



INDIANA

RISK WARRANT

&

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.



WHAT IS A RISK WARRANT?

In Indiana, a risk warrant allows for the temporary removal of firearms from individuals who possess a firearm and pose a danger of injury to self (including suicide) or others. Firearms may also be removed under the same law (the "Jake Laird Law") without a warrant. If at a hearing, of which the respondent has notice and an opportunity to be heard, the court determines the individual continues to pose a danger, the individual will be temporarily prohibited from purchasing, renting, receiving, owning, or possessing firearms and any license to carry a handgun possessed by the respondent will be suspended.

HOW ARE RISK WARRANTS DIFFERENT?

Petitioners

Law enforcement officers may petition¹ for a **risk warrant**.

Protections

Indiana's **risk warrant** law offers one type of protection: it temporarily separates a person at risk of injury to self or others from lethal means — their firearms. Following a hearing where the respondent has notice and an opportunity to be heard, if the court determines the individual continues to pose a danger, the individual is temporarily prohibited from purchasing, renting, receiving transfer of, owning, or possessing a firearm, and any license to carry a handgun possessed by the respondent is suspended.

WHAT IS A DOMESTIC VIOLENCE ORDER FOR PROTECTION?

In Indiana, a Domestic Violence Order for Protection is a civil order issued by a judge that provides various forms of relief from abuse to a victim of domestic violence, where the respondent presents a credible threat to the safety of a petitioner or a member of the petitioner's household. Some of the forms of relief from abuse include ordering the respondent² to refrain from abuse and threatening abuse and prohibiting contact with the petitioner and certain family or household members. Orders for protection may include a firearm, ammunition or deadly weapon purchase, and possession prohibition.

HOW ARE ORDERS OF PROTECTION DIFFERENT?

Petitioners

Family or household members (including spouses, persons residing together in an intimate relationship, persons with a child in common, dating partners) and a parent, guardian, or other representative on behalf of a minor child may petition for an **order for protection**.

Protections

An **order for protection** may order various forms of relief from abuse to victims of domestic violence, including but not limited to ordering the respondent to stay away from any petitioner and designated family or household member, granting possession of a residence to the petitioner, awarding temporary child custody, and ordering the respondent to refrain from purchasing or possessing firearms, ammunition or deadly weapons for the duration of the order.

DIVE DEEPER

In Indiana, risk warrants serve a different purpose than orders for protection. For a more detailed description of the differences, see the comparison chart.

EXPLORE THE DIFFERENCES

RISK WARRANT & DOMESTIC VIOLENCE ORDER FOR PROTECTION COMPARISON CHART

PETITIONS AND ORDERS

RISK WARRANT

DOMESTIC VIOLENCE ORDER FOR PROTECTION

What results from the issuance of a warrant/order?

Temporarily removes firearms from the respondent

A respondent may also be prohibited from purchasing, renting, receiving transfer of, owning, or possessing a firearm and any license to carry a handgun may be suspended if the court so orders³

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

- Enjoining a respondent from threatening to commit or committing acts of domestic or family violence against a petitioner and family or household members
- Prohibiting respondent from harassing, annoying, telephoning, contacting, or communicating with a petitioner
- Removing and excluding a respondent from the residence of a petitioner
- Ordering a respondent to stay away from the residence, school, or place of employment, or a specified place frequented by petitioner and family or household members
- Granting a petitioner exclusive possession, care, custody, or control of any family animal
- Prohibiting a respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of a family animal
- Ordering possession and use of the residence, an automobile, and other essential personal effects
- Ordering any other relief necessary to provide for the safety and welfare of a petitioner and family or household members⁴
- After a hearing with notice to the respondent, the court may prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon, and direct the respondent to surrender to law enforcement the firearm, ammunition, or deadly weapon for the duration of the order⁵

Is the warrant/order criminal or civil?	Civil If respondent violates the court's order they may be charged with a crime ⁶	Civil If the respondent violates the court's order they may be charged with a crime
What types of warrants/orders are available?	Risk warrant Order issued after notice and hearing	<i>Ex parte</i> Order for Protection ⁷ Final Order for Protection
Who may petition for a warrant/order?	Law enforcement ⁸	Family or household member (including spouses, persons residing together in an intimate relationship, persons with a child in common, dating partners) and a parent, guardian, or other representative on behalf of a minor child ⁹
Is there a fee to petition for a warrant/order?	No	No ¹⁰
May a minor be the respondent to a warrant/order?	The law does not explicitly state whether minors are eligible respondents	Yes, however the matter may be transferred to a court with juvenile jurisdiction ¹¹
Can the warrant/order be issued 24/7?	No	No
Which court hears the petition?	Circuit or Superior Court ¹²	Any court of record ¹³
What is the burden of proof?	Risk warrant: probable cause ¹⁴ Order issued after notice and hearing: clear and convincing evidence ¹⁵	<i>Ex parte</i> Order for Protection: Preponderance of the evidence Final Order for Protection: Preponderance of the evidence ¹⁶
What must be proven?	Respondent poses an imminent risk of personal injury to self or others, or It is probable the respondent will present a risk of personal injury to self or others in the future and the respondent (1) has a mental illness that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking medication while not under supervision, or (2) there is a reasonable belief that the respondent has a propensity for violent or suicidal conduct ¹⁷	Respondent represents a credible threat to the safety of a petitioner or a member of the petitioner's household
What factors may the court consider?	None specified in the statute	None specified in the statute

