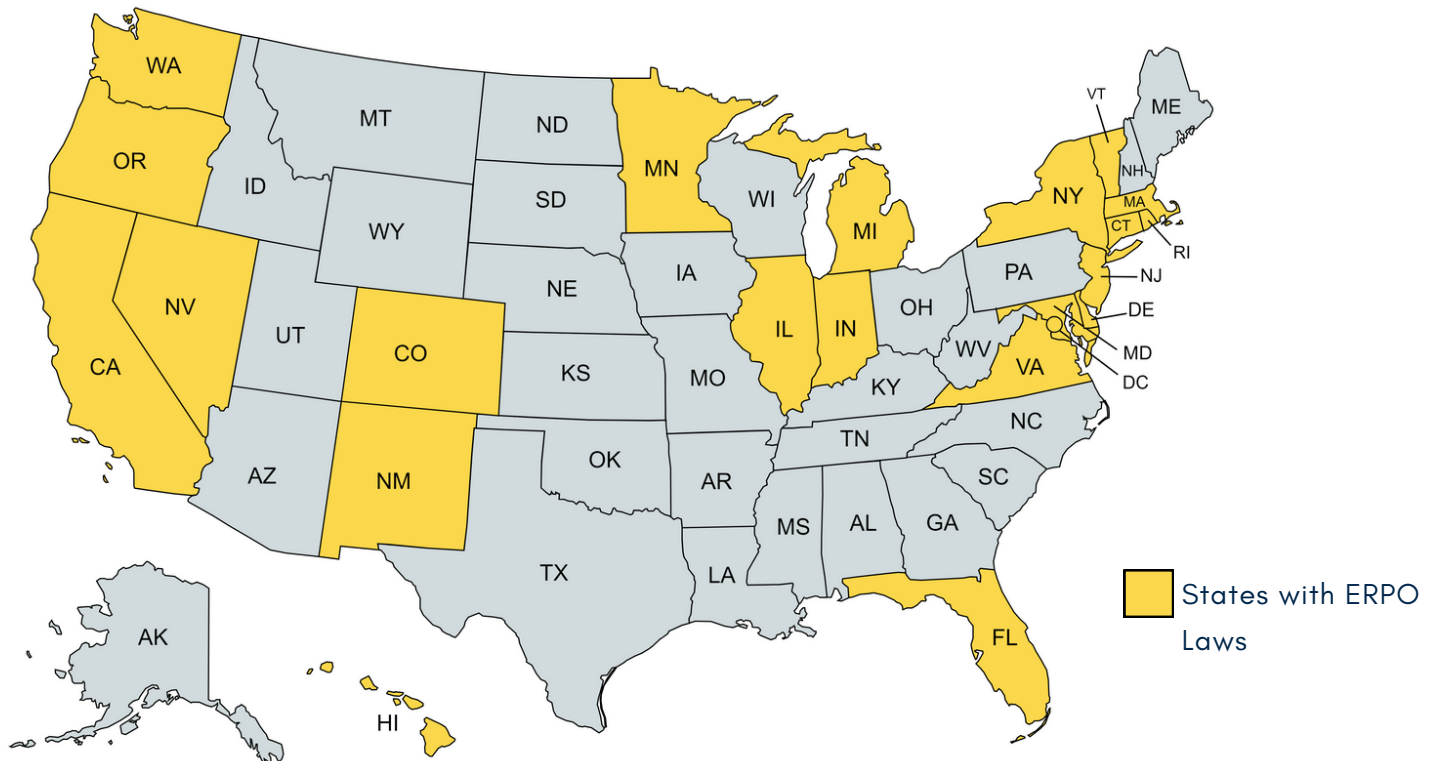


Implementation of Extreme Risk Protection Orders (ERPOs)

An **Extreme Risk Protection Order (ERPO)**, also known as a Red Flag order, is a civil court order that temporarily prohibits individuals who pose a danger to themselves or others from purchasing and possessing firearms. Implementation of ERPOs differs from state to state. Currently, 21 states and the District of Columbia have enacted ERPO laws.



