

# Extreme Risk Protection Order Model Policy Guide



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BLOOMBERG SCHOOL  
of PUBLIC HEALTH

Center for  
Gun Violence Solutions

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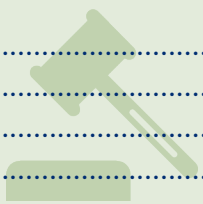
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# About This Report

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## About the Johns Hopkins Center for Gun Violence Solutions

The Johns Hopkins Center for Gun Violence Solutions combines the expertise of respected gun violence researchers with the skills of experienced gun violence prevention advocates. We use a public health approach to conduct rigorous scientific research to identify a range of innovative solutions to gun violence. Using the best available science, our Center works toward expanding evidence-based advocacy and policy-making efforts grounded in principles of equity. This combination of expertise creates a unique opportunity to turn public health research into action that reduces deaths and injuries from gun violence.

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# Extreme Risk Protection Order Model Policy Guide

## EXECUTIVE SUMMARY

This Model Policy Guide is designed to inform advocates and policymakers about important elements to include in evidence-informed public health policy. The guidance in this report is structured to be applied in any state across the country, regardless of jurisdictional differences. While some of the recommendations contained herein are necessary for the law to function properly, variations in the law are naturally going to occur due to local practice. Readers should ensure that the essential elements are in place and strive to incorporate other promising practices to improve the life-saving potential of this policy.

### ERPOs

Extreme Risk Protection Orders (ERPOs) are civil court orders that temporarily prohibit the possession and purchase of firearms by people adjudicated by a court to pose a danger to themselves and/or others. These laws are currently implemented in 21 states and the District of Columbia and show promise in addressing risks of suicide and mass violence. As further research continues to shed light on the life-saving effects of ERPO laws, this report details essential elements and promising practices to make ERPO laws function the best they can based on the evidence available to us.

This report contains **58 recommendations** reaching across 22 subcategories:



#### LEGAL STRUCTURES

- Petitioners and Respondents
- Minor Respondents
- Venue
- ERPO Types and Hearings
- Due Process Protections
- Burdens of Proof
- Standards of Proof



#### PETITION PROCESS

- Factors to Consider When Issuing an ERPO
- Fees
- What ERPO Prohibits
- Duration of Orders
- ERPO Document Information



#### ERPO ENFORCEMENT

- Service of Orders
- Searches Pursuant to ERPOs
- Firearm Removal
- Compliance Hearings
- Third Party/Joint Occupancy Clauses
- Entry Into Federal and State Background Check Systems



#### CONCLUSION OF ORDERS

- Extension and Early Termination of Orders
- Return of Firearms



#### DATA AND ACCOUNTABILITY

- Penalties
- Data Collection

# Introduction

The Johns Hopkins Center for Gun Violence Solutions compiled leading research, analysis, and expert guidance into this resource to inform the development of Extreme Risk Protection Order (ERPO) laws, also known as “red flag laws.” This resource briefs readers on the nature and evidence base of ERPO policies and provides promising elements of ERPO policy that should be incorporated into law.

It begins with an overview of what ERPOs are and the evidence basis supporting the policy’s value as a life-saving tool. It then breaks down the major issue areas within the policy, including a brief explanation of the policy component, recommendations relevant to that policy component, and the rationale behind the recommendations when applicable.

The following recommendations are promising practices supported by issue area experts to make the most effective version of an ERPO policy. While some of the recommendations are necessary for the law to function properly, variations in the law are naturally going to occur due to local practice. Policymakers should ensure that the essential elements are in place and strive to incorporate other promising practices suggested in this report to improve the life-saving potential of ERPOs.

This list of policy recommendations is also not exhaustive. As new research and better practices emerge, so too should policies change to reflect newfound knowledge.

