

New York's Extreme Risk Protection Order (ERPO)

How to Use the Extreme Risk Protection Order to Prevent Gun Violence

The Extreme Risk Protection Order (ERPO) is a civil court-issued order that prohibits people found to be dangerous to themselves or others from temporarily purchasing or possessing a firearm, rifle, or shotgun. ERPOs can be used to prevent mass shootings, suicides, and interpersonal gun violence before it occurs.¹

WHO CAN FILE AN ERPO PETITION?

- Police Officer or District Attorney
- Family or Household Member
- School Administrator or School Designee: Anyone chosen by the school to start the case, like teachers, guidance counselors, school psychologists, school nurse, and coaches.

WHERE IS AN ERPO PETITION FILED?

- File the ERPO petition with the NYS Supreme Court in the county where the individual (the “respondent”) who is allegedly dangerous lives.
- To locate the appropriate court, go to the NY courts website.

WHAT TYPE OF BEHAVIOR MAY WARRANT THE ISSUANCE OF AN ERPO?

- Threat or act of violence or use of physical force directed toward self or another person
- Violation or alleged violation of an Order of Protection
- Pending charge or conviction for an offense involving use of a weapon
- Reckless use, display or brandishing of a gun
- Prior violation of an ERPO
- Recent or ongoing abuse of controlled substances or alcohol
- Evidence of recent acquisition of a gun or another deadly weapon, dangerous instrument, or ammunition. Other behavior indicating that the individual is likely to harm self or others
- Did the behavior happen within 6 months of the time of the application?

WHAT HAPPENS AFTER THE FINAL ERPO EXPIRES?

- Return guns to lawful owner
- Return guns to respondent

¹ <https://efsgv.org/learn/policies/extreme-risk-laws/>

What is the process for filing and obtaining an ERPO?

There are two types of ERPOs: temporary ERPOs and final ERPOs. All petitioners first file an application for a temporary ERPO. A temporary ERPO is in effect for a maximum of six business days from when the order was served until the hearing for a final ERPO. If a judge does not issue a temporary ERPO, the hearing for a final ERPO will be held no later than 10 business days after the ERPO application is served on the respondent. A final ERPO lasts up to one year.

Step 1: File a Temporary ERPO Petition

Go to court and file an application describing why there is probable cause to believe the respondent is likely to engage in conduct that would result in serious harm to self or others by possessing a firearm.

Step 2: Court Assesses Temporary ERPO Petition

On the day the application is filed, the NY Supreme Court decides whether to issue a temporary ERPO.

Step 3a: Temporary ERPO Issued

Law enforcement or a third party serves respondent with a copy of the temporary ERPO, the application for an ERPO, a notice of the final hearing, and any associated papers including the petition and supporting documentation

Step 3b: Temporary ERPO Not Issued

Law enforcement or a third party serves respondent with a copy of the ERPO application, notice of the final hearing, and associated papers including the petition and supporting documentation.

Step 4: Comply with Temporary ERPO, Facilitate Dispossession

The respondent immediately surrenders 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 provides the respondent with a receipt or voucher for any property. If the respondent is not present, law enforcement (following a lawful search) leaves a receipt or voucher where the firearms were found, mails a copy of the receipt or voucher to the respondent's (or owner's) last known mailing address, and files a copy with the court.

Step 5: Update Background Check System

The court notifies the NY Division of State Police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the NY Division of Criminal Justice Services (DCJS) of the issuance of a temporary ERPO and provides a copy of the temporary ERPO. DCJS reports the order to the FBI.

Step 6: Proceed with Final Hearing

Three to six days after service of a temporary ERPO (or no later than 10 business day after service of an ERPO application if no temporary ERPO was issued), the NY Supreme Court holds a hearing

to determine whether to issue a final ERPO for up to 1 year and, when applicable, whether a firearm surrendered by, or removed from, the respondent should be returned to the respondent.

Step 7a: Final ERPO Issued

If the respondent is present at the hearing, they are served the final ERPO while in court. If the respondent is not present at the hearing, law enforcement serves the respondent with a copy of the final ERPO and requests surrender of all firearms.

