

EXTREME RISK PROTECTION ORDERS

Domestic Violence Symposium
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Extreme Risk Protection Order

Civil order that temporarily prevents individuals who are at a high risk of harming themselves or others from accessing firearms & concealed pistol license (CPL)

Background on ERPO Laws

- Based on national research regarding firearms risk
- Allows removal of firearms without having to arrest or seek civil commitment
- Able to prevent harm, rather than wait until a crisis escalates to a tragedy
- Connecticut's Risk Warrant
 - 1999 - amended in 2013 to include ammunition
- Indiana
- California: Gun Violence Restraining Order
- WA: Extreme Risk Protection Order (ERPO)
- Oregon: Extreme Risk Protection Order (ERPO)
- 5 states had ERPO-like laws before Parkland
- 8 additional states adopted them after Parkland (as of July)

What is an Extreme Risk Protection Order (ERPO)

- Initiative 1491 approved by voters in November 2016
- Law took effect December 2016, RCW 7.94
- Civil order that temporarily prevents individuals at a high risk of harming themselves or others from **accessing, purchasing, or possessing firearms/Concealed Pistol License (CPL)**

Active shooter and mass shootings

- According to the bureau, "An **active shooter** is an individual actively engaged in killing or attempting to kill people in a confined space or other populated area.
- **Mass shooting** is an incident involving multiple victims of firearms-related violence.
- FBI's definition of **Mass Murder**, "Generally, mass murder was described as a number of murders (four or more) occurring during the same incident, with no distinctive time period between the murders."

FBI data 2016-2017 (active shooter stats)

- **50 incidents in 21 states (3 in Washington)**
 - Mukilteo House Party (3 killed, 1 wounded) 2016
 - Cascade Mall (5 killed) 2016
 - Freeman High School (1 killed, 3 wounded) 2017
- **221 people killed (722 wounded)**
- **13 Law enforcement officers killed (20 wounded)**
- **50 shooters were all male- all acted alone (ages 14-66)**
- **13 shooters committed suicide**

Media clips

FBI stats on location of the mass shootings

- **17** out of 50 occurred in areas of commerce (**business environments** open to the public, private businesses- shopping malls.
- **7** occurred in **school/education** environments (sadly, this number is much higher for 2017-2018)
- **14** occurred in **open space locations** (e.g. shooter shot motorists from their parked or moving vehicles while the shooter was on foot)
- **3** occurred on **government properties**
- **2** at residences (resulting in at least four killed)
- **2 churches/** houses of worship
- **4 health care facilities**
- **1** on a double decker **bus**

School Shooting stats

- Since 1999, at least 145 school shootings
- When the weapon source was identified (105 cases), **80% were taken from the child's home or those of friends or relatives**
- Strong connection between school shootings and access to guns in the perpetrators home

• Source: *The Washington Post*, August 1, 2018

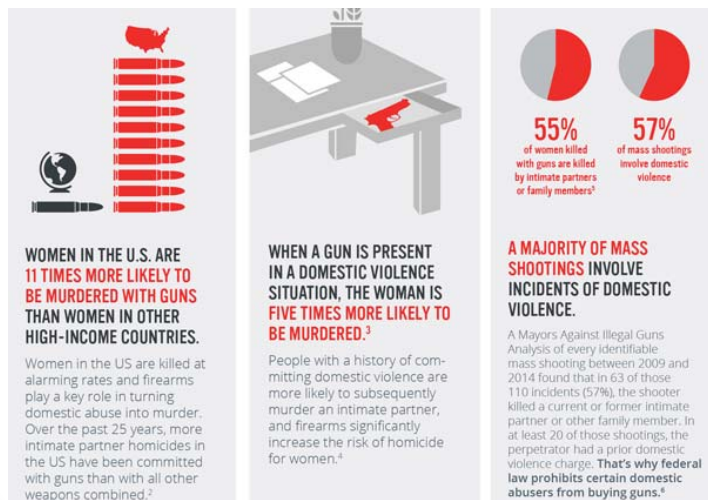
Purpose of the ERPO

- An Extreme Risk Protection Order is a critical tool to help law enforcement and families **keep guns out of the hands of someone experiencing a crisis:**
 - **Mental health crisis**
 - OR
 - **Violent behavior**

Red Flag Behaviors: Warning Signs

- **Threats of violence** towards others
- **Threats of self harm**
- Prior **domestic violence** incidents
- **Abuse of drugs or alcohol**
- Change in behavior (crisis calls or new disturbance calls)
- Prior protective orders issued
- Recently acquired firearms/ fixation with firearms

Mass shootings & Domestic Violence



What does an ERPO do?