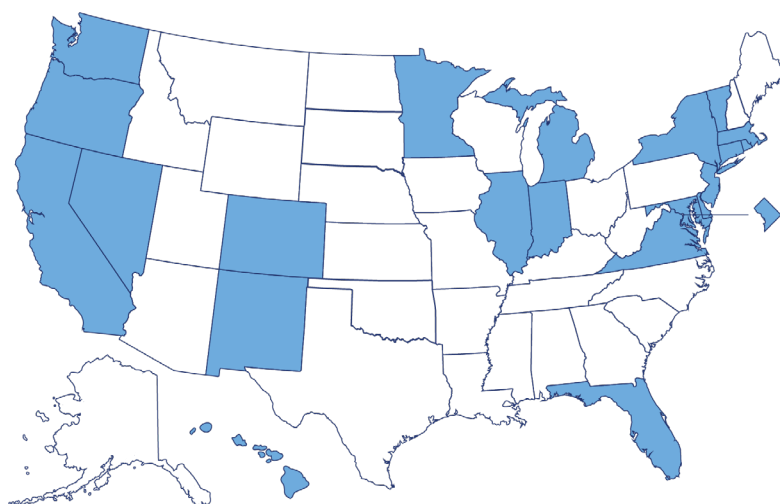
# Policy Overview

## Extreme Risk Protection Orders Explained

ERPOs are civil court orders that temporarily prohibit the possession and purchase of firearms by people adjudicated by a judicial officer to pose a danger to themselves and/or others. The Consortium for Risk-Based Firearm Policy developed the modern-day ERPO law in 2013.<sup>1</sup> ERPOs are modeled after Domestic Violence Protection Orders, another civil court order used to mitigate credible risks of violence that are available in all 50 states and Washington, D.C. (DC). While Domestic Violence Protection Orders can cover a wide range of risks related to domestic violence, such as prohibiting contact, access to the home, and firearm possession, ERPOs focus solely on access to firearms.<sup>2</sup> As of August 2024, 21 states and DC have ERPO laws.<sup>3</sup>

### States With ERPO laws

CALIFORNIA	MICHIGAN
COLORADO	MINNESOTA
CONNECTICUT	NEVADA
DELAWARE	NEW JERSEY
DISTRICT OF COLUMBIA	NEW MEXICO
FLORIDA	NEW YORK
HAWAII	OREGON
ILLINOIS	RHODE ISLAND
INDIANA	VERMONT
MARYLAND	VIRGINIA
MASSACHUSETTS	WASHINGTON



ERPOs create a process in the civil legal system for law enforcement, or, depending on the state, others such as family or household members or licensed health care providers to request that a court temporarily prevent the purchase and possession of firearms by someone found to pose an elevated risk of harming to self and/or others with firearms. There are two kinds of ERPOs that are typically issued sequentially by a court in two phases: (1) an ex parte order decided without requiring the respondent (subject of the order) be present in court and (2) a final order issued after a hearing in which the respondent has an opportunity to participate.

### Practice Pointer

Ex parte processes are used when urgent risks threatening public health and safety necessitate swift action by courts. Child abuse and neglect hearings, some domestic violence orders, and involuntary hospitalizations for mental health evaluations are all examples of other ex parte orders used in response to an imminent threat.<sup>4</sup>

# Policy Overview

Ex parte orders allow a court to issue an ERPO without notice to the respondent if it finds that the person poses an “immediate” risk of violence with firearms. These initial orders are short, averaging two to three weeks depending on the state, and require respondents to give their firearms to law enforcement and otherwise prohibit purchase and possession of firearms while the order is active.

ERPO respondents are entitled to a court hearing before a final ERPO can be issued. The ex parte ERPO reduces the risk of harm that can occur before a final hearing is held by temporarily removing the firearms from the respondent’s control and preventing the purchase of new firearms while the order is in effect. Both ex parte and final ERPOs employ due process protections for those whose rights are implicated, including requiring burdens of proof before issuing orders, only having orders issued by judicial officers, and having a short window between ex parte and final order hearings.<sup>5</sup>

## Evidence of Effectiveness

Though ERPOs are a relatively new policy intervention, a growing body of research has found them to be promising tools for preventing gun violence.



Initial findings from Indiana and Connecticut suggest that these states’ ERPO-style laws were associated with decreases in firearm suicides.<sup>6</sup>



Another study estimated that Connecticut’s ERPO law prevented one suicide for every 10–20 orders issued.<sup>7</sup>

In addition to suicide prevention, ERPOs are also used to address threats of mass violence and other forms of interpersonal violence.



An analysis of ERPO petitions across six states revealed that 10% of filed petitions related to threats of violence against at least three people, with K-12 schools being the most common target.<sup>8</sup>



A California study examining nearly two dozen cases involving ERPOs prompted by threats of mass shooting found no evidence of subsequent homicides or suicides by those respondents.<sup>9</sup>



# Recommendations: Legal Structures

## Petitioners and Respondents

A “Petitioner” is the named category of people that are permitted to ask a court (i.e., petition) to issue an ERPO. A “Respondent” is a person who is the subject of an ERPO petition.