Step 7b: Final ERPO Not Issued

If a temporary ERPO was issued, but a final ERPO is not, the respondent may submit a written request for the return of the respondent's firearm(s).

Step 8: Comply with Final ERPO, Facilitate Dispossession

In addition to law enforcement requesting the immediate surrender of all firearms (specifically where a temporary ERPO was not issued) and removing firearms found in plain sight or discovered pursuant to a lawful search, the NY Supreme Court temporarily suspends any existing firearm license.

Step 9: Terminate or Renew ERPO

A petitioner may request an ERPO renewal if they believe the respondent continues to be likely to engage in conduct that would result in serious harm to self or others. A respondent is entitled to one request for a hearing to modify the ERPO at any time during its effective period.

Step 10: Update Background Check System

The court promptly notifies and provides a copy of any order amending or revoking the ERPO to the NY Division of State Police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and DCJS (who reports expiration to the FBI).

Step 11: Return Firearms

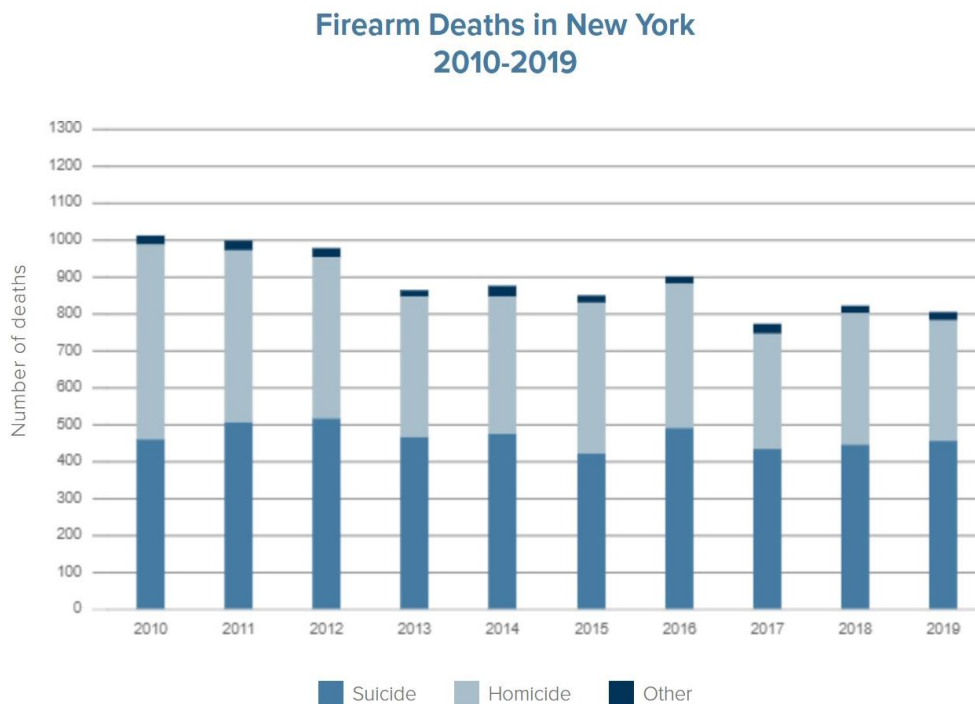
Upon expiration of the ERPO, the respondent may submit a written request to the court for the return of firearms upon expiration of the ERPO.

Data, Research, and Case Studies

NEW YORK FIREARM DEATH DATA

What does firearm violence look like in New York?

- In 2019, the most recent year of data available, there were 804 firearm deaths, of which 57% were firearm suicides (455 deaths) and 41% were firearm homicides (326 deaths).²



The “other” category is defined as any firearm death that is *not* defined by the CDC as a homicide or a suicide. This could include unintentional, undetermined, and legal intervention. To obtain the number of deaths in the “other” category, the total number of firearm suicide deaths and firearm homicide deaths were subtracted from the overall firearm deaths in a given year.

RESEARCH ON ERPO - HOW DO ERPOS PREVENT SUICIDE AND MASS SHOOTINGS?