All states that have ERPO laws include due process protections to ensure fairness of the process. Common due process protections include ex parte ERPOs issued by a judicial officer; a hearing of which the respondent (the person the ERPO is against) is provided notice and an opportunity to participate; and the requirement of substantial and credible evidence of imminent risk of harm to self or others to issue a ERPO.

State-level Differences of ERPO Laws

State	Petitioners & Type of Order	Orders Available with Length of Order & Burden of Proof
<p>California (Gun Violence Restraining Order Cal. Penal Code §§ 18100-18205)</p>	<p>Law Enforcement: Temporary Emergency, Ex Parte, Final</p> <p>Family or Household Member (1): Ex Parte, Final</p> <p>Employers (2): Ex Parte, Final</p> <p>Co-Workers Ex Parte, Final</p> <p>Employees and Teachers at Secondary and Post-Secondary Schools (3): Ex Parte, Final</p>	<p>Temporary Emergency:</p> <ul style="list-style-type: none"> Up to 21 days after issuance Reasonable cause <p>Ex Parte:</p> <ul style="list-style-type: none"> Up to 21 days after issuance Substantial likelihood <p>Final:</p> <ul style="list-style-type: none"> One to five years Clear and convincing
<p>Colorado (Extreme Risk Protection Order Colo. Rev. Stat. Ann. §§ 13-14.5-101- 13-14.5-114)</p>	<p>Law Enforcement: Temporary, Final</p> <p>Family or Household Member (4): Temporary, Final</p>	<p>Temporary Emergency:</p> <ul style="list-style-type: none"> Up to 14 days after issuance Preponderance of the evidence <p>Final:</p> <ul style="list-style-type: none"> 364 days, but can be terminated early or extended Clear and convincing
<p>Connecticut (Risk Protection Order Conn. Gen. Stat. § 29-38c)</p>	<p>Law Enforcement: Temporary, Final [Assistant]</p> <p>State’s Attorney: Temporary, Final</p> <p>**Note: Family members and medical practitioners can apply for a risk protection order investigation; then, after the court determines that there is good faith belief that the respondent poses a risk, the investigation will be carried out by law enforcement</p>	<p>Warrant:</p> <ul style="list-style-type: none"> Up to 14 days Probable cause <p>Final:</p> <ul style="list-style-type: none"> Until terminated Clear and convincing
<p>Delaware (Lethal Violence Protective Order Del. Code Ann. tit. 10, §§ 7701-7709)</p>	<p>Law Enforcement: Emergency, Final</p> <p>Family Member (5): Final</p> <p>**Note: In addition to temporarily prohibiting the purchase and possession of a firearm or ammunition, in Delaware, the court may prohibit the respondent from residing with someone who owns, possesses, or controls firearms or ammunition.</p> <p>**Note: Delaware’s LVPO includes an expanded list of petitioners and a focus on persons exhibiting dangerous behavior, generally, as opposed to persons exhibiting dangerous behavior due to a “mental condition” that requires a mental health service provider to notify law enforcement of such concern or behavior.</p>	<p>Emergency:</p> <ul style="list-style-type: none"> Up to 15 days after issuance Preponderance of the evidence <p>Final:</p> <ul style="list-style-type: none"> Up to 1 year Clear and convincing

1. Includes “spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household)”

2. Defined as “Employee who has substantial and regular interactions with the respondent and with approval of their employer”

3. Specifies “Employees and teachers at a secondary or postsecondary school, that the respondent has attended in the last 6 months with approval of a school administrator or a school administration staff member with a supervisory role”

4. Defined as “Persons related by blood, marriage, or adoption, persons with a child in common, persons who regularly reside or regularly resided with the respondent in the last six months, domestic partners, parents, children, stepparents, stepchildren, grandparents, grandchildren, legal guardians, current or former unmarried couples”

