

EXTREME RISK PROTECTION ORDER (ERPO) STATE ENACTED LAWS

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| Name & Legislation History | <p>Gun Violence Restraining Order Jan. 1, 2016</p> <p>AB 1014, signed by Gov. Brown Sept. 30, 2014</p> | <p>Extreme Risk Protection Order Dec. 8, 2016</p> <p>Approved by voter referendum Nov. 8, 2016, 69.31% yes to 30.61% no</p> | <p>Extreme Risk Protection Order Jan. 1, 2018</p> <p>SB 719, signed by Gov. Brown Aug. 16, 2017</p> | <p>Firearm Safety Warrants 1999</p> |
|----------------------------|---|--|---|--|
| Petitioner | <p>Law enforcement or an “immediate family member” (spouse/domestic partner, parent, grandparent/grandchild, child, sibling, or person who regularly resides in a household or has in past 6 mos.) may petition court for an ex-parte or standard GVRO. Only law enforcement may petition for a temporary emergency order.</p> | <p>Law enforcement or a “family or household member” (person related by blood, marriage or adoption, dating/domestic partner, person with whom there is a child in common, person residing/has resided with respondent over past year, person with biological or legal parent-child relationship with respondent, or person acting/has acted as respondent’s legal guardian) may petition court for an ERPO.</p> | <p>Law enforcement officer or a “family or household member” (spouse, intimate partner, mother/father, child, sibling, or anyone living within same household) may petition court for an ERPO.</p> | <p>A State’s attorney, assistant state’s attorney or any two law enforcement officers may petition court for a safety warrant.</p> |
| Considerations | <p>Two key facts must be proven: 1. a person poses an immediate danger of personal injury to themselves or others; and 2. a GVRO is necessary because other non-restrictive alternatives have been tried with no result and/or were inadequate. Courts may consider: recent threats/acts/patterns of violence or physical force; violation of other protective orders; unlawful/ reckless use of firearm; prior arrests for a felony; recent controlled substances or alcohol offenses; and recent acquisition of firearms.</p> | <p>Courts may consider: recent acts/patterns/threats of violence or physical force; dangerous mental health issues; violation of protective/no-contact orders; previous ERPOs ordered/violated; domestic violence conviction; unlawful/reckless use of firearms; prior arrests for felonies or violent crimes; evidence of controlled substance or alcohol abuse and recent firearms acquisitions. They may also take into consideration prior criminal history records.</p> | <p>Courts may consider: history of suicide attempts or threats; history of attempts/acts of violence or physical force; previous violent misdemeanors, stalking, domestic violence, DUI, or animal abuse convictions; recent unlawful use of controlled substances; unlawful or reckless use of deadly weapon; evidence of recent acquisition or attempted acquisition of deadly weapons.</p> | <p>Two key facts must be proven: 1. there is a risk of imminent personal/injury to themselves or others, and 2. there is no other reasonable alternative to prevent this injury. Courts may consider: recent threats/acts of violence or physical force; animal cruelty; reckless use of a firearm; prior involuntary commitments for mental illness; and illegal use of substances or abuse of alcohol.</p> |

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Who are guns transferred to?

Individual must either surrender firearms & ammunition to local law enforcement agency, or sell them to a licensed gun dealer within 24 hours.

Individual must surrender firearms, ammunition, and concealed carry licenses to local law enforcement within 48 hours.

Individual must surrender firearms and ammunition to local law enforcement, a licensed gun dealer, or a third party. Must surrender concealed carry license to law enforcement.

Individual must surrender firearms and ammunition to law enforcement or to an approved third party.

How is the order implemented?

Court notifies the California Department of Justice when a GVRO is issued, renewed, dissolved or terminated so records can be updated.

Clerk will enter the ERPO into state-wide judicial information system. Law enforcement enters the ERPO into the National Instant Criminal Background Check System (NICS) and other electronic databases used to identify prohibited purchasers.

County sheriff enters the ERPO into the state Law Enforcement Data System and requests the order be entered into National Crime Information Center at the U.S. Department of Justice.

Due Process

A temporary GVRO can be issued for 21 days. In the case of an ex-parte order, a hearing must be scheduled within 21 days to allow the respondent to provide evidence in their defense. GVRO can be extended to one year and can be renewed upon request & hearing. Respondent may submit one request per year for a hearing to terminate.

When a petition is filed, a hearing must be held within 14 days. A court can also issue a temporary ex-parte order that requires a hearing within 14 days to determine if an ERPO should be issued. An ERPO is one year long and can be renewed upon request & hearing. Respondent may submit one request per year for a hearing to terminate.

Once an ERPO is issued, the respondent must request a hearing to terminate the order within 30 days. If not, the ERPO is effective for one year and can be renewed upon request & hearing. Respondent may submit one request per year for a hearing to terminate.

No more than 14 days after a firearms warrant is issued, the court must hold a hearing to determine whether the seized firearms should be returned. The state has the burden of proof on all facts. Warrants may be extended for one year.

Other Information

Makes it a misdemeanor to provide false information or submit a petition with the intent to harass. Misdemeanor to knowingly possess/own a firearm/ammunition for those prohibited by a GVRO (5-year prohibition on purchasing/possessing firearms if found guilty).

Makes it a misdemeanor to submit a petition with the intent to harass. Misdemeanor to knowingly possess/own a firearm/ammunition for those prohibited under a GVRO (5-year prohibition on purchasing/possessing firearms if found guilty). Felony if Respondent has 2+ previous convictions for violating ERPO.

How is it unique?

Misdemeanor to falsely accuse or breach ERPO (only other is WA).

No fees for filing or service; misdemeanor to falsely accuse or breach ERPO (only other is CA).

No fees for proceedings; court cannot take mental illness diagnosis into consideration; respondent has the burden to terminate the temporary order.