



# NEW JERSEY

# EXTREME RISK

# PROTECTIVE

# ORDER



# DOMESTIC

# VIOLENCE

# RESTRAINING

# ORDER

# HOW DO THEY DIFFER?



Bloomberg American Health Initiative

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## WHAT IS AN EXTREME RISK PROTECTIVE ORDER?

In New Jersey, an Extreme Risk Protective 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 and ammunition.<sup>1</sup>

## HOW ARE ERPOS DIFFERENT?

### Petitioners

Family or household members (including domestic partners, partners in a civil union, persons with a child in common, and current or former dating partners)<sup>2</sup> and law enforcement officers may petition for an **ERPO**.

### Protections

An **ERPO** offers one type of protection: It temporarily separates a person at risk of injury to self or others from a lethal mean, firearms [and ammunition]. An ERPO prohibits the respondent from purchasing or possessing firearms and ammunition for the duration of the order, and requires the respondent to turn over firearms, ammunition, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun to law enforcement.

## WHAT IS A DOMESTIC VIOLENCE RESTRAINING ORDER?

In New Jersey, a Domestic Violence Restraining Order (DVRO) is a civil order issued by a judge that provides various forms of relief from abuse to a "victim of domestic violence<sup>3</sup>", including ordering the respondent<sup>4</sup> to refrain from abuse and threatening abuse, prohibiting contact with the victim, awarding temporary child custody, and requiring the respondent to surrender firearms and refrain from purchasing or possessing firearms for the duration of the order.<sup>5</sup>

## HOW ARE DVROS DIFFERENT?

### Petitioners

Any adult or emancipated minor who has been subjected to violence by a spouse, former spouse, or any other person who is or was a household member may petition for a **DVRO**. Any person who has been subjected to domestic violence by a person with whom the petitioner has a child in common, or will have a child in common if one of the parties is pregnant, or with whom the petitioner has had a dating relationship may petition for a **DVRO**.

### Protections

A **DVRO** may order various forms of relief from abuse, including but not limited to ordering the respondent to stay away from any victim, refrain from entering a victim's home, and refrain from purchasing or possessing firearms. Temporary DVROs may include a firearm purchase and possession prohibition; final orders must include a firearm purchase and possession prohibition.

## DIVE DEEPER

In New Jersey, ERPOs serve a different purpose than DVROS. For a more detailed description of the differences, see the comparison chart.

# EXPLORE THE DIFFERENCES

## EXTREME RISK PROTECTIVE ORDER & DOMESTIC VIOLENCE RESTRAINING ORDER COMPARISON CHART

### PETITIONS AND ORDERS

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

#### EXTREME RISK PROTECTIVE ORDER (ERPO)

Temporarily prohibits respondent from purchasing and possessing firearms and ammunition, and requires the immediate surrender of any firearms, firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent<sup>6</sup>

#### DOMESTIC VIOLENCE RESTRAINING ORDER (DVRO)

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

- Granting petitioner exclusive possession of the residence;
- Ordering the respondent to refrain from contacting the petitioner;
- Awarding temporary child custody;
- Ordering the respondent to stay away from the scene of the domestic violence;
- Ordering the respondent to surrender firearms or other weapons, and refrain from possessing firearms for the duration of the order;
- Ordering the search and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the respondent<sup>7</sup>

#### Is the order criminal or civil?

Civil  
If respondent violates the order they may be charged with a crime<sup>8</sup>

Civil  
If the respondent violates the order they may be charged with a crime<sup>9</sup>

#### What types of orders are available?

Temporary ERPO (TERPO)  
Final ERPO (FERPO)

Temporary DVRO  
Final DVRO

#### Who may petition for an order?

Family or household member (including a current or former spouse, domestic partner, partner in a civil union couple, household member, dating partner, a person with a child in common) and law enforcement<sup>10</sup>

Any adult or emancipated minor who has been subjected to domestic violence by a spouse, former spouse, or any other person who is or was a household member  
  
Any person who has been subjected to domestic violence by a person with whom the petitioner has a child in common, or will have a child in common if one of the parties is pregnant, or with whom the petitioner has had a dating relationship<sup>11</sup>

<b>May a minor be the respondent to an order?</b>	The law does not explicitly state whether minors are eligible respondents	No <sup>12</sup>
<b>Can the order be issued 24/7?</b>	No	Yes <sup>13</sup>
<b>Which court hears the petition?</b>	Superior Court	Municipal Court or Family Part of the Chancery Division of the Superior Court <sup>14</sup>
<b>What is the burden of proof?</b>	TERPO: good cause <sup>15</sup>  FERPO: preponderance of the evidence <sup>16</sup>	Temporary DVRO: good cause <sup>17</sup>  Final DVRO: preponderance of evidence <sup>18</sup>
<b>What must be proven?</b>	TERPO: Respondent poses an immediate and present danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm <sup>19</sup>  FERPO: Respondent poses a significant danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm <sup>20</sup>	The order is necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought or the petitioner is in danger of domestic violence <sup>21</sup>
<b>What factors may the court consider?</b>	The court shall consider whether the respondent:  - Has a history of threats or acts of violence directed toward self or others  - Has a history of use, attempted use, or threatened use of physical force against another person  - Is the subject of or has violated a domestic violence temporary or final DVRO  - Is the subject of or has violated a temporary or final Sexual Assault Survivor Protection order  - Has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, stalking offense or domestic violence offense  - Has any prior arrests, pending charges, or convictions for any offense involving cruelty to animals or any history of acts involving cruelty to animals  - Has a history of drug or alcohol abuse and recovery from this abuse  - Has recently acquired a firearm, ammunition, or other deadly weapon <sup>22</sup>	The court shall consider but not be limited to the following factors:  - Previous history of domestic violence between the parties, including threats, harassment and physical abuse  - The existence of immediate danger to person or property  - The financial circumstances of the parties  - The best interests of the victim and any child  - In determining custody and parenting time the protection of the victim's safety  - The existence of a verifiable order of protection from another jurisdiction <sup>24</sup>