- ✓ **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; & 4) licensed health care providers who have provided care to the respondent.**

Though most ERPO petitions are currently filed by law enforcement, other petitioners, including family and household members, dating partners, and licensed health care providers, are also well positioned to recognize serious threats by respondents and initiate the ERPO process.<sup>11, 12, 13</sup>

### Example



In New York, eligible petitioners include law enforcement officers, district attorneys, family or household members (including persons related by blood or marriage, current or former spouses, persons with a child in common, household members, and persons in an intimate relationship), school administrators or their designee, and health care practitioners (including 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).<sup>10</sup>

- ✓ **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.**

- ✓ **“Licensed Health Care Providers” should align with the state code definition.**

Definitions of named classes of petitioners should be consistent with existing definitions in the state code to reduce confusion and redundancy.

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

ERPO petitioners should be empowered to decide whether to file for ERPOs based on their good faith belief that an individual meets the criteria. Several states already permit basic liability protections for ERPO petitioners to encourage the responsible use of the law.<sup>14</sup> Additionally, filing false petitions or filing with the intent to harass may result in criminal penalties (as mentioned in greater detail below).

### Good vs. Bad Faith

“Good faith” is a legal term generally used to imply honest dealing, such as acting in a fair, dutiful, and sincere way without the intent to harm. “Bad faith” means the opposite, implying you acted with intent to harm or wrong someone in some way.<sup>15</sup>

## Example



Healthcare providers in New York are protected from criminal or civil liability for sharing health care records in an ERPO case.<sup>16</sup> Similarly, Law enforcement in Illinois are also shielded from civil liability when acting in good faith in carrying out their duties under Illinois' Firearms Restraining Order law.<sup>17</sup>



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

The Health Insurance Portability and Accountability Act (HIPAA) permits the disclosure of patients' protected health information if the provider believes it necessary to prevent serious and imminent harm to the patient or others, as is the case with ERPO. ERPO laws should provide clear guidance for licensed health care providers when petitioning for ERPOs because some states have more restrictive privacy requirements than federal law.<sup>18</sup>

## Minor Respondents

*Minor respondents are respondents under the age of 18.*

### ✓ 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.

Though many states prohibit minors from purchasing and/or possessing firearms, some states allow minors to legally possess long guns.<sup>19</sup> Minors may also otherwise have access to firearms, including those owned by a family or other household member.

Guns are the leading cause of death for children and teens ages 1-19.<sup>20</sup> In 2021, guns were responsible for 20% of all deaths among children and teens. Much like adults, when minors have access to firearms the risk of dying by firearm suicide increases. Youth firearm suicide decedents overwhelmingly access their firearms from their homes. An estimated 82% of adolescent firearm suicides involve a gun belonging to a family member.<sup>21</sup> An ERPO may also be an appropriate tool when a minor is threatening a school shooting. Data show that 80% of school shooters under 18 access a firearm from their own home or that of a relative or friend.<sup>22</sup>

While most ERPO respondents are adults, state laws should allow minors to be ERPO respondents when they pose a risk of harm to self and/or others.<sup>23</sup> A third party or joint occupancy clause, addressed later in this report, may be applicable when a firearm is owned by an adult household member. They can allow legal firearm owners living with ERPO respondents to keep possession of their firearms, while also keeping them away from the minor respondent.

## Practice Pointer

There may be slight variations in implementation of ERPOs when respondents are minors. For instance, the court forms and services for juveniles may be different from other ERPO forms and services for adults. Coordination with local authorities will inform successful ERPO usage with minor respondents.

## Venue

“Venue” refers to the level and location of courts that can hear ERPO cases.

- ✓ **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.**

This recommendation follows standard federal rules that venue can be proper in locations where the respondent resides or a substantial part of the events giving rise to the case occurred.<sup>24</sup>

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

Given the similarity between Domestic Violence Protection Orders and ERPOs, courts should keep rules similar for both to reduce confusion. Additionally, courts should be mindful of differences in burdens of proof or evidentiary standards in Domestic Violence Protection Orders and ERPOs, where applicable, and of relief offered by each order.

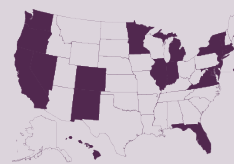
## ERPO Types and Hearings

There are typically two types of ERPOs: *ex parte* and final orders. “*Ex parte*” orders last a brief period, usually two to three weeks, and are issued at a hearing without the respondent being present because of the immediate risk of danger posed by the situation. “*Final*” orders are issued after a hearing where the respondent has an opportunity to be heard by a judicial officer.

