

COLORADO

EXTREME RISK

PROTECTION

ORDER

&

DOMESTIC

VIOLENCE

PROTECTION

ORDER

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.



## WHAT IS AN EXTREME RISK PROTECTION ORDER?

In Colorado, an Extreme Risk Protection Order (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.

## HOW ARE ERPOS DIFFERENT?

### **Petitioners**

Family or household members (including current and former spouses, persons with a child in common, domestic partners, household members)<sup>1</sup> and law enforcement officers may petition for an **ERPO**.

### **Protections**

**ERPOs** offer one type of protection: they temporarily prohibit persons at risk of injury to self or others from purchasing or possessing firearms for the duration of the order. ERPOs require respondents to dispossess themselves of any firearms and turn them over to law enforcement for safe keeping.

## WHAT IS A DOMESTIC VIOLENCE PROTECTION ORDER?

In Colorado, a Domestic Violence Protection Order (Protection Order) is a civil order issued by a judge that provides various forms of relief from abuse, including ordering the respondent<sup>2</sup> to refrain from abuse and threatening abuse, prohibiting contact with the petitioner, awarding temporary child custody, and in some cases, ordering the respondent to refrain from purchasing and possessing firearms. Colorado also has a criminal Protection Order (known as a Mandatory Protection Order) available when criminal charges have been filed against the respondent. This document focuses on civil Protection Orders.

## HOW ARE PROTECTION ORDERS DIFFERENT?

### **Petitioners**

Persons currently or formerly related to the respondent, living with the respondent, or in an intimate relationship with the respondent may petition for a **Protection Order** on behalf of themselves or a minor child. Any person may petition for a Protection Order on behalf of an at-risk adult.

### **Protections**

**Protection Orders** may order various forms of relief from abuse, including ordering the respondent to stay away from any party named in the order and awarding temporary child custody. Temporary Protection Orders *may* prohibit firearm and ammunition purchase and possession; final Protection Orders *may* prohibit firearm purchase and possession, but *must* prohibit firearm purchase and possession if the petitioner is a spouse or former spouse, shares a child with the respondent, or previously cohabited with the respondent. Emergency Protection Orders do not prohibit firearm and ammunition purchase and possession.

## DIVE DEEPER

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

# EXPLORE THE DIFFERENCES

## ERPO & DVPO COMPARISON CHART

### PETITIONS AND ORDERS

#### EXTREME RISK PROTECTION ORDER (ERPO)

#### DOMESTIC VIOLENCE PROTECTION ORDER (DVPO)

**What results from the issuance of an order?**

Temporarily prohibits respondent from purchasing and possessing firearms, and requires the respondent to surrender any concealed carry permit in their possession<sup>3</sup>

The court may order relief, including but not limited to:

- Ordering the respondent to refrain from further abuse or threats of abuse
- Ordering the respondent to refrain from contacting the petitioner
- Ordering the respondent to stay away from the petitioner
- Awarding temporary child custody
- Ordering the respondent to surrender firearms and ammunition and to refrain from possessing firearms and ammunition for the duration of the order<sup>4</sup>

**Is the order criminal or civil?**

Civil

Civil

If respondent violates the order they may be charged with a crime<sup>5</sup>

If the respondent violates the order they may be charged with a crime<sup>6</sup>

**What types of orders are available?**

Temporary ERPO

Emergency Protection Order

Final ERPO

Temporary Protection Order

Permanent Protection Order

**Who may petition for an order?**

Family or household members (including persons related by blood, marriage, or adoption, persons with a child in common, persons who regularly reside or regularly resided with the respondent in the last six months, domestic partners, parents, children, stepparents, stepchildren, grandparents, grandchildren, legal guardians, current or former unmarried couples), and law enforcement<sup>7</sup>

Persons currently or formerly related to the respondent, living with the respondent, or in an intimate relationship with the respondent, and any person on behalf of an at-risk adult<sup>8</sup>

