



NEW YORK

EXTREME RISK PROTECTION ORDERS

A GUIDE TO THE PROCESS



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.

NEW YORK

Extreme Risk Protection Order Process

FILE A TEMPORARY ERPO PETITION

Go to court and file an application describing why there is probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to self or others by possessing a firearm.

COURT ASSESSES TEMPORARY ERPO PETITION

On the day the application is filed, the NY Supreme Court decides whether to issue a temporary ERPO.

TEMPORARY ERPO ISSUED

Law enforcement or a third party serves respondent with a copy of the temporary ERPO, the application for an ERPO, a notice of the final hearing, and any associated papers including the petition and supporting documentation.

TEMPORARY ERPO NOT ISSUED

Law enforcement or a third party serves respondent with a copy of the ERPO application, notice of the final hearing, and associated papers including the petition and supporting documentation.

COMPLY WITH TEMPORARY ERPO, FACILITATE DISPOSSESSION

The respondent immediately surrenders all firearms in their possession to law enforcement serving the order, law enforcement may also remove firearms in plain sight and discovered pursuant to search warrant, if issued.

Law enforcement provides the respondent with a receipt or voucher for any property. If the respondent is not present, law enforcement (following a lawful search) leaves a receipt or voucher where the firearms were found, mails a copy of the receipt or voucher to the respondent's (or owner's) last known mailing address, and files a copy with the court.

UPDATE BACKGROUND CHECK SYSTEM

The court notifies the NY Division of State Police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the NY Division of Criminal Justice Services (DCJS) of the issuance of a temporary ERPO and provides a copy of the temporary ERPO. DCJS reports order to FBI.

PROCEED WITH FINAL HEARING

Three to six days after service of a temporary ERPO (or no later than 10 business day after service of an ERPO application if no temporary ERPO was issued), the NY Supreme Court holds a hearing to determine whether to issue a final ERPO for up to 1 year and, when applicable, whether a firearm surrendered by, or removed from, the respondent should be returned to the respondent.

Authorized petitioners in New York include:

- Law enforcement
- District attorney
- Family or household members (including persons related by blood or marriage, current or former spouses, persons with a child in common, household members, and persons in an intimate relationship)
- School administrator or school administrator's designee of any school in which the respondent is currently enrolled or has been enrolled in the six months immediately preceding the filing of the petition
- Health care practitioners (including licensed physicians, licensed psychiatrists, licensed psychologists, registered nurses, licensed clinical social workers, certified clinical nurse specialists, certified nurse practitioners, licensed clinical marriage and family therapists, registered professional nurses, and licensed master social workers or licensed mental health counselors who have treated the respondent in the six months immediately preceding the filing of the petition)

FINAL ERPO ISSUED

If the respondent is present at the hearing, they are served the final ERPO while in court.

If the respondent is not present at the hearing, law enforcement serves the respondent with a copy of the final ERPO and request surrender of all firearms.

FINAL ERPO NOT ISSUED

If a temporary ERPO was issued, but a final ERPO is not, the respondent may submit a written request for the return of the respondent's firearm(s).

COMPLY WITH FINAL ERPO, FACILITATE DISPOSSESSION

In addition to law enforcement requesting the immediate surrender of all firearms (specifically where a temporary ERPO was not issued) and removing firearms found in plain sight or discovered pursuant to a lawful search, the NY Supreme Court temporarily suspends any existing firearm license.

TERMINATE OR RENEW ERPO

A petitioner may request an ERPO renewal if they believe the respondent continues to be likely to engage in conduct that would result in serious harm to self or others.

A respondent is entitled to one request for a hearing to modify the ERPO at any time during its effective period.

UPDATE BACKGROUND CHECK SYSTEM

The court promptly notifies and provides a copy of any order amending or revoking the ERPO to the NY Division of State Police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and DCJS (who reports expiration to the FBI).

RETURN FIREARMS

Upon expiration of the ERPO, the respondent may submit a written request to the court for the return of firearms upon expiration of the ERPO.