- ✓ **ERPO laws should include both *ex parte* orders and final orders.**

Because of the imminent nature of most threats inspiring ERPO petitions, a respondent must be quickly separated from their firearms to mitigate the present risk of violence until a hearing occurs where they can be present. Other common examples of *ex parte* hearings include no-contact and firearm removal provisions of Domestic Violence Protection Orders<sup>25</sup> and emergency removals of children from the custody of their parents “to avoid imminent danger to the child’s life or health”.<sup>26</sup>

### Ex Parte Orders



Currently, every state with an ERPO law includes an *ex parte* order.

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

Ex parte orders are necessary for ERPOs to function as intended. The respondent could react with violence if they know their guns may be removed within the weeks it takes for a contested hearing to occur. Final ERPOs mitigate the continuing danger a respondent may pose to self and/or others beyond the short ex parte ERPO.

✓ **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.**

To address time sensitive threats that may arise, ex parte ERPOs should be available as a remedy 24/7, meaning that a petitioner can file the ERPO at any time and an on-duty or on-call judge could hear the ex parte ERPO outside of the court's standard hours when necessary.

**Example**



In Maryland, petitioners can request an ERPO 24 hours a day, seven days a week. Judicial officers have the authority to hear interim ERPO petitions outside of normal court hours and can issue orders until a judge can hear the petition.<sup>27</sup>

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

There may be circumstances where the ex parte order is not urgently necessary (like when there is some other temporary prohibition already in place), allowing a final ERPO to be issued without an ex parte order if the respondent is present for the hearing.

**Example**



Some states, such as Maryland, authorize three different ERPOs:

- The interim order, which can be granted when the court is not open (nights, weekends, or holidays) by a court commissioner. The interim order is in place until the court opens and a hearing before a judge can be held.
- The ex parte order, which lasts for up to seven days.
- The final order, which may last for up to one year.

**Practice Pointer**

When drafting ERPO legislation, it is important to include both the ex parte and the final orders. Ex parte orders are typically heard in response to an immediate threat. Advance notice to a respondent that their access to firearms may be removed could create a window of opportunity to cause harm before a hearing with both parties can occur. Final orders are in place for a longer period, usually up to one year.

## Due Process Protections

*The United States Constitution guarantees due process of law. Generally, due process requires that notice and an opportunity to be heard are given before the government deprives someone of constitutionally protected liberties or property. However, the Supreme Court has long identified situations where valid governmental interests, such as urgent matters of public health and safety, can justify the delay of notice and the opportunity to be heard on issues implicating other rights until after the deprivation occurs, such as removal of custody of children.*

### ✓ ERPOs should include the following procedural safeguards at the appropriate phase of the judicial process:

- Notice;
- An in-person hearing;
- An unbiased adjudicator;
- Know opposing evidence;
- Present evidence;
- Confront adverse witnesses;
- Representation by counsel at no expense to the government;
- Heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant;
- Penalties for abuse of the program.

#### Of Note



Senator Richard Blumenthal (D-CT) stated during the Bipartisan Safer Communities Act (BSCA) negotiations, “The Constitution already applies to these laws. The due process guarantees would apply in any event, but we had no problem spelling it out. That explicit protection in the legislative text is added for reassurance. In so doing, our bipartisan group agreed that all 21 jurisdictions that already have red flag laws will all qualify for funding under this bill.”<sup>28</sup>

## Burdens of Proof

*The burden of proof is a legal metric that indicates who has the responsibility of proving a disputed point to the court.*

- ✓ **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.**

It is standard legal practice that the burden of proof is held by the party moving to change the status quo. For ex parte and final ERPO requests, the petitioner is the moving party.

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

For early termination requests, the respondent is the moving party.

- ✓ **Burden of proof for extension of an ERPO should be on the petitioner to prove.**

For ERPO extension requests, the petitioner is the moving party.

## Standards of Proof

*The standard of proof is a legal metric that indicates the degree of certainty that a point must attain to be sufficiently proved in court. Standards of proof are generally lower in ex parte ERPO hearings, due to the imminent nature of the threat and the short duration of the order.*

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

Standards of proof are lower for ex parte or emergency hearings because of the expedient nature of the case at hand. When possible, standards of proof for ex parte ERPOs should be the same as the state's Domestic Violence Protection Order law to reduce confusion and redundancy.

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

Standards of proof for final ERPOs should be the same as the state's Domestic Violence Protection Order law to streamline court standards for civil protection orders.

