



# RHODE ISLAND

# EXTREME RISK PROTECTION ORDER



# DOMESTIC VIOLENCE RESTRAINING ORDER

# HOW DO THEY DIFFER?



Bloomberg American Health Initiative

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## WHAT IS AN EXTREME RISK PROTECTION ORDER?

In Rhode Island, 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, possessing, or receiving any firearms. ERPOs also require respondents<sup>1</sup> to surrender any concealed carry permit to law enforcement or the attorney general.

## HOW ARE ERPOS DIFFERENT?

### Petitioners

Law enforcement may petition for an **ERPO**.

### Protections

An **ERPO** offers one type of protection: it temporarily separates a person at risk of causing injury to self or others from lethal means—their firearms. An ERPO requires the surrender of firearms and prohibits the purchase and possession of firearms for the duration of the order.

## WHAT IS A DOMESTIC VIOLENCE RESTRAINING ORDER?

In Rhode Island, a domestic violence restraining order (restraining order) is a civil order issued by a judge that provides various forms of relief from abuse to a victim of domestic abuse, where there has been physical harm or an attempt or threat to cause physical harm; involuntary engagement in sexual relations by force, threat of force, or duress; or stalking or cyberstalking. There are two types of restraining orders: a domestic abuse restraining order and a domestic assault restraining order. Both restraining orders provide relief from abuse but differ based on the persons eligible for relief. (See *Petitioners* below.) Rhode Island also has a criminal No Contact Order available when criminal charges have been filed against the respondent. This document focuses on the civil restraining orders.

## HOW ARE DVROS DIFFERENT?

### Petitioners

Present or former family members; [step]parents; or persons in a substantive dating or engagement relationship within the past year where one person is a minor, or a parent, custodian, or legal guardian on behalf of a minor child or the director of the Rhode Island Department of Children, Youth and Families (DCYF) or its designee for a child in the custody of DCYF may petition for a **domestic abuse restraining order** in family court.

Cohabitants<sup>2</sup> (including on behalf of their minor child), persons in a substantive dating or engagement relationship within the past year, or an individual on behalf of a minor child may petition for a **domestic assault restraining order** in district court.

### Protections

A **restraining order** may order various forms of relief from abuse, including but not limited to ordering the defendant to refrain from molesting and assaulting the plaintiff, prohibiting contact with the plaintiff, and ordering the defendant to vacate the household or refrain from entering the plaintiff's home. A respondent subject to a final restraining order must surrender all firearms and is prohibited from possessing or purchasing firearms for the duration of the order.

## DIVE DEEPER

In Rhode Island, ERPOs serve a different purpose than restraining orders. For a more detailed description of the differences, see the comparison chart.

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# EXPLORE THE DIFFERENCES

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

### PETITIONS AND ORDERS

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

#### EXTREME RISK PROTECTION ORDER (ERPO)

Temporarily prohibits the respondent from possessing, having custody or control of, purchasing, receiving, or attempting to purchase or receive, any firearms while the order is in effect<sup>3</sup>

The respondent must surrender firearms to law enforcement and surrender any concealed carry permit to law enforcement or the attorney general while the ERPO is in effect<sup>4</sup>

#### DOMESTIC VIOLENCE RESTRAINING ORDER

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

- Ordering that the defendant be restrained and enjoined from contacting, assaulting, molesting, sexually exploiting, or interfering with the plaintiff at home, on the street, or elsewhere
  - Ordering the defendant to vacate the household immediately
  - Ordering the defendant to surrender physical possession of all firearms in their possession, care, custody, or control and prohibit the purchase or receipt, or attempted purchase or receipt of any firearms while the restraining order is in effect<sup>5</sup>
- If the petition is filed in family court, the court may also:
- Award the plaintiff custody of the minor children of the parties, if any
  - Provide for the safety and welfare of all household animals and pets
  - After notice and a hearing, order the defendant to pay child support<sup>6</sup>

#### Is the order criminal or civil?

Civil  
If the respondent violates the order they may be charged with a crime<sup>7</sup>

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

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**What types of orders are available?**

Temporary ERPO

Emergency Domestic Abuse Restraining Order

Temporary Domestic Abuse Restraining Order

Final Domestic Abuse Restraining Order

One-year ERPO

Emergency Domestic Assault Restraining Order

Temporary Domestic Assault Restraining Order

Final Domestic Assault Restraining Order

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**Who may petition for an order?**Law enforcement<sup>9</sup>