State	Petitioners & Type of Order	Orders Available with Length of Order & Burden of Proof
<p>District of Columbia (Extreme Risk Protection Order D.C. Code Ann. §§ 7-2510.01 – 7-2510.13)</p>	<p>Law Enforcement: Ex Parte, Final</p> <p>Family or Household Member (6): Ex Parte, Final</p> <p>Mental Health Professionals (7): Ex Parte, Final</p> <p>**Note: When an ex parte or final ERPO is issued, the respondent to that order must surrender all firearms, registration certificates, and Concealed Carry License to law enforcement for the duration of the order. Respondents must also surrender ammunition and any dealer’s license in their possession.</p>	<p>Emergency:</p> <ul style="list-style-type: none"> • Up to 14 days after issuance • Preponderance of the evidence <p>Final:</p> <ul style="list-style-type: none"> • Up to 1 year • Clear and convincing
<p>Florida (Risk Protection Order Fla. Stat. Ann. § 790.401)</p>	<p>Law Enforcement: Temporary Ex Parte, Final</p>	<p>Temporary Ex Parte:</p> <ul style="list-style-type: none"> • Up to 14 days after issuance • Reasonable cause <p>Final:</p> <ul style="list-style-type: none"> • Up to 1 year • Clear and convincing
<p>Hawaii (Gun Violence Protective Order Haw. Rev. Stat. Ann. §§ 134-61 – 134-72)</p>	<p>Law Enforcement: Ex Parte, Final</p> <p>Family or Household Member (8): Ex Parte, Final</p> <p>Medical Professional: Ex Parte, Final</p> <p>Educator: Ex Parte, Final Work</p> <p>Colleague: Ex Parte, Final</p>	<p>Ex Parte:</p> <ul style="list-style-type: none"> • Up to 14 days after petition for a one-year order submitted • Probable cause <p>Final:</p> <ul style="list-style-type: none"> • 1 year, but may be terminated early or renewed • Preponderance of the evidence
<p>Illinois (Firearms Restraining Order 430 Ill. Comp. Stat. Ann. 67/1-67/80)</p>	<p>Law Enforcement: Ex Parte, Final</p> <p>Family or Household Member (9): Ex Parte, Final</p> <p>**Note: When an emergency or six-month FRO is issued, the respondent to that order must surrender any firearms, ammunition, and firearm parts that could be assembled to make an operable firearm in their possession to law enforcement for the duration of the order. The respondent’s Firearm Owners Identification card and Concealed Carry License are also suspended for that time.</p>	<p>Ex Parte:</p> <ul style="list-style-type: none"> • Up to 14 days after issuance • Probable cause <p>Final:</p> <ul style="list-style-type: none"> • 6 months • Clear and convincing

6. Defined as “persons related to the respondent by blood, adoption, guardianship, marriage, domestic partnership, having a child in common, cohabitating, or maintaining a romantic, dating, or sexual relationship”

7. A “mental health professional” includes any of the following persons engaged in the provision of or reasonably believed by the client to be engaged in the provision of professional services: a person licensed to practice medicine; a person licensed to practice psychology; a licensed social worker; a professional marriage, family, or child counselor; a rape crisis or sexual abuse counselor who has undergone at least 40 hours of training and is supervised by a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist; and a licensed nurse who is a professional psychiatric nurse. D.C. Code Ann. § 7-2510.01(11).

8. Includes “intimate partners, persons with a child in common, and current or former dating partners, among others.”

9. Defined as “a current or former spouse, parent, child or stepchild, a person related by blood or present marriage, a person who has a minor child in common with the respondent, or a person who shares a common dwelling with the respondent”

