



## WASHINGTON

# EXTREME RISK PROTECTION ORDER & DOMESTIC VIOLENCE ORDER FOR PROTECTION

## 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.

NOTE: Washington's ERPO law and domestic violence law were amended in the 2019 session and will not go into effect until July 2019. The chart represents amended language. Please visit the Washington State website, <http://leg.wa.gov/>, for current language.



## WHAT IS AN EXTREME RISK PROTECTION ORDER?

In Washington, an Extreme Risk Protection Order (ERPO) is a civil order that temporarily prohibits individuals who pose a significant danger of injuring self or others from purchasing or possessing a firearm.

## HOW ARE ERPOS DIFFERENT?

### Petitioners

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

### Protections

ERPOs prohibit respondents from purchasing or possessing firearms for the duration of the order and require respondents to turn in their concealed pistol license to reduce the risk of harm to self or others.

Law enforcement may petition for an ex parte ERPO when the court is closed - making the order and its protections available 24 hours a day, 7 days a week.

## WHAT IS A DOMESTIC VIOLENCE ORDER FOR PROTECTION?

In Washington, a Domestic Violence Order for Protection ("Order for Protection") is a civil order that can provide multiple forms of protection for individuals seeking relief from domestic violence and abuse, such as ordering the respondent<sup>4</sup> to stay away from the petitioner, leave the home they share, and/or offering firearm protections, among others.

## HOW ARE ORDERS FOR PROTECTION DIFFERENT?

### Petitioners

Family and household members may petition for an Order for Protection.

### Protections

An Order for Protection may include various forms of relief, including but not limited to, ordering the respondent to refrain from threatening and abusing the petitioner, granting temporary custody of children, and ordering the respondent to leave a shared residence.<sup>1</sup> Orders for Protection may also prohibit respondents from purchasing firearms and order the surrender of any firearm or concealed pistol license for the duration of the order.<sup>2</sup>

Orders for Protection may only be issued during court business hours.



### DIVE DEEPER

In Washington, ERPOs serve a different purpose than Orders for Protection. For a more detailed description of the differences, see the comparison chart.

# EXPLORE THE DIFFERENCES

## ERPO & DVOP COMPARISON CHART

### PETITIONS AND ORDERS

### EXTREME RISK PROTECTION ORDERS

### ORDERS FOR PROTECTION

<b>What results from the issuance of an order?</b>	An ERPO temporarily prohibits the respondent from purchasing and possessing a firearm or attempting to do so <sup>3</sup> and requires the respondent to surrender their firearm(s) and concealed pistol license. <sup>4</sup>  If an ERPO is issued against a minor, firearms at the minor's residence must be safely secured or removed. <sup>5</sup>	A DVOP may order various forms of relief, including but not limited to: ordering the respondent not to threaten the petitioner, ordering the respondent not to enter the petitioner's residence, giving one parent temporary custody, ordering the respondent to leave a shared residence, <sup>6</sup> ordering the respondent to prohibit purchase of and surrender any firearm or concealed pistol license. <sup>7</sup>
<b>Is the order criminal or civil?</b>	Civil.	Civil.
<b>What types of orders are available?</b>	Ex Parte ERPO, <sup>8</sup> Final ERPO. <sup>9</sup>	Ex Parte Temporary Order, <sup>10</sup> Full Order. <sup>11</sup>
<b>Who may petition for an order?</b>	Family or household member <sup>B</sup> ; law enforcement officer or agency. <sup>12</sup>	Family or household member. <sup>C</sup> <sup>13</sup>
<b>May the order be issued against a minor?</b>	Yes. <sup>14</sup>	The order may be issued against a minor 16 years of age or older who is in a dating relationship with a petitioner who is 13 years of age or older. <sup>15</sup>
<b>Can the order be issued 24/7?</b>	Yes, law enforcement may petition for an ex parte order when the court is closed. <sup>16</sup>	No.
<b>Which court hears the petition?</b>	Superior Court. District and Municipal courts may hear a petition for an ex parte order. Juvenile courts may hear petitions from petitioners under 18 years of age. <sup>17</sup>	Superior, District, or Municipal Court (varies by jurisdiction). <sup>18</sup>
<b>What is the standard of proof?</b>	Ex Parte ERPO - Reasonable Cause. <sup>19</sup>  Final ERPO - Preponderance of the evidence. <sup>20</sup>	Ex Parte Temporary Order - Prima facie evidence (similar to reasonable cause).  Full Order - Preponderance of the evidence.
<b>What must be proven?</b>	Ex Parte ERPO - the respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. <sup>21</sup>  Final ERPO - the respondent poses a significant danger of injury to self or others by purchasing or possessing a firearm. <sup>22</sup>	Ex Parte Temporary Order - irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent. <sup>23</sup>  Full Order - the person has been the victim of domestic violence committed by the respondent. <sup>24</sup>

