

Subject Extreme risk protection orders; firearms

Authors Richardson

Analyst Jeff Diebel

Date February 21, 2020

## Overview

This bill provides a procedure under which a chief law enforcement officer or a city or county attorney can petition for an “extreme risk protection order” (ERPO) which would prohibit the respondent from possessing firearms for a fixed period.

## Summary

Section	Description
---------	-------------

1	<b>Ineligible persons.</b>
---	----------------------------

Amends section 624.713, subdivision 1, (Persons Ineligible to Possess Firearms) to include a person subject to an extreme risk protection order.

2	<b>Extreme risk protection orders.</b>
---	--

**Subd. 1. Definitions.** Defines “firearm” for the purposes of the bill.

**Subd. 2. Court Jurisdiction.** Provides that an application for relief shall be filed in the county of residence of the respondent and that actions under this section shall be given docket priority by the court.

**Subd. 3. Generally.** (a) Creates an action called a petition for an extreme risk protection order, which prohibits respondents to the action from possessing firearms for a certain period of time.

(b) Provides that petitioners may be chief law enforcement officers or their deputies, or city or county attorneys.

(c) Provides that the petition shall allege that the respondent poses a significant danger of bodily harm to self or to others by possessing a firearm. The petition must be accompanied by an affidavit made under oath stating specific facts and circumstances forming a basis to allege that an extreme risk protection order should be granted.

**Section Description**

---

(d) Provides that the petition must also allege that the respondent presents an immediate and present danger of bodily harm, if the petitioner is seeking emergency issuance of an ERPO.

(e) Provides that a petition for relief must describe, to the best of the petitioner's knowledge, the types and locations of any firearms possessed by the respondent.

(f) Provides that the state court administrator shall create all court forms necessary to implement the act.

(g) Waives the court filing fees for both parties and mandates that service of process fees are not the petitioner's responsibility.

(h) Provides that an ERPO applies throughout the state.

(i) Provides that any proceedings under this section shall be in addition to other civil or criminal remedies.

(j) Provides that any health records provided in a petition are private data.

(k) Provides that any ERPO or subsequent extension shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the respondent, which then must make the order known to other law enforcement agencies.

**3 Extreme risk protection orders issued after hearing.**

**Subd. 1. Hearing.** (a) Requires courts to hold ERPO hearings within 14 days of receiving an ERPO petition.

(b) Appoints law enforcement to serve ERPOs and seize and store firearms when so ordered by the court.

(c) Permits a respondent to be served with an ERPO petition any time prior to 12 hours before the time set for the hearing. If service occurs less than five days prior to hearing, there is a presumption that the respondent is entitled to continuance of five days.

(d) Authorizes alternate means to serve an ERPO petition if personal service cannot be made. (This language is patterned after the alternate service language in the domestic assault statute.)

**Subd. 2. Relief by court.** (a) Requires a petitioner to prove by a preponderance of evidence that the respondent poses a significant danger of bodily harm to self or other persons by possessing a firearm.

**Section Description**

---

(b) Specifies the types of information that the court should review in determining if a petition should be granted.

(c) Authorizes the court to look at other relevant evidence beyond the items listed in paragraph (b).

(d) If the court finds there is sufficient evidence to issue an ERPO, the court must inform the respondent that the respondent is prohibited from possessing firearms and shall issue a transfer order for the firearms.

(e) Requires that an ERPO be for a fixed period of not less than six months and not more than two years, subject to renewal or extension.

(f) Requires a court to determine if the respondent presents an immediate and present danger of bodily harm if the court issues an ERPO and an emergency ERPO had not be issued.

(g) If the court refuses to issue an ERPO after a hearing, the court shall vacate the existing emergency ERPO (if applicable).

(h) Permits a respondent to waive the respondent's right to contest the hearing and consent to imposition of an ERPO. A respondent who consents to imposition of an ERPO may request that the petition be sealed.

**4 Subsequent extensions and termination.**

Provides the process and procedures for subsequent extension and termination of an ERPO. An ERPO may be extended for six to 24 months. Provides that a respondent may apply for the order to be terminated at a hearing at which the respondent must prove by a preponderance of evidence that the respondent does not pose a significant danger of bodily harm to himself or others by possessing a firearm. Application for termination of an order is limited to one application for each year the order is in effect.

**5 Emergency issuance of extreme risk protection order.**

Provides procedures for the emergency issuance of an ERPO. A court shall issue an emergency ERPO if there is reasonable grounds that the respondent poses a significant danger of bodily harm to the respondent's self or to other persons by possessing a firearm AND the respondent presents an immediate and present danger of bodily harm. Emergency orders are for a fixed period of 14 days.

**6 Transfer of firearms.**

Provides procedures for the transfer of a respondent's firearms upon the issuance of an ERPO. Transfer must be made, within 24 hours, to a federally licensed firearms dealer or a law enforcement agency which may charge the respondent a reasonable

**Section Description**

---

- storage fee. (Antique, curio, and relic firearms may be transferred to a third party.) There is no transfer of ownership for temporary transfers. Establishes requirements for proving that firearms were indeed transferred. When an emergency order is issued and there is probable cause to believe the respondent owns firearms, the court shall issue a search warrant to law enforcement to take possession of the respondent's firearms "as soon as practicable."
- 7      **Return of firearms.**  
Provides for the return of a respondent's firearms upon the expiration of an ERPO. The law enforcement agency or firearms dealer holding the firearms must ensure that the respondent is otherwise eligible to possess firearms before returning the firearms.
- 8      **Offenses.**  
Provides that petitioners who file an ERPO petition that contains false information or is abusive are guilty of a misdemeanor. Respondents who continue to possess firearms after the issuance of an order are guilty of a misdemeanor and prohibited from possessing firearms for five years.
- 9      **Liability protection.**  
Provides that law enforcement officers and prosecutors who decide to not petition for a protective order are immune from criminal or civil liability. Provides limited liability protection for law enforcement agencies for (1) damage to stored firearms, (2) service of ERPOs, (3) execution of search warrants, and (4) harm caused by persons subject to ERPOs.
- 10     **Extreme risk protection order; development of model procedures.**  
Directs the Peace Officer Standards and Training Board to develop a model policy for storing firearms under this act.
- 11     **Revisor instruction.**  
Directs the revisor to make conforming changes to statutes impacted by this act.
- 12     **Effective date.**  
Provides that the bill has a January 1, 2021, effective date, and applies to firearm permit background checks made on or after that date.



**MN HOUSE  
RESEARCH**

*Minnesota House Research Department provides nonpartisan legislative, legal, and information services to the Minnesota House of Representatives. This document can be made available in alternative formats.*

[www.house.mn/hrd](http://www.house.mn/hrd) | 651-296-6753 | 600 State Office Building | St. Paul, MN 55155