<b>May a minor be the respondent to an order?</b>	The law does not explicitly state whether minors are eligible respondents	Yes, if the minor is at least 10 years old <sup>9</sup>
<b>Can the order be issued 24/7?</b>	No	Yes, an Emergency Protection Order <sup>10</sup>
<b>Which court hears the petition?</b>	District or County Court <sup>11</sup>	Emergency Protection Order: District or County Court <sup>12</sup>  Temporary or Permanent Protection Order: Municipal, County, District, Probate, or Juvenile Court <sup>13</sup>
<b>What is the burden of proof?</b>	Temporary ERPO: preponderance of the evidence <sup>14</sup>  Final ERPO: clear and convincing evidence <sup>15</sup>	Emergency Protection Order: reasonable grounds <sup>16</sup>  Temporary Protection Order: sufficient cause <sup>17</sup>  Permanent Protection Order: preponderance of evidence <sup>18</sup>
<b>What must be proven?</b>	Temporary ERPO: respondent poses a significant risk of injury to self or others in the near future by purchasing or possessing a firearm <sup>19</sup>  Final ERPO: respondent poses a significant risk of injury to self or others by purchasing or possessing a firearm <sup>20</sup>	Emergency Protection Order: an adult is in immediate and present danger of domestic abuse, assault, stalking, sexual assault or abuse, or a minor is in immediate and present danger of an unlawful sexual offense or domestic abuse <sup>21</sup>  Temporary Protection Order: respondent poses an imminent danger to the person or persons seeking protection <sup>22</sup>  Permanent Protection Order: respondent has committed acts of domestic abuse and will continue to commit such act or acts unless restrained <sup>23</sup>
<b>What factors may the court consider?</b>	Court may consider all relevant evidence, including:  - A recent act or credible threat of violence by the respondent against self or others, whether or not such violence or credible threat of violence involves a firearm  - A pattern of acts or credible threats of violence by the respondent within the past year  - A violation of a civil protection order  - A previous or existing ERPO issued against the respondent and a violation of a previous or existing ERPO  - A conviction of domestic violence  - Ownership, access to, or intent to possess a firearm	Emergency Protection Order: none provided  Temporary Protection Order: the court shall consider all relevant evidence concerning the safety and protection of the persons seeking the protection order <sup>25</sup>  Permanent Protection Order: the court shall consider the record and all evidence to determine whether the respondent has committed acts constituting grounds for issuance of the protection order <sup>26</sup>

- A credible threat of or the unlawful or reckless use of a firearm by the respondent
- The history of use, attempted use, or threatened use of unlawful physical force against another person, or a history of stalking
- Any prior arrest of the respondent for a crime, including cruelty to animals
- Evidence of the abuse of controlled substances or alcohol by the respondent
- Whether the respondent is required to possess, carry, or use a firearm as a condition of the respondent's current employment
- Evidence of recent acquisition of a firearm or ammunition by the respondent<sup>24</sup>

**How long is the order in effect?**

Temporary ERPO: until the Final ERPO hearing, not more than 14 days after service<sup>27</sup>

Final ERPO: up to 364 days<sup>28</sup>

Emergency Protection Order: until the close of judicial business on the next day of judicial business following the day of issue<sup>29</sup>

Temporary Protection Order: until the Permanent Protection Order hearing, not more than 14 days after service<sup>30</sup>

Permanent Protection Order: permanent, however the petitioner or respondent may request termination or modification<sup>31</sup>

**May the order be modified, terminated, or renewed?**

The order may be terminated or renewed<sup>32</sup>

The order may be modified or terminated<sup>33</sup>

If the respondent has been convicted of or pled guilty to any misdemeanor or felony against the protected person, other than the original offense, if any, that formed the basis for the issuance of the protection order, then the permanent protection order remains permanent and must not be modified or dismissed by the court<sup>34</sup>

**Are court records confidential?**

No

No

## **FIREARM DISPOSSESSION**

### **EXTREME RISK PROTECTION ORDER (ERPO)**

### **DOMESTIC VIOLENCE PROTECTION ORDER (DVPO)**

#### **What firearms must be surrendered?**

All firearms in the respondent's possession<sup>35</sup>

All firearms and ammunition in the respondent's possession<sup>36</sup>

#### **What is the process for firearm dispossession?**

The respondent must surrender to law enforcement all firearms and any concealed carry permit<sup>37</sup>

After law enforcement takes custody of the respondent's firearms, the respondent may request the transfer or sale of firearms to a federally licensed firearms dealer or the transfer of an antique, curio, or relic to a relative who does not live with the respondent

The respondent must surrender all firearms and ammunition in their possession for the duration of the order<sup>38</sup>

The surrender must take place within 24 hours if the respondent was served with the order in court or within 48 hours if served with the order out of court<sup>39</sup>