Domestic Abuse: present or former family members, [step]parents, or persons in a substantive dating or engagement relationship within the past year and one person is a minor; or a person, parent, custodian, or legal guardian on behalf of a minor child or the director of DCYF or its designee for a child in the custody of DCYF<sup>10</sup>

Domestic Assault: cohabitants (including on behalf of their minor child), persons in a substantive dating or engagement relationship within the past year, an individual on behalf of a minor child<sup>11</sup>

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**Is there a fee to petition for an order?**No<sup>12</sup>No<sup>13</sup>

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**May a minor be the respondent to an order?**

The law does not explicitly state whether minors are eligible respondents

Yes<sup>14</sup>

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**Can the order be issued 24/7?**Yes<sup>15</sup>Yes, an emergency order may be issued after court hours<sup>16</sup>

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**Which court hears the petition?**Superior Court<sup>17</sup>Family<sup>18</sup> or District<sup>19</sup> Court

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**What is the burden of proof?**Temporary ERPO: probable cause<sup>20</sup>Emergency Order: clearly appears<sup>22</sup>One-year ERPO: clear and convincing<sup>21</sup>Temporary Order: clearly appears<sup>23</sup>

Final Order: not specified in the statute

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**What must be proven?**

Temporary ERPO: the respondent poses a significant danger of causing imminent personal injury to self or others by having custody or control of, or by purchasing, possessing, or receiving, a firearm before notice can be served and a hearing held<sup>24</sup>

One-year ERPO: the respondent poses a significant danger of causing imminent personal injury to self or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm<sup>25</sup>

Emergency Order: clearly appears from specific facts shown by written plaintiff's written affidavit that immediate and irreparable injury, loss, or damage will result to the plaintiff before notice can be served and a hearing<sup>26</sup>

Temporary Order: clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before notice can be served and a hearing<sup>27</sup>

Final Order: Not specified in the statute

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**What factors may the court consider?**

The court may consider any or all of the following, including, but not limited to:

- A recent act or threat of violence by the respondent against self or others, regardless of whether the act or threat of violence involves a firearm

- A pattern of acts or threats of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence against self or others

- The respondent's mental health history

- Evidence of the respondent's abuse of controlled substances or alcohol

- Previous violations by the respondent of any court order including, but not limited to, restraining orders, no-contact orders, and protective orders

- Previous ERPOs issued against the respondent

- The unlawful, threatening, or reckless use or brandishing of a firearm by the respondent, including, but not limited to, such act taken or displayed through social media

- The respondent's ownership of, access to, or intent to possess firearms

- The respondent's criminal history, including, but not limited to, arrests and convictions for felony offenses, crimes of violence, violent misdemeanor offenses, crimes involving domestic violence, and stalking

Not specified in the statute

- The history, use, attempted use, or threatened use of physical violence by the respondent against another person, or the respondent's history of stalking another person, or evidence of cruelty to animals by the respondent, including, but not limited to, evidence of violations or convictions of animal cruelty
- Evidence of recent acquisition or attempts at acquisition of firearms by the respondent<sup>28</sup>

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

Temporary ERPO: up to 14 days<sup>29</sup>  
 One-year ERPO: 1 year<sup>30</sup>

Emergency Order: until close of business the next business day, or longer if ordered by the court<sup>31</sup>  
 Temporary Order: up to 21 days<sup>32</sup>  
 Final Order: up to 3 years<sup>33</sup>

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

The order may be terminated or renewed<sup>34</sup>

The order may be modified or terminated<sup>35</sup>

**Are court records confidential?**

Yes<sup>36</sup>

No

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## **FIREARM DISPOSSESSION**

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

### **DOMESTIC VIOLENCE RESTRAINING ORDER**

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

All firearms in the respondent's custody, control, or possession and any concealed carry permit<sup>37</sup>

All firearms in the defendant's possession if subject to a final restraining order<sup>38</sup>

Law enforcement and active members of military service, including members of the reserves, are exempted if required by their employment to carry a firearm in the performance of their duties

Any individual exempted may possess a firearm only during the course of their employment and the firearm must be stored at the place of employment when not being possessed for employment use; all other firearms(s) must be surrendered<sup>39</sup>

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

Upon service of a one-year or temporary ERPO, the respondent must arrange to immediately turn over to law enforcement any firearms in their custody, control, or possession and surrender to law enforcement or the attorney general any concealed carry permit issued to the respondent<sup>40</sup>

