Extreme Risk Protection Order Model Policy Guide

RECOMMENDATION CHECKLIST

Petitioners and Respondents

1. Persons eligible to petition for ERPOs should include: 1) law enforcement officers; 2) the respondent's family and household members, 3) current and former dating partners of the respondent; and 4) licensed health care providers who have provided care to the respondent.

2. The term "dating partner" should refer to a person who is or has been in a social relationship of a romantic or intimate nature with the respondent.

3. "Licensed Health Care Providers" should align with the state code definition.

4. ERPO petitioners cannot be sued for petitioning or failing to petition for an ERPO if they acted in good faith.

5. States should examine and amend their privacy laws as needed to allow licensed health care providers to be authorized ERPO petitioners.

Minor Respondents

6. ERPOs, including ex parte orders, should be available when a minor poses a risk of personal injury to self or others by having in their custody or control, by purchasing, by possessing, or by receiving a firearm, regardless of legal firearm ownership.

Venue

7. ERPO cases should be filed and heard by judicial officers in courts where the respondent resides or where events that gave rise to the petition occurred.

8. ERPOs should be heard in the same courts where Domestic Violence Protection Order cases are heard.

ERPO Types and Hearings

9. ERPO laws should include both ex parte orders and final orders.

10. Courts should allow for both ex parte and final ERPO petitions.

11. A petition for an ex parte ERPO should be heard in person, virtually, or by telephone on the day the petition is filed or on the judicial day immediately following the day the petition is filed.

12. Courts should allow petitioners to file for a final ERPO without first having sought and obtained an ex parte ERPO.

Due Process Protections

13. ERPOs should include the following procedural safeguards at the appropriate phase of the judicial process, as listed in the Bipartisan Safer Communities Act. (See report for list of recommended safeguards)

Burdens of Proof

14. Burden of proof for ex parte and final ERPOs should be on the petitioner to prove that the respondent poses a significant risk of personal injury to self and/or others by having in their custody or control, by purchasing, by possessing, or by receiving a firearm.

15. Burden of proof for early termination of an ERPO should be on the respondent to prove.

16. Burden of proof for extension of an ERPO should be on the petitioner to prove.

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Standards of Proof

17. The standard of proof for issuing an ex parte ERPO should be probable cause, or mirror the state's Domestic Violence Protection Order statute.

18. The standard of proof for issuing a final ERPO should mirror the state's Domestic Violence Protection Order statute.

19. The standard of proof for the extension or early termination of an ERPO should be the same as for a final ERPO.

Factors to Consider When Issuing an ERPO

20. In deciding whether to issue an ERPO, courts should consider a non-exhaustive list of evidence-informed risk factors. (See report for recommended consideration factors)

Fees

21. There should not be any court or firearm storage fees associated with ERPOs.

What ERPO Prohibits

22. ERPO legislation and petitions should clearly state that respondents cannot purchase, possess, control, receive, acquire, or hold in their custody any firearms, ammunition, or firearm permits and licenses while subject to an active ERPO and notify the respondent of how to comply with the order while it is in effect.

Duration of Orders

23. Temporary (ex parte) orders should be in effect for two to three weeks to allow parties to prepare for a final ERPO hearing, or mirror the length of the temporary order in civil domestic violence cases.

24. Final ERPOs should be in effect for one year.

25. If no renewal petition is sought and granted, the order should expire automatically at the end of one year.

26. In the final 90 days of the order, there should be a process where petitioners (or if law enforcement were the petitioners, appropriate family members/partners) are notified, to the best of the court's ability, of the impending expiration of the petition and given information regarding how to file for an extension.

ERPO Document Information

27. ERPOs should clearly state certain information to help with their administration and application and ensure that key information is understood by the relevant parties. (See report for recommended information to include)

28. Both ex parte and final orders should allow for the petitioner's address to be omitted from court documents if the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household.

29. Law enforcement and others petitioning as professionals should be able to provide their work address on petitions.

Service of Orders

30. ERPOs should be served by law enforcement.

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Searches Pursuant to ERPOs

31. Prior to a hearing for an ex parte ERPO or a final ERPO issued after notice and hearing the court should ensure that a reasonable search has been conducted of all available records to determine whether the respondent owns any firearms or ammunition.

32. Search warrants should be issued upon finding of probable cause that the respondent possesses items prohibited by ERPO if an ERPO has been issued and the respondent had the opportunity to voluntarily provide these items to law enforcement.

33. Courts should determine whether probable cause for a search warrant exists to believe the respondent has failed to relinquish firearms, ammunition, other deadly weapons, and firearm permits or licenses as required by the ERPO. The request for a search warrant should be granted after a judicial officer has reviewed a sworn statement or testimony of the petitioner or any law enforcement officer alleging that the respondent has failed to comply with the removal of items prohibited by ERPOs.