State	Petitioners & Type of Order	Orders Available with Length of Order & Burden of Proof
<p>Indiana (Seizure and Retention of a Firearm (Risk-Warrant) Ind. Code Ann. §§ 35-47-14-1 - 35-47-14-10)</p>	<p>Law Enforcement: Warrant, Warrantless</p> <p>**Note: Indiana Code defines “dangerous” as “(1) they pose an imminent risk of personal injury to self or others, or 2) it is probable the individual will present a risk of personal injury to self or others in the future and they (a) have a mental illness that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking medication while not under supervision, or (b) there is a reasonable belief that the individual has a propensity for violent or suicidal conduct.”</p>	<p>Warrant:</p> <ul style="list-style-type: none"> • At least 180 days after issuance • Probable cause (initial warrant) • Clear and convincing (at hearing) <p>Warrantless:</p> <ul style="list-style-type: none"> • At least 180 days after the court orders law enforcement to retain firearm • Probable cause (after firearm seizure) • Clear and convincing (at hearing)
<p>Maryland (Extreme Risk Protective Order Md. Code Ann., Pub. Safety §§ 5-601 - 5-610)</p>	<p>Law Enforcement: Interim, Ex Parte, Final</p> <p>Family or Household Member: Interim, Ex Parte, Final</p> <p>Healthcare Professional (10): Interim, Ex Parte, Final</p>	<p>Interim:</p> <ul style="list-style-type: none"> • Up to 2 business days • Reasonable grounds <p>Ex Parte:</p> <ul style="list-style-type: none"> • Up to 7 days after service • Reasonable grounds <p>Final:</p> <ul style="list-style-type: none"> • Up to 1 year • Clear and convincing
<p>Massachusetts (Extreme Risk Protection Order Mass. Gen. Laws Ann. ch. 140, §§131R-131Y)</p>	<p>Law Enforcement: Emergency, Final</p> <p>Family or Household Member (11): Emergency, Final</p> <p>**Note: Petitions for ERPOs are available 24 hours a day, 7 days a week; Petitioners must surrender firearms, other weapons, ammunition, and any Firearm Identification Card and License to Carry to law enforcement for the duration of the order.</p>	<p>Emergency:</p> <ul style="list-style-type: none"> • Up to 10 days after issuance • Reasonable cause <p>Final:</p> <ul style="list-style-type: none"> • Up to 1 year • Preponderance of the evidence
<p>Michigan (Extreme Risk Protection Order Senate Bill 83 [2023])</p>	<p>Law Enforcement: Ex Parte, Final</p> <p>Family or Household Member (12): Ex Parte, Final</p> <p>Healthcare Providers (13): Final</p> <p>Mental Health Professional (14): Ex Parte, Final</p> <p>**Note: Respondents can file a motion to rescind or modify the ERPO order once per 6 month period.</p>	<p>Ex Parte:</p> <ul style="list-style-type: none"> • 1 year unless a hearing is requested (hearing must be held within 14 days for most respondents) • Clear and convincing <p>Final:</p> <ul style="list-style-type: none"> • 1 year • Preponderance of the evidence

10. Defined as “physicians, psychologists, clinical social workers, licensed clinical professional counselors, clinical nurse specialists in psychiatric and mental health nursing, psychiatric nurse practitioners, licensed clinical marriage or family therapists, and health officers or designees of health officers who have examined a patient who may be the subject of an ERPO petition”

11. 1. Defined as “current or former spouses, persons currently or formerly residing in the same household, persons currently or formerly related by blood or marriage, persons with a child in common, persons currently or formerly in a substantive dating or engagement relationship”

12. Household member defined as “the spouse of the respondent, a former spouse of the respondent, an individual who has a child in common with the respondent, an individual who has or has had a dating relationship with the respondent, an individual who resides or has resided in the same household with the respondent, a family member, a guardian of the respondent.” and family member is defined as “a parent, a son or daughter, a sibling, a grandparent, a grandchild, an uncle or aunt, or a first cousin”