Evidence from Connecticut and Indiana show that ERPOs are an effective tool for suicide prevention, and research from California shows that ERPOs can be used to help prevent mass shootings.

² Centers for Disease Control and Prevention, National Center for Health Statistics. Suicide Deaths and Rates per 100,000. WONDER Online Database, 1999-2019. Available: <http://wonder.cdc.gov/uccd-icd10.html>. Note: The most recently available CDC data is 2019; as such, 2019 data is used where appropriate.

HOW HAVE ERPOS BEEN USED TO PREVENT GUN VIOLENCE?

MASS VIOLENCE

- “The Federal Bureau of Investigation (FBI) contacted a local police department about a 22-year-old man who was the close associate of a man recently charged with providing material support to the al-Nusra Front, a foreign terrorist organization. Both men had traveled to Turkey on one-way tickets, possibly to cross into Syria, but had returned to the United States. According to the FBI, the al-Nusra Front encouraged its members to engage in lone-wolf attacks on large public gatherings rather than joining the conflict in Syria. One week before the FBI contact, the 22-year-old man, who was not previously known to own firearms, purchased an AK-47-type rifle, meaning that the 10-day waiting period would expire in 3 days. The man had begun working at an indoor firing range 1 month earlier but was fired the day before the FBI contacted the police. According to the FBI's interview with the range manager, the man disliked dealing with customers but was very interested in handling firearms. He lived within walking distance of public events, scheduled 2 and 3 weeks later, that were expected to draw 50,000 to 100,000 people. The police department obtained and served a GVRO the following day, blocking acquisition of the rifle. A 1-year order after hearing was subsequently issued.”³

SUICIDE

- “In January of 2016, Deputies obtained an Emergency Protective Order to remove firearms owned by a 34-year-old Goleta woman who was in temporary crisis and had made suicidal statements.”⁴

DEMENTIA

- “An 81-year-old man from Carmel Mountain who threatened to shoot his 75-year-old wife and a neighbor because he believed they were having an affair. His wife escaped the house, barefoot, by climbing a fence and running through cactus. His family reported him to be in the early stages of dementia.”⁵

³ Wintemute, G. J., Pear, V. A., Schleimer, J. P., Pallin, R., Sohl, S., Kravitz-Wirtz, N., & Tomsich, E. A. (2019). Extreme risk protection orders intended to prevent mass shootings: a case series. *Annals of internal medicine*.

⁴ Press Release. September 29, 2016. “Santa Barbara Sheriff's GVRO (Firearms Emergency Protective Orders).” Office of the Sheriff, Santa Barbara County.

⁵ Press Release. September 29, 2016. “Santa Barbara Sheriff's GVRO (Firearms Emergency Protective Orders).” Office of the Sheriff, Santa Barbara County.

ALCOHOL AND GUNS

- “A 39-year-old San Carlos man who, while intoxicated (at three times the legal limit), believed he was shooting at raccoons and rats in his backyard. Terrified neighbors called police as bullets flew into their backyards.”⁶

DOMESTIC VIOLENCE

- “We have found that Risk Protection Orders (RPOs) are a useful tool in curtailing repeat Intimate Partner Violence. We had one incident where the subject was showing up at his ex-girlfriend's house two nights in a row, armed with an AK-47. The victim was understandably terrified and has since refused to cooperate with the criminal case. However, through an RPO, we were able to disarm the subject and we are now back to speaking with the victim. Now that she feels safer, she is back speaking with Detectives about pursuing the criminal case.”⁷

MINORS

- A Maryland student posted Snapchats of him holding a rifle and threatening a school shooting. He posted “I have WJ [Walter Johnson High School]” and “Ha, ha, I’m going to shoot up the school.” Police issued a temporary order and removed a pair of loaded assault rifles and ammunition.⁸

⁶ Press Release. February 16, 2018. “City Attorney’s Office, San Diego Police Working to Protect the Public from Gun Violence.” San Diego City Attorney’s Office.

⁷ Correspondence with Fort Lauderdale Police Department, June 2020.

⁸ [Rockville teen charged with threatening mass violence at Walter Johnson High School](#). (2018). Bethesda Magazine.