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

Before extending or shortening the length of a final ERPO, courts must have an opportunity to reevaluate whether the respondent continues to pose a significant risk of personal injury to self and/or others before changing the order's duration.

# Recommendations: Petition Process

## Factors to Consider When Issuing an ERPO

There is a wealth of research on behaviors that indicate risks of harm. **A strong predictor of future violence is past violent behavior.** However, there are many other risk factors for violence that courts should be required to consider before issuing an ERPO.

### Practice Pointer

It is important to note that any one factor alone may not mean that a potential respondent is at an elevated risk of gun violence. It is equally as important to note that an individual's risk profile is heightened when risk factors are combined.

### ✓ In deciding whether to issue an ERPO, courts should consider the following non-exhaustive list of evidence-informed risk factors:

- Acts or threats of violence toward self or others (regardless of whether the act or threat of violence involved use of a firearm)
- Evidence of the misuse of controlled substances or alcohol by the respondent and any countervailing evidence of the respondent's recovery from controlled substances or alcohol misuse
- Conviction of a violent misdemeanor
- Conviction of a domestic violence misdemeanor
- Recent violation of a domestic violence protection order
- Unlawful or reckless use, display, or brandishing of a firearm by the respondent
- Evidence of recent acquisition of firearms, ammunition, and/or other deadly weapons
- Cruelty to animals

Judges should also consider any other relevant evidence when deciding whether to issue an ERPO. These considerations can include evidence that the respondent is affected by a serious mental illness or emotional disturbance that makes them dangerous to self and/or others. ERPOs are based on evidence-based behavioral risk factors, not a mental illness alone, and therefore care should be taken not to stigmatize individuals living with mental illness.

## Fees

Many court processes require fees for the service being provided. Like most Domestic Violence Protection Order petitions, ERPOs should not have fees associated with them unless respondents or petitioners decide to hire legal representation.

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

ERPOs should be an accessible, user-friendly resource. Requiring fees for filing and implementing ERPOs could deter their use in life-endangering situations.

## What ERPO Prohibits

*ERPOs should prohibit all forms of access to firearms, including the possession of firearms, ammunition, and firearms permits and licenses. Clearly stating these prohibitions in the text of the order and upon service puts the respondent on notice of how they can comply with the order.*

- ✓ **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.**

### Practice Pointer

Note that an ERPO may still be an appropriate tool when the respondent does not currently have access to firearms but could legally purchase and possess one in the absence of an ERPO.

## Duration of Orders

*Both ex parte and final ERPOs are temporary in scope, with fixed expiration dates and opportunities for extension or early termination (to be discussed later in these recommendations) based on the risks of danger shown by the respondent.*

- ✓ **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.**
- ✓ **Final ERPOs should be in effect for one year.**
- ✓ **If no renewal petition is sought and granted, the order should expire automatically at the end of one year.**
- ✓ **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

*Like all court forms, ERPOs contain information explaining the legal purpose and function of the document. It is important that documents related to ERPOs include all relevant information to facilitate their use.*

- ✓ **ERPOs should clearly state certain information to help with their administration and application and ensure that key information is understood by the relevant parties.**



*Ex parte and final ERPOs should include the following information:*

1. A statement that the respondent is prohibited from having in their custody or control, purchasing, possessing, or receiving a firearm, ammunition for the duration of the order;
2. Clear instructions for relinquishment of firearms, ammunition, or a firearm permit or license already in the respondent's custody, control, or possession. This should include information for where the respondent should relinquish their firearms, the time requirements for relinquishing firearms, and what, if any, paperwork is required to be completed by the respondent as a part of this process (including proof of relinquishment of firearms);
3. A statement of the grounds supporting the issuance of the order;
4. A notice of hearing to determine whether to end the ex parte order and return removed items, continue the ex parte order, or whether to issue a final ERPO; and
5. A statement that the respondent may seek the advice of an attorney as to any matter connected with the order.

*A final ERPO should also include information regarding:*

6. The date and time the order expires;
7. The address of the court that issued the order; and
8. A statement that the respondent shall have the right to request one hearing to terminate an ERPO at any time during its effective period.

- ✓ **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.**

ERPOs are meant to reduce risks of violence, which includes sheltering petitioner information that may put them at risk from a retributive respondent.

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

Individuals petitioning in their professional capacity need not implicate their personal lives by sharing their home addresses. They can receive notices and other important court information by having it sent to their workplace.