13. Defined as “physician, physician’s assistant, nurse practitioner, or certified nurse specialist”

14. Defined as “a physician, a psychologist, a registered nurse, or a licensed social worker, therapist, or counselor”

State	Petitioners & Type of Order	Orders Available with Length of Order & Burden of Proof
<p>Minnesota (Extreme Risk Protection Order Minn. Stat. § 624.7171 – 624.7178)</p>	<p>Law Enforcement: Ex Parte, Final Family or Household Member: Ex Parte, Final City or County Attorneys: Ex Parte, Final</p>	<p>Ex Parte:</p> <ul style="list-style-type: none"> • 14 days • Probable cause <p>Final:</p> <ul style="list-style-type: none"> • 6 months to 1 year • Clear and convincing
<p>Nevada (Order for Protection Against High-Risk Behavior Nev. Rev. Stat. Ann. §§ 33.500 – 33.670)</p>	<p>Law Enforcement: Ex Parte, Final Family or Household Member (15): Ex Parte, Final</p>	<p>Ex Parte:</p> <ul style="list-style-type: none"> • Up to 7 days after issuance or until final hearing held • Preponderance of the evidence <p>Final (Extended):</p> <ul style="list-style-type: none"> • Up to 1 year • Clear and convincing
<p>New Jersey (Extreme Risk Protective Order N.J. Stat. Ann. §§ 2C:58-20 – 2C:58-32)</p>	<p>Law Enforcement: Temporary, Final Family or Household Member: Temporary, Final</p> <p>**Note: When an temporary or final ERPO is issued, the respondent must surrender firearms, ammunition, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun</p>	<p>Temporary:</p> <ul style="list-style-type: none"> • Up to 10 days after petition is filed • Good cause <p>Final:</p> <ul style="list-style-type: none"> • 1 year • Preponderance of the evidence
<p>New Mexico (Extreme Risk Firearm Protective Order N.M. Stat. Ann. §§ 40-17-1 – 40-17-13)</p>	<p>Law Enforcement: Temporary, Final</p> <p>**Note: Reporting parties (including, but not limited to, a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, co-parent of a child, child, person with whom a resident has or had a continuing personal relationship, employer or public or private school administrator) can request that a law enforcement officer file a petition but are ineligible to file a petition themselves.</p>	<p>Temporary:</p> <ul style="list-style-type: none"> • Up to 10 days after service • Probable cause <p>Final:</p> <ul style="list-style-type: none"> • 1 year • Preponderance of the evidence

15. Defined as “persons related by blood, marriage, or adoption, persons with a child in common, domestic partners, persons in a dating relationship, and a legal guardian of the respondent, among others”

State	Petitioners & Type of Order	Orders Available with Length of Order & Burden of Proof
New York (Extreme Risk Protection Order N.Y. C.P.L.R. 6340 - 6348)	Law Enforcement: Temporary, Final District Attorney: Temporary, Final Family or Household Member (16): Temporary, Final School Administrator or Designee (17): Temporary, Final Healthcare Practitioners (18): Temporary, Final **Note: New York launched several statewide resources to educate potential ERPO petitioners: conferences for teachers and parents to learn about ERPO, a website with step-by-step instructions for how to apply for an ERPO, and a call center with trained staff available to answer questions from potential petitioners about ERPO. The call center is staffed Monday through Friday from 8 am to 9 pm.	Temporary: <ul style="list-style-type: none"> • Up to 6 days after service • Probable cause Final: <ul style="list-style-type: none"> • Up to 1 year • Clear and convincing
Oregon (Extreme Risk Protection Order Or. Rev. Stat. §§ 166.525-166.543)	Law Enforcement: Final Family or Household Member: Final **Note: The Respondent must turn over all deadly weapons including firearms, to law enforcement, a gun dealer, or a third party for the duration of the ERPO. In addition, the respondent must give to law enforcement any concealed handgun permit within 24 hours of the court issuing the ERPO.	Final:* 1 year Clear and convincing * Court may issue a final order at an ex parte hearing. Respondent may request a hearing to terminate the order within 30 days of service.
Rhode Island (Extreme Risk Protection Order R.I. Gen. Laws Ann. §§ 8-8.3-1 - 8-8.3-14)	Law Enforcement: Temporary, Final **Note: An ERPO can be terminated early or renewed.	Ex Parte: <ul style="list-style-type: none"> • Up to 14 days after issuance • Probable cause Final: <ul style="list-style-type: none"> • 1 year • Clear and convincing
Vermont (Extreme Risk Protection Order Vt. Stat. Ann. tit. 13, §§ 4051-4061)	State's Attorney: Temporary, Final Office of the Attorney General: Temporary, Final **Note: The respondent must relinquish any firearms in their possession to law enforcement, a federally licensed firearms dealer, or, if ordered by the court, a third party. All other dangerous weapons must be relinquished to law enforcement.	Ex Parte: <ul style="list-style-type: none"> • 14 days after issuance • Preponderance of the evidence Final: <ul style="list-style-type: none"> • Up to 6 months • Clear and convincing