If the court finds one or more of the factors listed above, the court may consider whether the respondent:

- Has any prior involuntary commitment in a hospital or treatment facility for persons with psychiatric disabilities
- Has received or is receiving mental health treatment
- Has complied or has failed to comply with any mental health treatment
- Has received a diagnosis of a mental health disorder<sup>23</sup>

<b>How long is the order in effect?</b>	TERPO: until the final ERPO hearing, no longer than 10 days <sup>25</sup>  FERPO: until termination by petition and a court hearing <sup>26</sup>	Temporary DVRO: until further order of the court <sup>27</sup>  Final DVRO: until termination by the court upon good cause shown <sup>28</sup>
<b>May the order be modified, terminated, or renewed?</b>	The order may be terminated <sup>29</sup>	The order may be modified or terminated <sup>30</sup>
<b>Are court records confidential?</b>	Yes <sup>31</sup>	Yes

## **FIREARM DISPOSSESSION**

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

### **DOMESTIC VIOLENCE RESTRAINING ORDER (DVRO)**

<b>What firearms must be surrendered?</b>	All firearms and ammunition in the respondent's possession; any firearm purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent <sup>32</sup>	All firearms in the respondent's possession for a final DVRO (may be required for a temporary DVRO) <sup>33</sup>
<b>What is the process for firearm dispossession?</b>	Respondent immediately surrenders all firearms and ammunition to law enforcement serving the order or arrange for the immediate surrender or sale of firearms and ammunition to a licensed firearms dealer <sup>34</sup>	The respondent must surrender all firearms in their possession to law enforcement for a final DVRO (may be required for a temporary DVRO) <sup>35</sup>
<b>Is an order to search for and seize firearms issued in conjunction with the ERPO or DVRO?</b>	Yes, if there is probable cause that the respondent owns firearms, poses an immediate and present danger of bodily injury to self or others, and the firearms and ammunition are in a specifically described location <sup>36</sup>	The court <b>may</b> order the search and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located <sup>37</sup>

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## ENDNOTES

- 1 N.J. Stat. Ann. § 2C:58-26(b).
- 2 See the chart below for a complete list of “family or household members.”
- 3 New Jersey refers to the petitioner as the “victim of domestic violence” or the “plaintiff.”
- 4 A “respondent” is a person subject to an order.
- 5 N.J. Stat. Ann. §§ 2C:25-28(j); 2C:25-29(b).
- 6 N.J. Stat. Ann. § 2C:58-26(b).
- 7 N.J. Stat. Ann. §§ 2C:25-28(j); 2C:25-29(b).
- 8 N.J. Stat. Ann. § 2C:29-9(e).
- 9 N.J. Stat. Ann. § 2C:25-29(b).
- 10 N.J. Stat. Ann. §§ 2C:58-23(a); 2C:58-21.
- 11 N.J. Stat. Ann. § 2C:25-19(d).
- 12 N.J. Stat. Ann. § 2C:25-19(a); 2A:4A:30.
- 13 N.J. Stat. Ann. § 2C:25-28(a).
- 14 N.J. Stat. Ann. § 2C:25-28(a).
- 15 N.J. Stat. Ann. § 2C:58-23(e).
- 16 N.J. Stat. Ann. § 2C:58-24(b).
- 17 N.J. Stat. Ann. § 2C:25-28(i).
- 18 N.J. Stat. Ann. § 2C:25-29(a).
- 19 N.J. Stat. Ann. § 2C:58-23(e).
- 20 N.J. Stat. Ann. § 2C:58-24(b).
- 21 N.J. Stat. Ann. § 2C:25-28(f), (g).
- 22 N.J. Stat. Ann. §§ 2C:58-23(f); 2C:58-24(b).
- 23 [https://www.nj.gov/oag/newsreleases19/Extreme-Risk\\_Directive.pdf](https://www.nj.gov/oag/newsreleases19/Extreme-Risk_Directive.pdf)
- 24 N.J. Stat. Ann. § 2C:25-29(a).
- 25 N.J. Stat. Ann. § 2C:58-24(a).
- 26 N.J. Stat. Ann. § 2C:58-25.
- 27 N.J. Stat. Ann. § 2C:25-28(i).
- 28 N.J. Stat. Ann. § 2C:25-29(d).
- 29 N.J. Stat. Ann. § 2C-58:25.
- 30 N.J. Stat. Ann. § 2C:25-29(d).
- 31 N.J. Stat. Ann. § 2C-58:30.
- 32 N.J. Stat. Ann. § 2C:58-26(b).
- 33 N.J. Stat. Ann. § 2C:25-29(b).
- 34 N.J. Stat. Ann. § 2C:58-26(b).
- 35 N.J. Stat. Ann. § 2C:25-29(b).
- 36 Attorney General Directive Pursuant to the Extreme Risk Protection Order Act of 2018, [https://www.nj.gov/oag/newsreleases19/Extreme-Risk\\_Directive.pdf](https://www.nj.gov/oag/newsreleases19/Extreme-Risk_Directive.pdf)
- 37 N.J. Stat. Ann. § 2C:25-28(j).

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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).