34. The court shall keep records of the seizure of any firearms, ammunition, and firearm permits or licenses discovered pursuant to a lawful search.

35. Courts should only issue concurrent search warrants with the issuing of ex parte ERPOs or final ERPOs if there are individual findings of probable cause that the respondent failed to relinquish items in their possession that are prohibited by ERPOs.

Firearm Removal

36. A law enforcement officer serving an ERPO should take possession of all firearms, ammunition, or firearm permits and licenses belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to lawful search.

37. At the time of service of an ERPO, law enforcement should request immediate relinquishment of all firearms, ammunition, and firearm permits and licenses in the respondent's custody, control, ownership, or possession to the law enforcement officer.

38. If personal service by a law enforcement officer is not possible, or not required because the respondent was present at the ERPO hearing, the respondent should be required to immediately relinquish all firearms, ammunition, or firearm permits and licenses in a safe manner to the control of the local law enforcement agency within 24 hours of being served with the order by alternate service or within 24 hours of the hearing at which the respondent was present.

39. At the time of dispossession, a law enforcement officer taking possession of a firearm, ammunition, or firearm permits and licenses should create a receipt and issue a copy of the receipt to the respondent.

40. Within two court days after service of the order, or two court days after the hearing at which the respondent was present, the respondent should be required to file an affidavit of surrender with the court that issued the ERPO which details that the firearms are no longer in the respondent's possession, when the dispossession occurred, and where the firearms are being stored.

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41. Law enforcement agencies should be required to develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition, and firearm permits and licenses required to be dispossessed pursuant to an ERPO.

Compliance Hearings

42. The respondent should be required to attend a compliance hearing shortly after a final ERPO has been issued, preferably less than one week.

Third Party/Joint Occupancy Clauses

43. ERPO laws should include "third party clauses" (or "joint occupancy clauses") allowing a person who is not the respondent, but legally owns firearms removed pursuant to an ERPO, to petition for return of their firearms. These clauses should apply whether or not the respondent is a minor.

44. It should be unlawful for any firearms owner to knowingly, recklessly, or negligently allow an individual they know is a respondent to an ERPO to access their firearms.

45. The petition for return of firearms to a third party should require a hearing before a judicial officer, provide notice to parties to the case, and be accompanied by a plan that indicates how the legal owner intends to prevent access by the respondent.

Entry Into Federal and State Background Check Systems

46. States should ensure that when a court issues or renews an ERPO, the information is entered by the state-designated entity into the National Instant Criminal Background Check System (NICS), the National Crime Information Center (NCIC), and, depending on the state, the state background check database. Such notification should occur the same day the ERPO is issued and include order expiration dates.

47. Entries of ERPOs into background check databases should include order expiration dates and any renewals that are granted.

48. Upon the issuance of an ex parte ERPO or final ERPO, firearm permits and licenses issued to the respondent should be revoked and removed from the state's relevant databases.

Extension and Early Termination of Orders

49. Respondents should have the option to petition once for early termination of the order after it goes into effect, with the burden of proof being on the respondent to demonstrate that they are no longer at elevated risk of violence.

50. ERPOs may be extended based on a petition filed within the final 90 days the order is active.

51. Renewal of an ERPO should be based on evidence that the respondent continues to pose an elevated risk of violence, and may also take into consideration the original facts of the case to the extent that they support a finding of continued risk.

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52. Renewals of ERPOs should be in effect for one year.

53. When a renewal order is granted, respondents should again have the option to petition for early termination of the order, with the burden of proof being on the respondent to demonstrate that they are no longer at elevated risk of violence.

Return of Firearms

54. Where an order is terminated or expired without renewal, a law enforcement agency holding a firearm, ammunition, or firearm permit or license should be required to return, upon request, any dispossessed items back to a respondent only after:

    1. Confirming, through a background check, that the respondent is currently eligible to possess firearms under federal and state law; and

    2. Confirming with the court that the ERPO has been terminated or has expired without renewal.

55. Law enforcement should be allowed to dispose of unclaimed firearms after a reasonable time, as defined by existing state statute, has passed.

Penalties

56. There should be a penalty associated with knowingly filing false petitions for an ERPO and for petitions filed with the intent to harass. These penalties are in addition to other state laws which may prohibit perjury or other false statements under oath.

57. There should be criminal penalties for violations of an ERPO.

Data Collection

58. States should ensure that ERPO case data are gathered and should facilitate access to these data for research, policy, and public safety purposes. (See report for recommended data categories)

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