

**NEW YORK**

# EXTREME RISK PROTECTION ORDER

# & ORDER OF PROTECTION

**HOW DO THEY DIFFER?**



**Bloomberg American  
Health Initiative**

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## WHAT IS AN EXTREME RISK PROTECTION ORDER?

In New York, 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, rifles, or shotguns.

## HOW ARE ERPOS DIFFERENT?

### Petitioners

Law enforcement officers, district attorneys, family or household members (including persons with a child together and persons in an intimate relationship), and school administrators or their designees of any school in which the respondent is currently enrolled or has been enrolled in the 6 months preceding the filing of the petition may petition for an **ERPO**.<sup>1</sup>

### 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, their firearms. An ERPO prohibits the respondent from purchasing or possessing firearms for the duration of the order, and requires the respondent to turn over firearms to law enforcement.

## WHAT IS AN ORDER OF PROTECTION?

In New York, an Order of Protection is a civil order issued by a judge that provides various forms of relief from where there is an allegation that the respondent<sup>2</sup> assaulted or attempted to assault a family or household member. An Order for Protection may prohibit the respondent from contacting the petitioner, award temporary child custody, and restrict firearm purchase and possession. New York also has a criminal Order of Protection available when criminal charges have been filed against the respondent. This document focuses on civil Orders of Protection.

## HOW ARE ORDERS OF PROTECTION DIFFERENT?

### Petitioners

Family or household members (including persons with a child together and persons in an intimate relationship)<sup>3</sup> may petition for an **Order of Protection**.

### Protections

An **Order of Protection** may order various forms of relief from abuse, including but not limited to ordering the respondent to refrain from abuse and threatening abuse, stay away from the petitioner, refrain from entering the home of the petitioner, and refrain from purchasing or possessing firearms.

## DIVE DEEPER

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

# EXPLORE THE DIFFERENCES

## EXTREME RISK PROTECTION ORDER & ORDER OF PROTECTION COMPARISON CHART

### PETITIONS AND ORDERS

PETITIONS AND ORDERS	EXTREME RISK PROTECTION ORDER (ERPO)	ORDER OF PROTECTION
<b>What results from the issuance of an order?</b>	<p>Temporarily prohibits respondent from purchasing and possessing firearms, rifles, or shotguns<sup>4</sup></p> <p>Any firearm license shall be temporarily suspended<sup>5</sup></p>	<p>The court may order relief, including but not limited to:</p> <ul style="list-style-type: none"> <li>- Ordering the respondent to refrain from further abuse or threats of abuse</li> <li>- Ordering the respondent to refrain from contacting the petitioner</li> <li>- Ordering the respondent to stay away from the petitioner</li> <li>- Ordering the respondent to surrender firearms and refrain from purchasing and possessing firearms for the duration of the order, and suspend any license<sup>6</sup></li> </ul>
<b>Is the order criminal or civil?</b>	Civil	Civil, however the court may order that the matter be prosecuted as a criminal action if the court determines that it is in the interest of justice
<b>What types of orders are available?</b>	<p>Temporary ERPO</p> <p>Final ERPO</p>	<p>Temporary Order of Protection</p> <p>Final Order of Protection</p>
<b>Who may petition for an order?</b>	Law enforcement officer, district attorneys, family or household member (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 <sup>7</sup> ), school administrator or their designee <sup>8</sup>	Family or household members (including persons related by blood or marriage, current or former spouses, persons in an intimate relationship, persons related by consanguinity or affinity) <sup>9</sup>
<b>May a minor be the respondent to an order?</b>	The law does not explicitly state whether minors are eligible respondents	The law does not explicitly state whether minors are eligible respondents
<b>Can the order be issued 24/7?</b>	No <sup>10</sup>	No
<b>Which court hears the petition?</b>	Supreme Court <sup>11</sup>	Family Court <sup>12</sup>

<b>What is the burden of proof?</b>	<p>Temporary ERPO: probable cause<sup>13</sup></p> <p>Final ERPO: clear and convincing evidence<sup>14</sup></p>	<p>Temporary Order of Protection: Good cause shown<sup>15</sup></p> <p>Final Order of Protection : preponderance of the evidence<sup>16</sup></p>
<b>What must be proven?</b>	<p>Respondent is likely to engage in conduct that would result in serious harm to self or others<sup>17</sup></p>	<p>Respondent assaulted or attempted to assault a family or household member<sup>18</sup></p>
<b>What factors may the court consider?</b>	<p>The court shall consider any relevant factors (and the time that has elapsed since the occurrence of such act or acts and the age of the person at the time of the occurrence of such act or acts) including, but not limited to, the following acts of the respondent:</p> <ul style="list-style-type: none"> <li>- A threat or act of violence or use of physical force directed toward self, the petitioner, or another person</li> <li>- A violation or alleged violation of an order of protection</li> <li>- Any pending charge or conviction for an offense involving the use of a weapon</li> <li>- The reckless use, display or brandishing of a firearm, rifle or shotgun</li> <li>- Any history of a violation of an extreme risk protection order</li> <li>- Evidence of recent or ongoing abuse of controlled substances or alcohol</li> <li>- Evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition<sup>19</sup></li> </ul>	<p>Temporary Order of Protection: The court shall consider, but is not limited to:</p> <ul style="list-style-type: none"> <li>- Whether the temporary order of protection is likely to achieve its purpose in the absence of enumerated conditions</li> <li>- Conduct subject to prior orders of protection</li> <li>- Prior incidents of abuse</li> <li>- Extent of past or present injury or present threats</li> <li>- Drug or alcohol abuse</li> <li>- Access to weapons<sup>20</sup></li> </ul> <p>Final Order of Protection:</p> <ul style="list-style-type: none"> <li>- Physical injury or serious physical injury to the petitioner caused by the respondent</li> <li>- The use of a dangerous instrument against the petitioner by the respondent</li> <li>- A history of repeated violations of prior orders of protection by the respondent</li> <li>- Prior convictions for crimes against the petitioner by the respondent</li> <li>- The exposure of any family or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner or any member of the petitioner's family or household<sup>21</sup></li> </ul>
<b>How long is the order in effect?</b>	<p>Temporary ERPO: until the Final ERPO Hearing, but not less than 3 and not more than 6 business days after service of the temporary order<sup>22</sup></p> <p>Final ERPO: Up to 1 year<sup>23</sup></p>	<p>Temporary Order of Protection: until the final hearing<sup>24</sup></p> <p>Final Order of Protection: up to 2 years or up to 5 years upon a finding of aggravating circumstances or if the conduct is a violation of an order of protection<sup>25</sup></p>

