

Extreme Risk Protection Orders: What Physicians Need to Know

What is an ERPO?

An Extreme Risk Protection Order (ERPO), also known as a “Red Flag Law,” is a civil court order that temporarily prevents an individual who has been determined by a court to pose a danger to themselves or others (the respondent) from purchasing or possessing firearms. When an ERPO is granted by a court, law enforcement has the authority to remove firearms from the respondent for the duration of the order. ERPOs also create an opportunity for behavioral health treatment intervention.

Who can petition for an ERPO?

Persons authorized to petition for an ERPO vary from state to state, however, eligible petitioners can include a member of a person’s family, friends, employers, law enforcement officials, and more. In six states and Washington DC, clinicians, including physicians, credentialed therapists, and licensed social workers, are eligible to directly petition the court for an ERPO on behalf of a patient in crisis.

What is the process for filing an ERPO?

Currently, 21 states and the District of Columbia maintain ERPO processes that describe the requirements necessary to issue an ERPO. Typically, petitioners need to provide the court with the indicated person’s information and evidence of why that person poses a threat to themselves or others. Then, the court may issue a temporary ERPO where a law enforcement officer serves the order to the person named, removes any firearms from their possession, and updates the background check data system to bar any further firearms purchases.

While the temporary ERPO is active, a final hearing is held in which the petitioner explains to the court why a final ERPO (i.e., an ERPO active for up to 1 year) should be issued. The respondent then has an opportunity to respond to the petition and present any evidence they may have. Based on the information presented to the court, a judge may decide to issue a final ERPO.

Once the order expires, the person named may issue a request for return of their firearms, in which case law enforcement will verify that no other prohibitions exist and update the background check data system. If no prohibitions exist, the firearms are returned to the owner.

States with existing ERPO processes:

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| ▪ California | ▪ Florida | ▪ Michigan* | ▪ New York* |
| ▪ Colorado* | ▪ Hawaii* | ▪ Minnesota | ▪ Oregon |
| ▪ Connecticut* | ▪ Illinois | ▪ Nevada | ▪ Rhode Island |
| ▪ Delaware | ▪ Indiana | ▪ New Jersey | ▪ Vermont |
| ▪ District of Columbia* | ▪ Maryland* | ▪ New Mexico | ▪ Virginia |
| | ▪ Massachusetts | | ▪ Washington |

** Indicates states where a clinician is an eligible petitioner*

Are ERPOs effective tools to reduce firearm injury?

ERPOs Prevent Suicides:

- Researchers examining 762 ERPO orders filed in Connecticut over a 14-year period estimate that one suicide was averted for every 10 to 11 firearm seizure orders issued (1).
- Researchers analyzing 365 ERPOs issued in Indiana calculated that one life was saved by averted suicide for every 10.1 firearm removal actions (2). Indiana's ERPO law is associated with a 7.5% reduction in firearm suicides in the ten years following its enactment (3).

ERPOs Improve Public Safety:

- A 2022 study analyzing 201 ERPO records in California found that 54% of cases involved potential harm to others and 28.7% of cases involved mass shooting threats (4).
- Of 159 ERPOs issued in California between 2016 and 2018, 21 of the ERPO subjects showed clear signs that they intended to commit a mass shooting. Following the issuance of the ERPOs, no mass shootings or homicides occurred by these respondents (5).
- In Washington, 9 of 237 ERPOs filed between 2016 and 2019 were used to remove firearms from and protect persons with dementia (6).
- In the first three months after Maryland's ERPO law was implemented, at least four individuals who posed "significant threats" for school shootings were disarmed (7).

What do clinicians need to know about ERPOs and firearm safety?

- Visit the [National ERPO Resource Center](#) to learn more about ERPOs
 - National ERPO Resource Center: [For Clinicians](#)
- Watch this 40-minute CME video from the Johns Hopkins Center for Gun Violence Solutions: [Extreme Risk Protection Orders: What Clinicians Need to Know](#)
- Review [guidance](#) from the Department of Health and Human Services on the HIPAA Privacy Rule and disclosures of protected health information when filing an ERPO
- Annals of Internal Medicine: [U.S. Extreme Risk Protection Orders to Prevent Firearm Injury: The Clinician's Role](#)
- Take this CME course developed by the American Medical Association: [The Physician's Role in Promoting Firearm Safety](#)

Visit [ACP's Firearms Hub](#) to learn more about talking to your patients about firearms and take the Annals pledge to protect your patients from firearm injury.

Brief Background on Ethics and ERPOs

The *ACP Ethics Manual* states, “The physician's primary commitment must always be to the patient's welfare and best interests, whether in preventing or treating illness or helping patients to cope with illness, disability, and death”, but physicians also have obligations to protect public health, “including by reporting disease, injury, domestic violence, abuse, or neglect to the responsible authority as required by law” (8). The legal recognition of the physician’s duty to warn a subject of a patient’s violent threats was established in the *Tarasoff* case (9). Protecting the interests and well-being of others raises ethical challenges for physicians. Whether a patient poses a risk for gun violence sufficient to petition for an extreme risk protection order (ERPO) entails consideration of whether an ERPO is the most appropriate response in light of its likely effectiveness in forestalling harm compared to other possible options, and implications for confidentiality, patient welfare, respect for patient autonomy, and the patient-physician relationship. Currently, physicians are authorized to petition for an ERPO in six of the 21 states with ERPO laws (10).

Similar ethical issues are posed when a patient is at risk for unsafe, medically impaired driving (11) in minimizing harm when confidentiality is breached, assessing the risk posed by conditions that may impair the patient’s ability to drive safely, identifying strategies to respect patient autonomy as much as possible, and communicating openly with the patient. Not all states require that physicians report medically impaired drivers (12). In the context of firearms, risk can depend on many factors and the reasonable certainty that the patient poses a risk that is both severe and imminent (13). Regarding confidentiality, as for other threats to public health or safety (8), it may be necessary to disclose patient information to protect individuals or the public. The Health Insurance Portability and Accountability Act (HIPAA) permits physicians to disclose a patient’s protected health information when petitioning for an ERPO, restricting disclosure to the “minimum necessary” information for the purpose (14).

Communicating effectively, with compassion and respect, is important to preserving the integrity of the therapeutic relationship (8). Persuading the patient to voluntarily surrender firearms or take other steps to ensure safety, with the support of family or friends, is preferable to coercing surrender through an ERPO (13). In either event, the physician must remain the patient’s advocate and help ensure that the patient receives appropriate care.

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