### Example



The Oregon Judicial Branch makes a comprehensive ERPO packet available online, which includes information about who can petition, where to petition, how to petition, and other pertinent information for both the petitioner and the respondent.<sup>29</sup> Also included in the ERPO packet is a copy of the ERPO petition, information about ERPO service, and a certificate of service.

### Example



Michigan's court forms are publicly available and include the court's template order, the affidavit of service, and directions for surrender and return of firearms.<sup>30</sup>

# Recommendations: ERPO Enforcement

## Service of Orders

*Orders must be served on the respondent to comply with procedural due process requirements of notice to the respondent, as well as ensuring the respondent has a fair opportunity to understand the requirements of an ERPO.*

### ✓ ERPOs should be served by law enforcement.

Ensuring that ERPOs are served safely is critical to the ERPO process. Though there is a role for non-law enforcement entities in the ERPO process, ERPOs should be served by law enforcement. Specially trained officers, with competencies in de-escalation, crisis response and communication skills, and clear service protocols help improve the ERPO service process.

## Searches Pursuant to ERPOs

*ERPOs may require searches or record checks to ensure that all prohibited items are removed from the respondent's control while the order is active. Having guidance on how and when these searches should be conducted both promotes due process protections and removes ambiguity of how deadly weapons and associated items should be handled.*

### ✓ 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.

A record of firearm purchase (if available under state law) or evidence presented by family or household members could help courts determine whether the respondent relinquished all their firearms after an ERPO was issued. A records review could also be helpful in determining whether a search warrant is necessary to collect firearms that have not yet been removed.

### ✓ 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.

Probable cause is the normal standard of proof for granting search warrants. Search warrants issued for ERPOs should be treated the same as search warrants in other cases.

### ✓ 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.

The procedure for search warrants in ERPO cases, described above, is standard procedure for search warrants in other areas of law.

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


Maintaining court records of dispossessed items will help courts and law enforcement reconnect respondents with their items after the ERPO is terminated.

- ✓ **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.**

### Practice Pointer

Concurrent search warrants are search warrants issued at the same hearing as another matter, as opposed to having separate hearings for a search warrant. Concurrent search warrants are useful in situations where expediency is key, saving the time it would take to hold two or more separate court hearings. It is important to note that concurrent search warrants still need an independent finding of probable cause to be issued.

### Example



Colorado specifically allows for concurrent search warrants to be issued during ERPO hearings if law enforcement files a separate sworn affidavit for a concurrent warrant to search for the respondent's firearms with the ERPO petition and the court finds probable cause to justify the warrant.<sup>31</sup>

The use of concurrent search warrants increases the efficiency of the court process, removing the requirement of separate filings and hearings for search warrants and ERPOs. They can also promote safety by reducing the time between service of an ERPO and the recovery of firearms and other prohibited items. However, the individual findings of probable cause to justify the granting of the search warrant is still needed to protect the privacy rights of respondents.

## Firearm Removal

- ✓ **Firearm removal provisions must be in place to ensure there is a clear and safe process for respondents to relinquish their firearms and other prohibited items in compliance with an ERPO.**

### Practice Pointer

It is imperative that the firearm removal process be clearly explained on the record in court and in writing so respondents understand the process to comply with the order.

- ✓ **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 turned over, in plain sight, or discovered pursuant to lawful search.**

It is critical that prohibited items be promptly removed after an ERPO is issued to reduce the likelihood of the respondent harming themselves and/or others with firearms. Law enforcement recovering items in plain sight or pursuant to a lawful search are standard search and seizure protocol consistent with the Fourth Amendment.<sup>32</sup>

- ✓ **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.**

- ✓ **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.**

Prompt dispossession and compliance with an ERPO once notice has been given to the respondent can reduce the risk of violence by separating the respondent from firearms. Information will be clearly shared with the respondent explaining the deadline and articulating where the firearms are to be relinquished to and what corresponding paperwork must be completed by the respondent, such as the affidavit of surrender.

- ✓ **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.**

Such record keeping will help seized items be returned to the rightful owner once the ERPO ends. This information is also provided to the courts to ensure compliance with the order.

- ✓ **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.**

The affidavit of surrender affirms that both the respondent and the court know of the items the respondent relinquished pursuant to an ERPO and where they are being held for the duration of the order.

- ✓ **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.**

Having a standard practice for law enforcement to follow promotes shared understanding of how items removed pursuant to ERPOs should be handled.