- Prohibits purchasing firearms/possession of firearms/CPL for up to 1 year (renewable)
- Respondent has to immediately surrender firearms/CPL
- Order gets entered into WASIC/ NCIC (state and federal databases)
- It DOES NOT prohibit contact or put any other personal restraints (only about preventing firearm purchasing/possession)

DVPO vs. ERPO

- DVPO: If a victim is seeking protection from a respondent that includes physical restraint provisions, protection against assaults/ threats, a DVPO should be considered
- DVPO: Can also prohibit a respondent's access to firearms (Order to Surrender Weapons is issued with the DVPO)
- ERPO: Is specific to firearms and CPL only, it does not require separation from the petitioner so in some cases because it is only specific to firearms is a better option for families and those in treatment
- ERPO can be a tool when DVPO or NCO does not meet the circumstances

Who Can File for an ERPO

- Law Enforcement
- or
- Family or household member
 - Persons related by blood, marriage or adoption to the respondent
 - Dating partners of the respondent
 - Child in common with the respondent
 - Roommate within the last year
 - Biological or legal parent-child relationship (stepparents/
grandparents/ grand children
 - Legal guardians

Forms Needed for ERPO filing

- **ERPO Petition** (supporting police reports, Cert, or other documentation)
- **LEIS** (Law Enforcement Information Sheet)
- **Law Enforcement Addendum** (for LE only. This form is suggested, but not required)
- **Temporary Ex Parte Extreme Risk Protection Order**
- **Return of Service**
- www.protectionorder.org - includes FAQs & Washington Courts online forms

How to Petition for an ERPO

- Step 1: Where to File the ERPO petition;
 - Can file in any Municipal, District or Superior Court
 - Can file in the county where the petitioner or respondent resides
- Two part process (like other protective orders)
 - **Temporary Ex Parte Order** (emergency order done without notice to the respondent)
 - Service required- must serve 5 days before the next court date (full hearing)
 - **Full hearing**- set within 14 days of the Temporary Ex Parte Order being issued. Full hearing will always be in **Superior Court**

ERPO Petition

- Practice Tip: The law enforcement agency is the petitioner
 - (Seattle Police Department v John Doe)
- Individual Officer signing the petition is petitioning on behalf of their agency
- LE Officer that signs the petition needs to be available/appear at the full hearing (set within 14 days in Superior Court)
- ERPO can be issued for 1 year and renewable

ERPOs

- A petition for an extreme risk protection order may be filed by (a) a **family or household member of the respondent** or (b) a **law enforcement officer** or **agency**.
- Must be filed in the county where the petitioner resides or the county where the respondent resides.
- A petition must:
 - (a) Allege that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm, and be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent;
 - (b) Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, or control;
 - (c) Identify whether there is a known existing protection order governing the respondent; **and**
 - (d) Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition

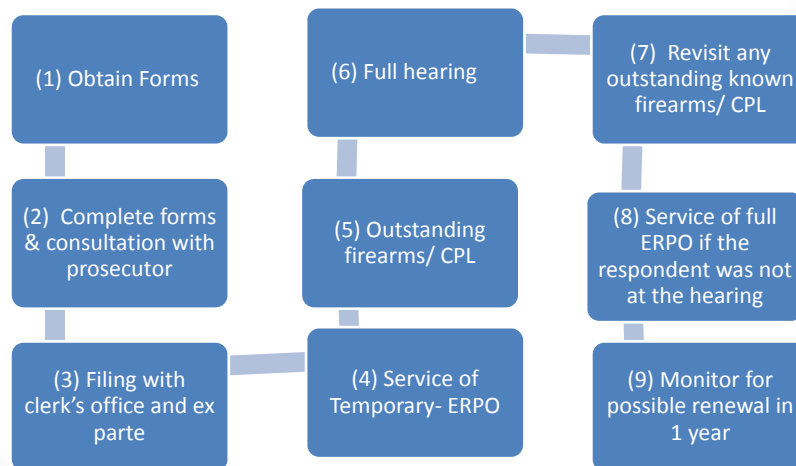
Service and Enforcement of the ERPO

- LE may have already taken weapons during a crisis call/ DV response (community caretaking- safe keeping)
- If firearms are not in evidence/ safe keeping, **LE must order the respondent to surrender all firearms/ CPL**
- LE should do a threat assessment with their supervisors prior to service (SWAT protocol)
 - What is the safest way to serve the ERPO
- LE can seize firearms in plain view or with consent
- **Consider if there is a basis to detain the respondent for an involuntary hold/ evaluation** (This can give you time to get a search warrant if the respondent refuses to surrender)

