



WASHINGTON

EXTREME RISK PROTECTION ORDER



INVOLUNTARY PSYCHIATRIC TREATMENT

HOW DO THEY DIFFER?



Bloomberg American
Health Initiative

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

Court-ordered mental health evaluation and treatment, including 72-hour detention for evaluation and treatment and 14-day involuntary inpatient treatment, are primarily concerned with ensuring that a person with a suspected or diagnosed mental illness receives appropriate treatment.

WHAT IS AN EXTREME RISK PROTECTION ORDER?

In Washington, an ERPO¹ is a civil order that temporarily prohibits individuals who pose a significant danger of injuring themselves (including suicide) or others from purchasing and possessing a firearm or attempting to do so.

14-DAY INVOLUNTARY INPATIENT TREATMENT

In Washington, 14-day involuntary inpatient treatment (or commitment) or 90 days of less restrictive alternative treatment,⁴ may be ordered if the court finds that an individual, as a result of a mental disorder or substance use disorder, presents a likelihood of serious harm to self (including suicide) or others or is gravely disabled, and that treatment – either involuntary commitment or a less restrictive alternative treatment – is in the best interest of the individual or others.

At the end of 14-day involuntary inpatient treatment, additional treatment options – further commitment or less restrictive alternative treatment – may be available following another hearing.⁵

72-HOUR INVOLUNTARY INPATIENT TREATMENT

In Washington, detention for 72-hour evaluation and treatment occurs under two types of scenarios, an initial detention that involves the court, and an emergency detention that does not involve the court.

Initial Detention²

In Washington, a designated crisis responder (hereafter, designated mental health professional) may petition the court to detain a person for evaluation and treatment for no longer than 72 hours if it is alleged that the person, as a result of a mental disorder and/or substance use disorder, presents a likelihood of serious harm to self or others. However, if there is an imminent likelihood of serious harm to self or others, emergency detention is available.

Emergency Detention³

Where it is alleged that a person, as a result of a mental disorder and/or substance use disorder presents an “imminent likelihood of serious harm, or is in imminent danger” to self or others, a designated mental health professional may, without petitioning the court, take the individual (or cause the individual to be taken) into emergency custody for evaluation and treatment for no longer than 72 hours.

HOW ARE ERPOS DIFFERENT?

Petitioners

Family and household members and law enforcement officers may petition for an ERPO.⁶

Criteria considered

An ERPO petitioner must establish that a respondent poses a significant danger of harm to self (including suicide) or others, and does not require that a petitioner suspect or prove that the respondent has a mental disorder. The court will consider: recent acts or threats of violence toward self or others, violation of a protection order or no-contact order, and conviction for a crime that constitutes domestic violence, among others.⁷

Judicial review

An ERPO is issued after a judicial officer has reviewed a petition, heard from any witnesses, and at the final hearing (of which the respondent received notice) the respondent has had the opportunity to be heard.

Firearm prohibition

ERPO respondents are prohibited from purchasing and possessing firearms for the duration of the order and must surrender their firearms and concealed pistol license upon execution of the order.⁸

HOW IS INVOLUNTARY PSYCHIATRIC TREATMENT DIFFERENT?

Petitioners

Designated mental health professionals, and in some situations, immediate family members, guardians, or conservators, may petition for initial or emergency detention for 72-hour evaluation and treatment.⁹

Designated mental health professionals, and professional staff of the facility who conducted the initial evaluation of the individual, may petition for 14-day involuntary inpatient treatment or 90-day less restrictive alternative treatment.¹⁰

Criteria considered

A petitioner for initial detention for 72-hour evaluation and treatment must allege that as a result of a mental disorder or substance use disorder the individual presents a likelihood of serious harm to self or others, or is gravely disabled.¹¹ A petitioner for emergency detention for 72-hour evaluation and treatment must allege that as a result of a mental disorder or substance use disorder, the individual presents an imminent likelihood of serious harm to self or others, or that as a result of being gravely disabled, is in imminent danger.