The defendant must surrender all firearms within 24 hours of notice of the restraining order to the Rhode Island state police or local police department or to a federally licensed firearms dealer and file a receipt with the court within 72 hours or attest to the court they had no firearms in their possession or control<sup>41</sup>

The defendant may instruct the federally licensed firearms dealer to sell the firearm(s) or to transfer ownership to a qualified individual who is not a member of the defendant's household, not related by blood, marriage, or relationship, and who can legally possess firearms<sup>42</sup>

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

Yes<sup>43</sup>

No

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## ENDNOTES

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

2 "Cohabitants" means emancipated minors or persons eighteen (18) years of age or older, not related by blood or marriage, who together are not the legal parents of one or more children, and who have resided together within the preceding three (3) years or who are residing in the same living quarters. R.I. Gen. Laws § 8-8.1-1(1)

3 R.I. Gen. Laws §§ 8-8.3-3(b); 8-8.3-5(f)(6).

4 R.I. Gen. Laws §§ 8-8.3-4(e)(6); 8-8.3-5(f)(6).

5 R.I. Gen. Laws §§ 8-8.1-3(a)(1), (a)(2), (a)(4); 15-15-3(a)(1), (a)(2), (a)(4).

6 R.I. Gen. Laws § 15-15-3(a)(3), (a)(5).

7 R.I. Gen. Laws § 8-8.3-10.

8 R.I. Gen. Laws §§ 8-8.1-7; 15-15-7.

9 R.I. Gen. Laws § 8-8.3-1(8).

10 R.I. Gen. Laws §§ 15-15-1(4); 15-15-3(a).

11 R.I. Gen. Laws §§ 8-8.1-1(1), (5); 8-8.1-3(a).

12 R.I. Gen. Laws § 8-8.3-2.

13 R.I. Gen. Laws §§ 15-15-2(c); 8-8.1-2.

14 R.I. Gen. Laws §§ 15-15-1(4); 15-15-3(p)(2).

15 R.I. Gen. Laws § 8-8.3-4(c).

16 R.I. Gen. Laws §§ 8-8.1-4(b)(1); 15-15-4(b)(1).

17 R.I. Gen. Laws §§ 8-8.3-1(1); 8-8.3-2.

18 R.I. Gen. Laws § 15-15-3(a).

19 R.I. Gen. Laws § 8-8.1-3(a).

20 R.I. Gen. Laws § 8-8.3-4(a).

21 R.I. Gen. Laws § 8-8.3-5(a).

22 R.I. Gen. Laws §§ 8-8.1-4(b)(2); 15-15-4(b)(3).

23 R.I. Gen. Laws §§ 8-8.1-4(a)(2); 15-15-4(a)(2).

24 R.I. Gen. Laws § 8-8.3-3(c).

25 R.I. Gen. Laws § 8-8.3-5(a).

26 R.I. Gen. Laws §§ 8-8.1-4(b)(2); 15-15-4(b)(3).

27 R.I. Gen. Laws §§ 8-8.1-4(a)(2); 15-15-4(a)(2).

28 R.I. Gen. Laws § 8-8.3-5(b).

29 R.I. Gen. Laws § 8-8.3-4(e)(7).

30 R.I. Gen. Laws § 8-8.3-5(a).

31 R.I. Gen. Laws § 15-15-4(b)(4).

32 R.I. Gen. Laws §§ 8-8.1-4(a)(2); 15-15-4(a)(2).

33 R.I. Gen. Laws §§ 8-8.1-3(n); 15-15-3(m)(2).

34 R.I. Gen. Laws § 8-8.3-7.

35 R.I. Gen. Laws §§ 8-8.1-3(n); 15-15-3(m)(2).

36 R.I. Gen. Laws §§ 8-8.3-2; 8-8.3-12(b).

37 R.I. Gen. Laws § 8-8.3-5(f)(6).

38 R.I. Gen. Laws §§ 8-8.1-3(c); 15-15-3(c); 11-47-5.

39 R.I. Gen. Laws §§ 8-8.1-3(k); 15-15-3(k).

40 R.I. Gen. Laws § 8-8.3-5(f)(6).

41 R.I. Gen. Laws §§ 8-8.1-3(a)(4); 15-15-3(a)(4).

42 R.I. Gen. Laws §§ 8-8.1-3(a)(4)(ii); 15-15-3(a)(4)(ii).

43 R.I. Gen. Laws § 8-8.3-3(b).

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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).