ERPO Practice Tips

- **Petition:** Run JABS/ NCIC for prior orders (DV orders/ AHO- list prior orders in the petition)
- **Petition:** **Run firearm purchase history and CPL** on all ERPO petitions. Check if prior out of state residence- consider asking that agency (e.g. California) to run purchase history if the out of state agency participates in sharing this information. * Can contact RDVFEU for assistance
- **Petition:** LE does not need an exact MH diagnosis of the respondent. It is sufficient to indicate that the respondent appears to be in a MH crisis (explain what the crisis is: recent police contacts, suicidal ideation, alcohol/ drug use etc)
- **Service:** Petitioner (LE Officer that signs the petition), cannot serve the documents. Same LE agency may serve, just not the author of the petition.
- **Service:** Consult with your local prosecutor ahead of the temp ERPO filing (if possible) if you think the respondent is likely to refuse to surrender their firearms/ CPL.
 - Do you have a SW ready to go in case of the refusal to surrender

Steps for ERPO process



ERPO violations

- RCW 7.94.120(1)(2)
- Anyone that files a false ERPO petition, knowing the information is false or with the intent to harass the respondent, is guilty of a gross misdemeanor
- Anyone that has in their custody, control, purchases, possesses, or receives a firearm with knowledge they are prohibited by an ERPO, is guilty of a gross misdemeanor (if two or more previous convictions= class C felony).
 - Extends the **ERPO by 5 years** (from date of existing ERPO)
 - Should be charged under the RCW for the priors to count

Sample ERPO Cases

Defendant arrested for DUI. During the arrest, the defendant made reference to school shootings and was making suicidal statements

18 year old student brought a loaded gun to school in his backpack

Defendant arrested for threats to bomb and A4-DV : LE took 30 plus firearms into evidence

Child luring investigation, stalking of a local dentist, and respondent doing a citizen's arrest on a stranger

Defendant discharging a firearm in a busy populated area (shooting into the sky)

Challenges to date

- **Legal issues:**
 - Does an ERPO apply to juveniles?
 - Can our federal partners apply for an ERPO?
 - Can law enforcement apply for a search warrant at the time of the ex parte ERPO filing. Do respondent's have to be given a chance to surrender when served?
 - Can law enforcement NIBIN test firearms from civil orders (ERPOs and Order to Surrender Weapons HB 1840)
 - ERPO violations are a gross misdemeanor the first 2 times- on the 3rd elevates to a felony
 - Does not include ammunition
 - **Ongoing need for training and education:** Need to do continue to educate families, law enforcement & school resource officers, judges, health care providers & mental health professionals about the ERPO option

Summary of the ERPO law

- **Legal authority:** Extreme Risk Protection Order (ERPO), RCW 7.94
- **Legislative intent:** Goal to prevent future gun violence by restricting access, possession of firearms/ CPL , to individuals in crisis
- **Who can petition:** Family/household member or law enforcement can petition
- **Criteria:** Crisis can be mental health or violent behavior "Think red flag behaviors"
- **Length of ERPO:** Lasts 1 year, but renewable
- **Restraint is for firearms/ CPL only:** Does not restrain a person (no personal protection for the petitioner)- ERPO is a restraint on firearms/ CPL only

ERPOs

www.washingtonprotectionorder.org - FAQs

Court Forms:

<https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=106>

XR 101 - Petition for Extreme Risk Protection Order

Xri 101 - Firearms

Examples

XR 112 - Return of Service

XR 121 - Temporary Extreme Risk Protection Order

XR 141 - Extreme Risk Protection Order

Law Enforcement Agency-Specific Forms:

LEA Addendum to Petition

LEIS -

- Thank you!
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