<b>What factors may the court consider?</b>	<p>A recent act or threat of violence against self or others, whether or not such violence or threat of violence involves a firearm;</p> <p>A pattern of acts or threats of violence within the past 12 months including, but not limited to, acts or threats of violence by the respondent against self or others;</p> <p>Any behaviors that present an imminent threat of harm to self or others;</p> <p>A violation of a protection order or a no-contact order;</p> <p>A previous or existing extreme risk protection order issued against the respondent;</p> <p>A violation of a previous or existing extreme risk protection order issued against the respondent;</p> <p>A conviction for a crime that constitutes domestic violence;</p> <p>A conviction for malicious harassment;</p> <p>The respondent's ownership, access to, or intent to possess firearms;</p> <p>The unlawful or reckless use, display, or brandishing of a firearm;</p> <p>The history of use, attempted use, or threatened use of physical force against another person, or history of stalking another person;</p> <p>Any prior arrest for a felony offense or violent crime;</p> <p>Corroborated evidence of the abuse of controlled substances or alcohol; and</p> <p>Evidence of recent acquisition of firearms.<sup>25</sup></p>	<p>Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;</p> <p>Sexual assault of one family or household member by another; or</p> <p>Stalking<sup>9</sup> of one family or household member by another family or household member.<sup>26</sup></p>
<b>How long is the order in effect?</b>	<p>Ex Parte ERPO - Up to 14 days.<sup>27</sup></p> <p>Final ERPO - One year.<sup>28</sup></p>	<p>Ex Parte Temporary Order - Up to 14 days, not to exceed 24 days (if service by publication or mail).<sup>29</sup></p> <p>Full Order - Varies based on relief but could be permanent.<sup>30</sup></p>
<b>May the order be modified, terminated, or renewed?</b>	The order may be terminated and renewed. <sup>31</sup>	Yes, the order may be modified, terminated, <sup>32</sup> and renewed. <sup>33</sup>
<b>Are court records confidential?</b>	Respondents under 18 years of age may petition to have their record sealed. <sup>34</sup>	No.

## **FIREARM DISPOSSESSION**

### **EXTREME RISK PROTECTION ORDERS**

### **ORDERS FOR PROTECTION**

<b>What firearms must be surrendered?</b>	All firearms in the respondent's custody, control, or possession, as well as a concealed pistol license. <sup>35</sup>	If surrender is ordered, all firearms the respondent owns and possesses, as well as a concealed pistol license. <sup>36</sup>
<b>What is the process for firearm dispossession?</b>	The officer serving the order is required to ask the respondent to immediately surrender their firearms and concealed pistol license or, if service is not possible or required because the respondent was present at the hearing, the respondent must surrender their firearms to a local law enforcement agency within 48 hours of the hearing at which the respondent was present. <sup>37</sup>	The respondent must immediately surrender firearms and concealed pistol license to law enforcement serving the order, or if service is not required because the respondent was present at the hearing, the respondent must surrender their firearms to a local law enforcement agency on the day of the hearing. <sup>38</sup>
<b>May a warrant to search and seize firearms be issued?</b>	Yes, the court shall issue a warrant to search and seize firearms where there is probable cause to believe the respondent illegally possesses firearms. <sup>39</sup>	Yes, a magistrate may issue a warrant to search and seize firearms if there is probable cause to believe the respondent illegally possesses the firearms. <sup>40</sup>

