisis was highly intoxicated. After losing a scuffle with a 19-year-old, the subject armed himself with an AR-15 and chased a group of college students from his neighbor's yard. No one was willing to prosecute, but the neighbor was willing to cooperate with an ERPO to prevent further harm. The subject was served with an ERPO. A year later, the subject had undergone treatment for his alcohol use, acquired job training, and was entering school to be an EMT. With the time and space facilitated by ERPO, the subject connected with services and turned his life around. The ERPO expired and the subject has had no contact with law enforcement since.



In Illinois, the Cook County Sheriff's Police Gun Team was notified of a domestic battery incident where the victim stated the offender possessed firearms in a safe. The offender had a history of domestic battery arrests. On-scene the offender refused to cooperate with police. The Cook County Sheriff's Police Department obtained a Firearms Restraining Order and recovered 12 firearms and 1,500 rounds of ammunition.

Additional Resources

ADDITIONAL RESOURCES FOR LAW ENFORCEMENT:

ERPO.org: <https://erpo.org/implementer/law-enforcement/>

TO REQUEST TRAINING AND TECHNICAL ASSISTANCE, PLEASE VISIT:

<https://erpo.org/training-technical-assistance-request-form/>

Endnotes

1. Also called red flag laws, extreme risk laws, gun violence restraining orders, firearms restraining orders, lethal violence protection orders, among other names.
2. Note – the process varies by state. This is the process in many states.
3. Cantrell, S & Geller, L. (2024). Extreme Risk Protection Orders & Domestic Violence Protection Orders: A Side by-Side Comparison of ERPOs and DVPOs. National ERPO Resource Center. Johns Hopkins Center for Gun Violence Solutions. Available: <https://erpo.org/wp-content/uploads/2024/10/Final-Extreme-Risk-Protection-Orders-Domestic-Violence-Protection-Orders-Chart.pdf>
4. Cantrell, Geller, Fleisher, Assar, Horwitz, Frattaroli, When Minors Threaten Violence: Firearm Access And Extreme Risk Protection Order Laws, Health Affairs Forefront, <https://www.healthaffairs.org/content/forefront/minors-threaten-violence-fire-arm-access-and-extreme-risk-protection-order-laws>, December 20, 2024.
5. Available: A Closer Look: NICS enhanced background checks for under-21 gun buyers showing results, FBI News, <https://www.fbi.gov/news/stories/nics-enhanced-background-checks-for-under-21-gun-buyers-showing-results>