



NEW YORK

**EXTREME RISK
PROTECTIVE ORDER,
EMERGENCY
ADMISSION,
INVOLUNTARY
INPATIENT ADMISSION
&
SAFE ACT
HOW DO THEY DIFFER?**



**Bloomberg American
Health Initiative**

Information on this website does not constitute legal advice. Every factual situation is unique; if you want legal advice specific to your particular circumstances, please consult knowledgeable counsel.

Extreme Risk Protective Orders (ERPOs) temporarily remove firearms from individuals at risk of harming themselves (including suicide) or others. Criteria for an ERPO focus on dangerous behaviors, not mental illness diagnoses.

Emergency admission and involuntary inpatient admission are primarily concerned with ensuring that a person with a suspected or diagnosed mental health disorder receives appropriate treatment.

New York's Secure Ammunition and Firearms Enforcement (SAFE) Act temporarily removes firearms from individuals receiving mental health treatment who are likely to engage in conduct that would result in serious harm to self or others.

WHAT IS AN EXTREME RISK PROTECTIVE ORDER?

In New York, an **ERPO** is a civil order that temporarily prohibits individuals who pose a danger of injury to self (including suicide) or others from purchasing and possessing firearms.¹

Mental illness diagnosis

New York's ERPO law does not require the petitioner to demonstrate that the respondent has a suspected or diagnosed mental disorder. Dangerous behaviors are the main criteria for an ERPO. An **ERPO** petitioner must establish that a person is likely to engage in conduct that would result in serious harm to self or others by possessing a firearm. The court will consider relevant evidence including a threat or act of violence or use of physical force toward self or others, violation of a protective order, and recent or ongoing "abuse of controlled substances or alcohol," among others.²

Firearm prohibition

ERPOs prohibit respondents from purchasing or possessing firearms for the duration of the order and require respondents to surrender their firearms to law enforcement upon execution of the order.³ ERPOs also require the temporary suspension of any firearm license possessed by respondents.⁴

WHAT IS AN EMERGENCY ADMISSION? WHAT IS AN INVOLUNTARY ADMISSION?

In New York, an **emergency admission** is the detainment of an individual believed to have a mental illness who is likely to cause serious harm to self or others. Emergency admission occurs when immediate observation, care, and treatment in a hospital is appropriate.⁵

Involuntary inpatient admission is the hospitalization of an individual with a mental illness who is in need of inpatient care because:

- (1) they are likely to engage in conduct that is likely to result in serious harm to self or others;
- (2) they are unwilling to be admitted voluntarily; and
- (3) less restrictive alternative forms of care are inadequate to provide for the person's needs.⁶

Mental illness diagnosis

An individual may be detained for an **emergency admission** if they present a substantial risk of physical harm to self or others due to a suspected mental illness.⁷ An individual may be **involuntarily admitted** if they are examined and determined to have a mental illness and as such are in need of inpatient care.⁸

Firearm prohibition

Persons detained for an **emergency admission** are not prohibited from purchasing or possessing firearms. An individual who has been **involuntarily admitted** is prohibited from possessing firearms indefinitely.⁹ The individual may apply for a Certificate of Relief from Disabilities if the person's record and reputation are such that the person is not likely to act in a manner contrary to public safety.¹⁰

WHAT IS THE SAFE ACT?

In New York, the **SAFE Act** amended Mental Hygiene Law § 9.46 to require mental health professionals to report to the director of community services any individual receiving treatment who, in their professional judgement, is likely to engage in conduct that would result in serious harm to self or others.¹¹ The information reported shall include the name of the individual and non-clinical identifying information.¹² If the director of community services agrees with the mental health professional's determination, the information is reported to the New York Division of Criminal Justice Services (DCJS).¹³ If the individual possesses a firearms license, DCJS notifies the local licensing authority who shall suspend or revoke the license.¹⁴

Mental illness diagnosis

New York's **SAFE Act** requires that mental health professionals who are currently providing treatment services to an individual make a report to the director of community services, if they determine, using reasonable professional judgment, that the individual is likely to engage in conduct that would result in serious harm to self or others.¹⁵

Firearm prohibition

In New York, an individual must obtain a license prior to purchasing a firearm. An individual reported pursuant to the **SAFE Act** is prohibited from purchasing or possessing a firearm for five years and will have their firearms license revoked.¹⁶

ENDNOTES

1 N.Y. CPLR §§ 6342; 6343.

2 N.Y. CPLR § 6342(2).

3 N.Y. CPLR §§ 6342(6); 6344(1).

4 N.Y. CPLR § 6343(3)(b).

5 N.Y. Mental Hyg. Law §§ 9.37 - 9.45; 9.55 - 9.58.

6 N.Y. Mental Hyg. Law § 9.27.

7 N.Y. Mental Hyg. Law §§ 9.37 - 9.45; 9.55 - 9.58.

8 N.Y. Mental Hyg. Law § 9.27.

9 N.Y. Penal Law § 400.00(1)(i). Regardless of whether a patient is being treated inpatient or outpatient, if a mental health professional who is currently providing treatment services to an individual determines the individual is likely to engage in conduct that would result in serious harm to self or others, the mental health professional shall make a report to the director of community services, or the director's designee. If the director agrees with the assessment, the information shall be reported to the division of criminal justice services to be used for determining whether a firearms license should be suspended or revoked, or for determining whether a person is ineligible for a license issued, or is no longer permitted under state or federal law to possess a firearm. N.Y. Mental Hyg. Law § 9.46(b).

10 N.Y. Mental Hyg. Law § 7.09(j)(2).

11 N.Y. Mental Hyg. Law § 9.46(b).

12 N.Y. Mental Hyg. Law § 9.46(b).

13 N.Y. Mental Hyg. Law § 9.46(b).

14 N.Y. Mental Hyg. Law § 9.46(b).

15 N.Y. Mental Hyg. Law § 9.46(b).

16 N.Y. Mental Hyg. Law § 9.46; N.Y. Penal Law § 400.00(1)(i); (1)(b).

ABOUT THIS PROJECT

In 2013, following the Sandy Hook massacre, the Consortium for Risk-Based Firearm Policy published evidence-based recommendations to address all forms of gun violence. Among the recommendations was a call for states to pass a new policy called Extreme Risk Protection Orders. As of September 1, 2020, seven years since the Consortium released its report, 19 states and the District of Columbia have passed new ERPO laws. Dozens more states have introduced ERPO bills.

With many laws in place, and several additional states poised to enact ERPO laws, there is a need for information, technical assistance, and support for implementing ERPO laws. This project was created to address that need. Please visit the central resource for ERPO implementers at americanhealth.jhu.edu/implementERPO.

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