# ENDNOTES

- 1 Washington Courts, Domestic Violence Protection Order Process, [https://www.courts.wa.gov/dv/?fa=dv\\_order.ordtypes](https://www.courts.wa.gov/dv/?fa=dv_order.ordtypes).
  - 2 Wash. Rev. Code Ann. § 9.41.800(1).
  - 3 Wash. Rev. Code Ann. §§ 7.94.040(7)(g), 7.94.050(6)(g).
  - 4 Wash. Rev. Code Ann. § 7.94.090(1).
  - 5 Wash. Rev. Code Ann. § 7.94.060(7)(b).
  - 6 Washington Courts, Domestic Violence Protection Order Process, [https://www.courts.wa.gov/dv/?fa=dv\\_order.ordtypes](https://www.courts.wa.gov/dv/?fa=dv_order.ordtypes).
  - 7 Wash. Rev. Code Ann. § 9.41.800(1).
  - 8 Wash. Rev. Code Ann. § 7.94.050.
  - 9 Wash. Rev. Code Ann. § 7.94.040.
  - 10 Wash. Rev. Code Ann. § 26.50.070.
  - 11 Wash. Rev. Code Ann. § 26.50.060.
  - 12 Wash. Rev. Code Ann. § 7.94.030(1).
  - 13 King County Domestic Violence Protection Order Advocacy Program, Can I Get A Protection Order?, <http://www.dvprotectionorder.org/can-i-get-a-protection-order.html>.
  - 14 Wash. Rev. Code Ann. §§ 7.94.030(2).
  - 15 Wash. Rev. Code Ann. §§ 26.50.010(6), 26.50.020(1).
  - 16 Wash. Rev. Code Ann. § 7.94.030(14).
  - 17 Wash. Rev. Code Ann. § 7.94.030(11).
  - 18 Wash. Rev. Code Ann. §§ 26.50.020(5), 26.50.010(1).
  - 19 Wash. Rev. Code Ann. § 7.94.050(3).
  - 20 Wash. Rev. Code Ann. § 7.94.040(2).
  - 21 Wash. Rev. Code Ann. § 7.94.050(1).
  - 22 Wash. Rev. Code Ann. § 7.94.030(4)(a).
  - 23 Wash. Rev. Code Ann. § 26.50.070(1).
  - 24 Wash. Rev. Code Ann. § 26.50.020(1)(a).
  - 25 Wash. Rev. Code Ann. § 7.94.040(3).
  - 26 Wash. Rev. Code Ann. § 26.50.010(3).
  - 27 Wash. Rev. Code Ann. § 7.94.050(5).
  - 28 Wash. Rev. Code Ann. § 7.94.040(2).
  - 29 Wash. Rev. Code Ann. § 26.50.070(4).
  - 30 Wash. Rev. Code Ann. § 26.50.060(2).
  - 31 Wash. Rev. Code Ann. § 7.94.080.
  - 32 Wash. Rev. Code Ann. § 26.50.130.
  - 33 Wash. Rev. Code Ann. § 26.50.060(3).
  - 34 Wash. Rev. Code Ann. § 7.94.030(12)(a).
  - 35 Wash. Rev. Code Ann. § 7.94.090(1).
  - 36 Wash. Rev. Code Ann. § 9.41.800(1) .
  - 37 Wash. Rev. Code Ann. § 7.94.090(2).
  - 38 H.R. 1786, 66th Leg., Reg. Sess. (Wash. 2019).
  - 39 Wash. Rev. Code Ann. § 7.94.090(4).
  - 40 Wash. Rev. Code Ann. § 10.79.035(1).
- A A “respondent” is a person subject to an order - ERPO or Order for Protection.
- B “Family or household member” includes person related by blood, marriage, or adoption to the respondent; dating partners of the respondent; person who has a child in common with the respondent, regardless of whether such person has been married to the respondent or has lived together with the respondent at any time; person who resides or has resided with the respondent within the past year; domestic partner of the respondent; person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren; and person who is acting or has acted as the respondent’s legal guardian.
- C “Family or household members” means former or current dating partner, former or current spouse, parent of a child in common, former or current cohabitant as an intimate partner (including former or current registered domestic partner), [step]-parent or [step]-child, former or current roommate, in-law, anyone with a blood relation other than parent or child.
- D “Stalking” is defined as a) a person who intentionally and repeatedly harasses or repeatedly follows another person; and (b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and (c) The stalker either: (i) Intends to frighten, intimidate, or harass the person; or (ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person. (Wash. Rev. Code Ann. § 9A.46.110(1) (2019))

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## 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 May 2019, six years since the Consortium released its report, 13 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](http://americanhealth.jhu.edu/implementERPO).