## Compliance Hearings

*Compliance hearings are a promising practice to ensure that all firearms have been removed in compliance with the order by having the respondent report to the court in person (or virtually, depending on the state) to verify that relinquishment occurred.*

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

Compliance hearings are already required in some jurisdictions with ERPO laws. For instance, respondents in King County, Washington, return to court and testify under oath that all firearms have been dispossessed after an ERPO has been issued.<sup>33</sup> This hearing gives the petitioner, or the law enforcement petitioner in coordination with family members, the opportunity to also present any evidence they may have if they believe that the respondent continues to possess any firearms.

### Practice Pointer

If the firearms are surrendered at the ex parte phase, then the final ERPO hearing can serve as a de facto compliance hearing. At the final hearing, the judicial officer can verify compliance and ensure that the respondent has surrendered all firearms.

## Third Party/Joint Occupancy Clauses

*A Third Party/Joint Occupancy Clause acknowledges that some respondents may live with other lawful owners of firearms. This clause would allow for the lawful owner to petition the court for the return of their firearm or other item dispossessed because of an ERPO, as long as they ensure to the court that they will not allow the respondent to access the returned prohibited item.*

- ✓ **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.**

Third-party/joint occupancy clauses are necessary to ensure that firearms are promptly removed from high-risk situations after an ERPO is issued and quickly returned to their proper owner. However, protections should be in place to prevent firearms from being accessible to the respondent.

- ✓ **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.**

Criminal liability adds a deterrent to prevent other gun owners from creating scenarios where ERPO respondents could access firearms despite the prohibition from purchase and possession.

- ✓ **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.**

The requirement of a hearing before a judicial officer to request the return of firearms owned by a third party increases the likelihood that the firearms go back to the lawful owner and that the firearm owner is on notice of their legal responsibility to prevent their firearms from being accessed by the respondent.

## Entry Into Federal and State Background Check Systems

*The issuance of ERPOs must be uploaded to federal and state background check systems in a timely manner to reduce the possibility that a respondent could acquire firearms, or other prohibited items, while the ERPO is active.*

- ✓ **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.**

Temporarily preventing respondents from purchasing firearms is one of the goals of the ERPO process. Promptly notifying the appropriate state and federal background check system upon the issuance of an ERPO reduces the likelihood that respondents can purchase firearms for the full duration of the order. Even if states do not rely on NICS for firearms background checks, it is important that ERPOs be entered into NICS to ensure full faith and credit for ERPOs.<sup>34</sup>

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

The requirement of this data input helps ensure that ERPOs prohibit firearm possession while they are active.

- ✓ **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.**

As an additional backstop to prevent prohibited firearm purchase and possession, licenses to carry or purchase firearms should also be suspended to further demonstrate that the respondent cannot possess or purchase firearms while the ERPO is active.



# Recommendations: Conclusion of Orders

## Extension and Early Termination of Orders

*The risks of violence that merit the issuance of an ERPO can vary from person to person and situation to situation. Procedures should be in place to both terminate an ERPO early and extend the ERPO beyond the original expiration date depending on current risk posed by the respondent.*

- ✓ **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.**

Mechanisms should be in place for a final ERPO to be terminated before one year if the court finds that the respondent no longer poses a risk of violence to self or others. The burden of proof to shorten the order would be on the respondent because they are the party seeking to change the legal status quo. The respondent should only have one early termination hearing per one-year duration of an ERPO to limit the risk of abuse of the legal system through multiple appeals.

- ✓ **ERPOs may be extended based on a petition filed within the final 90 days the order is active. The requirement of this data input helps ensure that ERPOs prohibit firearm possession while they are active.**

The 90-day limit gives petitioners ample time to consider whether they need to file and have a hearing to extend a final ERPO, while preventing them from making the request too early in the order's duration.

- ✓ **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.**

Like the initial order, ERPO extensions need to be supported with sufficient findings of fact by the court and focused on risks posed in the present.

- ✓ **Renewals of ERPOs should be in effect for one year.**

The extension should last the same duration as the prior order because renewal orders are under the same requirements, including similar risk of violence, as the initial order.

- ✓ **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.**

Even if a final ERPO is extended, there is still the possibility that the respondent will cease posing the risk that gave rise to the order. The respondent should have one opportunity to show that the factors giving rise to the order have abated.

## Return of Firearms

*Clear processes help ERPO respondents reclaim their firearms and other prohibited items, such as dispossessed licenses and ammunition, after an ERPO is terminated in a safe and structured manner. It also allows for law enforcement to dispose of unclaimed firearms and other prohibited items after a reasonable time has passed, so they do not end up holding those items indefinitely.*

✓ **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.