How long is the warrant/order in effect?	Risk warrant: up to 14 days ¹⁸ Order issued after notice and hearing: until termination (at least 180 days) ¹⁹	<i>Ex parte</i> Order for Protection: 2 years after the date of issuance unless another date is ordered by the court Final Order for Protection: 2 years after the date of issuance unless another date is ordered by the court ²⁰
May the warrant/order be modified, terminated, or renewed?	The order may be terminated ²¹	The order may be modified or dismissed ²²
Are court records confidential?	No	No (with a few exceptions)

FIREARM DISPOSSESSION

RISK WARRANT

DOMESTIC VIOLENCE ORDER FOR PROTECTION

What firearms must be surrendered?	All firearms in the respondent's possession ²³	The court may order the respondent surrender all firearms, ammunition, or deadly weapons in the respondent's possession ²⁴
What is the process for firearm dispossession?	Risk warrants authorize law enforcement to search for and seize firearms Law enforcement may seize firearms without a risk warrant but may not search for firearms if a warrant would otherwise be required ²⁵ The respondent, following a hearing at which the court decides to retain the respondent's firearms, may petition for a court order to transfer the firearm to a responsible third party, transfer the firearm to an individual who possesses a valid federal firearms license for storage or lawful sale, or to sell the firearm at auction and return the proceeds to the individual or the rightful owner of the firearm ²⁶	After a hearing with notice to the respondent, the court may prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon, and direct the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the order
Is an order to search for and seize firearms issued in conjunction with the risk warrant or order for protection?	A risk warrant authorizes law enforcement to search for and seize a firearms in the respondent's possession ²⁷	No

ENDNOTES

1 In Indiana, a law enforcement officer may file an affidavit for the seizure of firearms. For the purposes of this page, "petition/petitioner" will be used instead of "file an affidavit" and "affiant."

2 A "respondent" is a person subject to an order.

3 Ind. Code § 35-47-14-6(c).

4 Ind. Code § 34-26-5-9(c)(1)-(8), (d).

5 Ind. Code § 34-26-5-9(d)(4).

6 Ind. Code § 35-47-4-6.5.

7 If a petition is based solely on an allegation of harassment an ex parte order cannot be granted. In that situation, the court must hold a hearing where the respondent is provided notice and an opportunity to be heard within 30 days to determine whether to issue a final order for protection. See Ind. Code § 34-26-5-9(b).

8 Ind. Code § 35-47-14-2(a).

9 Ind. Code § 34-26-5-2. See also <https://www.in.gov/judiciary/locs/files/center-bb-po-form-po-0100.pdf>.

10 Ind. Code § 34-26-5-16.

11 Ind. Code § 34-26-5-2(e).

12 Ind. Code § 35-47-14-2(a).

13 Ind. Code § 34-26-5-4(a). If a court has jurisdiction over an action that relates to the subject matter of the requested civil order for protection, either because of an action pending in that court or in the exercise of the court's continuing jurisdiction, the petitioner must file the petition for an order for protection in that court.

14 Ind. Code § 35-47-14-2(a).

15 Ind. Code § 35-47-14-6(b).

16 Ind. Code § 34-26-5-9(g).

17 Ind. Code §§ 35-47-14-1; 35-47-14-2(a); 35-47-14-6(c).

18 Ind. Code § 35-47-14-5(b).

19 Ind. Code § 35-47-14-8.

20 Ind. Code § 34-26-5-9(f).

21 Ind. Code § 35-47-14-8.

22 Ind. Code §§ 34-26-5-9(a); 34-26-5-12.

23 Ind. Code §§ 35-47-14-2; 35-47-14-3.

24 Ind. Code § 34-26-5-9(d)(4).

25 Ind. Code §§ 35-47-14-2; 35-47-14-3.

26 Ind. Code § 35-47-14-10(a).

27 Ind. Code § 35-47-14-2(a).

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.