16. Defined as "persons related by blood or marriage, current or former spouses, persons with a child in common, household members, and persons in an intimate relationship." "Intimate relationship" is determined by the nature or type of relationship; the frequency of interaction between the persons; and the duration of the relationship.

17. Defined as "a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, or other school personnel required to hold a teaching or administrative license or certificate, and full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate."

18. Defined as "licensed physicians, licensed psychiatrists, licensed psychologists, registered nurses, licensed clinical social workers, certified clinical nurse specialists, certified nurse practitioners, licensed clinical marriage and family therapists, registered professional nurses, and licensed master social workers or licensed mental health counselors"

State	Petitioners & Type of Order	Orders Available with Length of Order & Burden of Proof
Virginia (Substantial Risk Order Va. Code Ann. §§ 19.2-152.13 - 19.2-152.17)	Law Enforcement Officer: Emergency Attorney for the Commonwealth: Emergency, Final	Ex Parte: <ul style="list-style-type: none"> • Up to 14 days after issuance • Probable cause Final: <ul style="list-style-type: none"> • Up to 180 days • Clear and convincing
Washington (Extreme Risk Protection Order Wash. Rev. Code Ann. §§ 7.105.330 - 7.105.375)	Law Enforcement: Ex Parte, Final Family Or Household Member: Ex Parte, Final **Note: The King County District Attorney’s Office developed a unit that specializes in ERPO implementation. Trained staff provide support to law enforcement and civilians petitioning for ERPOs and guide them through the different stages of the petition process. Comprehensive information on Washington’s implementation of ERPOs can be found here: https://americanhealth.jhu.edu/erpo-state/washington	Ex Parte: <ul style="list-style-type: none"> • Up to 14 days after issuance • Reasonable cause Final: <ul style="list-style-type: none"> • 1 year • Preponderance of the evidence

What are some best practices to consider when enacting ERPO legislation?

- ERPO legislation should be clear about the authority each implementer (e.g., law enforcement, judges) has and their role in ERPO implementation.
- Training of law enforcement is needed so that they understand their role, when it is appropriate to petition for an ERPO, the process for implementation of orders (including service of orders and firearm removal), and the benefit of ERPOs to keep individuals, families, and communities safe.
- Training of judges is needed so that they understand the state’s standard of evidence for allowing an ERPO to be granted.
- Greater dissemination of public information about ERPOs may increase their appropriate use and the proportion of high-risk individuals and families who may benefit. Family members may not know that ERPOs are available as a tool to keep themselves and their loved ones safe in times of crisis, especially with a suicidal family member.
- Legislation should be explicit on how firearms that are relinquished should be stored outside of the home.
- ERPOs are a live-saving tool, not a criminal tool – this should be considered when illegal firearms are part of the relinquishment or illegal activity is witnessed during service of the order and firearm relinquishment.

What are some best practices to consider when law enforcement serve an ERPO and/or remove firearms from a respondent?

- Creating a non-adversarial interaction is important.
- Some police departments have ERPO units or specific officers trained to do ERPO investigations and removals, such as Fort Lauderdale, Florida. These officers are well-trained in establishing relationships with ERPO respondents during the investigations to enable safe and non-adversarial removal, should the ERPO be granted.
- Removing firearms from an individual in crisis is not going to end their crisis, but it may save lives. Individuals and families should also be connected with resources and public health services when an ERPO is granted or stipulated to.
- When social workers (or similar professionals) go with law enforcement to serve the order/remove firearms, they can lead the interaction to make it one of helping the individual to access services they may need to keep them and their loved ones safe.