A petitioner for 14-day involuntary inpatient treatment must allege that the individual, as a result of a mental disorder or substance use disorder, presents a likelihood of serious harm to self or others, or is gravely disabled, and that there are no less restrictive alternatives to involuntary detention that are in the best interest of the individual or others.¹²

A petitioner for 90 days of involuntary less-restrictive alternative treatment must allege that the individual, as a result of a mental disorder or substance use disorder, presents a likelihood of serious harm to self or others, is gravely disabled, or is in need of assisted outpatient behavioral health treatment.¹³ A petition for 14-day involuntary inpatient treatment, or 90 days of less restrictive alternative treatment, must be signed by two health professionals.

Judicial review

An individual who presents an imminent likelihood of serious harm may be taken into emergency custody without judicial review for emergency 72-hour evaluation and treatment.¹⁴ An individual who presents a likelihood of serious harm may be detained for an initial 72-hour evaluation and treatment after a judge reviews the petition.¹⁵

Where a petition has been filed for 14-day involuntary inpatient treatment, or 90 days of less restrictive alternative treatment, a hearing must be held within 72 hours of the initial detention for evaluation and treatment to determine if the individual presents a likelihood of serious harm to self or others, or is gravely disabled, as a result of a mental disorder or substance use disorder, and treatment – either involuntary treatment or less restrictive alternative treatment – is in the individual's best interest.¹⁶

Firearm prohibition

A person detained for 72-hour evaluation and treatment is prohibited from purchasing and possessing firearms for six months and must surrender their firearms and concealed pistol license upon oral and written notice.¹⁷

A person committed for 14-day involuntary inpatient treatment, or 90 days of less restrictive alternative treatment, following the initial 72-hour evaluation and treatment, is prohibited from purchasing and possessing firearms until they petition the court and are granted relief from the firearm prohibition.¹⁸ Upon commitment, they must surrender their concealed pistol license and firearms, which will be returned only after they petition for and are granted relief.¹⁹

DEFINITIONS

Designated Crisis Responder: A mental health professional appointed by the county, an entity appointed by the county, or the behavioral health organization to perform the duties specified in this chapter.¹⁹

NOTE

A person may be legally prohibited from possessing firearms but the law and the law enforcement infrastructure may not include a requirement or process for that person to turn over their firearms to law enforcement, a federally licensed firearms dealer, or third party. When such processes are not defined or in place, implementation and enforcement of these orders can be more challenging.

Statutory language about dispossession processes is important to assuring full implementation and enforcement of ERPO laws but is often missing from court-ordered mental health treatment statutes.

ENDNOTES

- 1 Wash. Rev. Code Ann. § 71.05.150.
- 1 Wash. Rev. Code Ann. § 71.05.150.
- 2 Wash. Rev. Code Ann. § 71.05.153.
- 3 Wash. Rev. Code Ann. §§ 71.05.230, 71.05.240.
- 4 Wash. Rev. Code Ann. §§ 71.05.280, 71.05.320.
- 5 Wash. Rev. Code Ann. § 7.94.030(1).
- 6 Wash. Rev. Code Ann. § 7.94.040(3).
- 7 Wash. Rev. Code Ann. § 7.94.090(1).
- 8 Wash. Rev. Code Ann. §§ 71.05.020(14), 71.05.150(1), 71.05.153(1), 71.05.201(1).
- 9 Wash. Rev. Code Ann. § 71.05.230(A)(4)(a)(i).
- 10 Wash. Rev. Code Ann. §§ 71.05.150(1), 71.05.153(1),(2),(3)(a)(ii).
- 11 Wash. Rev. Code Ann. § 71.05.230(1), (4)(b).
- 12 Wash. Rev. Code Ann. § 71.05.230(1), (4)(b).
- 13 Wash. Rev. Code Ann. § 71.05.153(1), (3)(a).
- 14 Wash. Rev. Code Ann. § 71.05.150(1), (2)(a).
- 15 Wash. Rev. Code Ann. § 71.05.240(1), (3)(a).
- 16 S. 5181, 66th Leg., Reg. Sess. (Wash. 2019); Wash Rev. Code Ann. § 9.41.098(1)(c), (g).
- 17 Wash. Rev. Code Ann. §§ 71.05.360(1)(a), 9.41.040(2)(a)(iv), 9.41.075(1)(b).
- 18 See Wash. Rev. Code Ann. § 9.41.047(1)(a).
- 19 Wash. Rev. Code Ann. § 71.05.020(14).