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

The order may be terminated or renewed<sup>26</sup>

The order may be modified, reconsidered, or renewed<sup>27</sup>

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**Are court records confidential?**

Not while ERPO is in effect<sup>28</sup>

Yes (with a few exceptions)<sup>29</sup>

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## **FIREARM DISPOSSESSION**

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

### **ORDER OF PROTECTION**

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**What firearms must be surrendered?**

All firearms, rifles, and shotguns in the respondent's possession<sup>30</sup>

All firearms, rifles, and shotguns in the respondent's possession<sup>31</sup>

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

The respondent must immediately surrender 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 will provide the respondent with a receipt or voucher for any property seized

If the respondent is not present, law enforcement (following a lawful search) will leave a receipt or voucher where the firearms were found, mail a copy of the receipt or voucher to the respondent's (or owner's) last known mailing address, and file a copy with the court<sup>32</sup>

Temporary Order of Protection: The court shall revoke any existing firearms license, order the respondent ineligible for a firearms license, and order the immediate surrender of any firearms in the respondent's possession where the court finds good cause to believe the respondent has a prior violent felony conviction; has failed to obey a prior order of protection and caused physical injury, threatened the use of a deadly weapon, or exhibited violent behavior that would constitute a felony offense; has a prior conviction for stalking; **and** there is substantial risk the respondent may use or threaten to use a firearm against the protected person or persons<sup>33</sup>

Final Order of Protection: The court shall revoke any existing firearms license, order the respondent ineligible for a firearms license, and order the immediate surrender of any firearms in the respondent's possession where the court finds the basis for the order of protection involved physical injury, the threatened use of a deadly weapon, or violent behavior that would constitute a felony offense **and** there is a substantial risk the respondent may use or threaten to use a firearm against the protected person or persons<sup>34</sup>

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

A search warrant may be issued<sup>35</sup>

No

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## ENDNOTES

1 See the chart below for a complete list of petitioners.

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

3 See the chart below for a complete list of family or household members.

4 N.Y. CPLR §§ 6342; 6343.

5 N.Y. CPLR § 6343(3)(b).

6 N.Y. Fam. Ct. Act §§ 842; 842-a.

7 Factors that may be considered to determine if an "intimate relationship" exists include: the nature or type of relationship; the frequency of interaction between the persons; and the duration of the relationship. N.Y. Soc. Serv. Law § 459-a.

8 N.Y. CPLR § 6340(2); N.Y. Soc. Serv. Law § 459-a. The school administrator may be from any school in which the respondent is currently enrolled or has been enrolled in the six months immediately preceding the filing of the petition. The school administrator's designee must be employed at the same school as the school administrator and shall be any of the following who has been designated in writing to file a petition with respect to the respondent: a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, or other school personnel required to hold a teaching or administrative license or certificate, and full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate.

9 N.Y. Fam. Ct. Act § 812(1).

10 See <https://www2.nycourts.gov/erpo>

11 N.Y. CPLR § 6341.

12 N.Y. Fam. Ct. Act § 812(2)(b).

13 N.Y. CPLR § 6342(1).

14 N.Y. CPLR § 6343(2).

15 N.Y. Fam. Ct. Act § 828.

16 N.Y. Fam. Ct. Act § 832.

17 N.Y. CPLR §§ 6342(1); 6343(2).

18 N.Y. Fam. Ct. Act § 821.

19 N.Y. CPLR § 6342(2).

20 N.Y. Fam. Ct. Act § 828(1).

21 N.Y. Fam. Ct. Act §§ 827(a)(vii); 842.

22 N.Y. CPLR § 6343(1).

23 N.Y. CPLR § 6343(3)(c).

24 N.Y. Fam. Ct. Act § 828(1)(a).

25 N.Y. Fam. Ct. Act § 842.

26 N.Y. CPLR §§ 6345(1); 6346(6).

27 N.Y. Fam. Ct. Act §§ 842; 844.

28 N.Y. CPLR § 6346(1).

29 N.Y. Fam. Ct. Act § 166.

30 N.Y. CPLR § 6344(1).

31 N.Y. Fam. Ct. Act § 842-A.

32 N.Y. CPLR §§ 6342(8); 6344(1).

33 N.Y. Fam. Ct. Act § 842-A(1).

34 N.Y. Fam. Ct. Act § 842-A(2).

35 N.Y. CPLR § 6342(8).

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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).