A court may allow up to 72 hours to surrender firearms or ammunition if the respondent can demonstrate to the satisfaction of the court he or she is unable to comply with the 24 or 48 hours requirement<sup>40</sup>

The respondent may sell or transfer possession of the firearm or ammunition to a federally licensed firearms dealer or a private party who is legally able to possess firearms, or may arrange for surrender of the firearm or ammunition to law enforcement<sup>41</sup>

If respondent is in the custody of a law enforcement agency, the respondent shall be required to relinquish any firearm or ammunition in the respondent's possession or control within 24 hours after their release from incarceration or custody<sup>42</sup>

#### **Is an order to search for and seize firearms issued in conjunction with an ERPO or Protection Order?**

Yes<sup>43</sup>

No

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## ENDNOTES

- 1 See the chart for a complete list of "family or household members."
- 2 A "respondent" is a person subject to an order.
- 3 Colo. Rev. Stat. § 13-14.5-105.
- 4 Colo. Rev. Stat. §§ 13-14-103(1)(b); 13-14-105(1); 18 U.S.C. § 922 (d)(8), (g)(8).
- 5 Colo. Rev. Stat. § 13-14.5-111.
- 6 Colo. Rev. Stat. Ann. § 18-6-803.5(2)(a).
- 7 Colo. Rev. Stat. §§ 13-14.5-103; 13-14.5-102; 18-6-800.3(2).
- 8 Colo. Rev. Stat. §§ 13-14-104.5(8); 13-14-101(2); 26-3.1-102(1)(b), (1)(c).
- 9 Colo. Rev. Stat. § 13-14-104.5(1)(a).
- 10 Colo. Rev. Stat. § 13-14-103(1)(e).
- 11 Colo. Rev. Stat. § 13-14.5-104(8).
- 12 Colo. Rev. Stat. § 13-14-103(1)(a).
- 13 Colo. Rev. Stat. § 13-14-104.5(1)(a).
- 14 Colo. Rev. Stat. § 13-14.5-103(3).
- 15 Colo. Rev. Stat. § 13-14.5-105(2).
- 16 Colo. Rev. Stat. § 13-14-103(1)(e).
- 17 Colo. Rev. Stat. § 13-14-104.5(8).
- 18 Colo. Rev. Stat. § 13-14-106(1)(a).
- 19 Colo. Rev. Stat. § 13-14.5-103(2).
- 20 Colo. Rev. Stat. § 13-14.5-104(3)(a).
- 21 Colo. Rev. Stat. § 13-14-103(1)(e).
- 22 Colo. Rev. Stat. § 13-14-104.5(7)(a).
- 23 Colo. Rev. Stat. § 13-14-106(1)(a).
- 24 Colo. Rev. Stat. § 13-14.5-105(3)(a)-(f).
- 25 Colo. Rev. Stat. § 13-14-104.5(7)(a).
- 26 Colo. Rev. Stat. § 13-14-106(1)(a).
- 27 Colo. Rev. Stat. § 13-14.5-103(5).
- 28 Colo. Rev. Stat. § 13-14.5-105(2).
- 29 Colo. Rev. Stat. § 13-14-103(1)(f).
- 30 Colo. Rev. Stat. § 13-14-104.5(10); 13-14-106(1)(a).
- 31 Colo. Rev. Stat. § 13-14-108(2). The respondent may not apply for modification or dismissal of a permanent protection order within two years after issuance.
- 32 Colo. Rev. Stat. §§ 13-14.5-105(9)(f), (10); 13-14.5-107.
- 33 Colo. Rev. Stat. § 13-14-108(2).
- 34 Colo. Rev. Stat. § 13-14-108(3)(a)(i).
- 35 Colo. Rev. Stat. § 13-14.5-103(6)(g); 13-14.5-108.
- 36 Cal. Fam. Code § 6389(a).
- 37 Colo. Rev. Stat. § 13-14.5-103(6)(g); 13-14.5-108.
- 38 Colo. Rev. Stat. § 13-14-105.5(1)(a).
- 39 Colo. Rev. Stat. § 13-14-105.5(2)(a).
- 40 Colo. Rev. Stat. § 13-14-105.5(2)(b).
- 41 Colo. Rev. Stat. § 13-14-105.5(2)(c).
- 42 Colo. Rev. Stat. § 13-14-105.5(3).
- 43 Colo. Rev. Stat. § 16-3-301.5.

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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 April 16, 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](http://americanhealth.jhu.edu/implementERPO).