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

It would be an undue burden for law enforcement to indefinitely amass firearms that are never recovered after ERPOs are no longer in effect.





# Recommendations: Data & Accountability

## Penalties

*Though ERPOs are civil orders, they should be coupled with criminal penalties to deter violations or abuses of the law by both respondents and petitioners. Respondents should be notified in court that failure to comply with the ERPO is a criminal violation of the law and that a search warrant could be issued should they fail to relinquish all firearms. Petitioners should be notified that lying on a petition is also a criminal violation.*

- ✓ **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.**
- ✓ **There should be criminal penalties for violations of an ERPO.**

## Data Collection

*Data collection is crucial for evaluating a law's impact and use. Collecting specific information on ERPO implementation and sharing it with the public can help interested parties understand how effective the policy is at preventing violence and identify opportunities to improve the functioning of the law.*

- ✓ **States should ensure that ERPO case data are gathered and should facilitate access to these data for research, policy, and public safety purposes.**
- Data reporting recommendations, as outlined in the Consortium for Risk-Based Firearm's October 2020 ERPO report, provide a list of important data to collect.<sup>35</sup> Comprehensive data collection related to ERPOs includes petition and respondent information, information on the order and circumstances of the order, and information about the respondent's firearms. Furthermore, data collection is required for states using Byrne State Crisis Intervention Program (SCIP)<sup>36</sup> funding for ERPO implementation. Specifically, data collection should include:

### Petitioner Information

1. Petitioner type (category of eligible petitioner according to state law);
2. Relationship of petitioner to respondent;
3. Demographic information of petitioner, including age, gender identity, and racial or ethnic identity; and
4. For law enforcement petitioners, the specific department or agency for which the petitioner works or which the petitioner is representing.

### Respondent Information

1. Demographic information of respondent, including age, gender identity, and racial or ethnic identity;
2. Whether the respondent is or has been the respondent to another ERPO and/or other protective order; and
3. Whether the respondent has a concurrent criminal case.

### Firearms and Compliance Information

1. Petitioner type (category of eligible petitioner according to state law);
2. Relationship of petitioner to respondent;
3. Demographic information of petitioner, including age, gender identity, and racial or ethnic identity; and
4. For law enforcement petitioners, the specific department or agency for which the petitioner works or which the petitioner is representing.

### Order Information and Circumstances

1. City, county, and date of petition and issuance;
2. Expiration date for petition;
3. Risk profile of respondent:
  - a. Risk to self only,
  - b. Risk to others only, or
  - c. Risk to self and others;
4. Brief synopsis of event that precipitated the order;
5. Petition Outcome:
  - a. Ex parte ERPO granted or denied and reasons for petition being granted, denied, or renewed,
  - b. Final ERPO granted, denied, or renewed and reasons for petition being granted, denied, or renewed,
  - c. Case dismissed and reasons for dismissal,
  - d. If the respondent contested the order, or
  - e. If the petitioner and/or respondent were represented by counsel;
6. Whether the order was served, and if yes, the date of service;
7. Whether the respondent was arrested, hospitalized, or referred for services;
8. Whether a search warrant was issued; and
9. Whether a renewal or early termination of a final ERPO was requested.
  - a. Who requested the renewal or early termination.
  - b. Whether the renewal or early termination request was granted.

# Conclusion

Extreme Risk Protection Orders are civil court orders that can save lives by temporarily prohibiting the possession and purchase of firearms by people adjudicated by a court to pose a danger to themselves and/or others. While 21 states and the District of Columbia already have these laws in place, the rest of the country has the potential to pass them. This guide contains recommendations for states as they draft or amend ERPO laws grounded in implementation, practice, and public health research. Policymakers can, and should, use these recommendations to construct the best possible ERPO policies for their communities.

## The National ERPO Resource Center

The National ERPO Resource Center (ERC) is a training and technical assistance hub designed to support states and localities with the implementation of their ERPO programs to reduce gun violence and save lives. If your jurisdiction has passed an ERPO law, the ERC is able to assist with implementation. Visit [erpo.org](http://erpo.org) for more information.



# Citations

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# ERPO 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.

# ERPO Recommendation Checklist

## 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.

# ERPO Recommendation Checklist

## 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.

# ERPO Recommendation Checklist

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



# ERPO Recommendation Checklist

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)