

FINAL BILL REPORT

ESSB 5027

C 246 L 19
Synopsis as Enacted

Brief Description: Concerning extreme risk protection orders.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Frockt, Carlyle, Palumbo, Wellman, Pedersen, Keiser, Saldaña, Mullet and O'Ban).

Senate Committee on Law & Justice
House Committee on Civil Rights & Judiciary

Background: An extreme risk protection order (ERPO) is a civil court order that temporarily prevents individuals who are at a high risk of harming themselves or others from accessing firearms and concealed pistol licenses (CPL). An ERPO may be filed by a family member of the respondent or by law enforcement. An ERPO petition must include:

- sworn allegations that the respondent poses a significant danger of causing personal injury to self or others by having access to a firearm;
- identification of the number, types, and locations of firearms the respondent is believed to have access to;
- disclosure of any known protection order against the respondent; and
- disclosure of any pending lawsuit, complaint, petition, or other action between the parties to the petition.

If the petitioner is a law enforcement officer or agency, the agency must make a good faith effort to provide notice to a family member of the respondent or any known third party who may be at risk of violence.

Upon receipt of a petition, the court must set a hearing within 14 days. The court may issue an ex parte ERPO pending the hearing. At the hearing, if the court finds by a preponderance of the evidence the respondent poses a significant danger of causing personal injury to themselves or others due to the person's access to firearms, the court will issue an ERPO for a period of one year. In determining whether to issue an ERPO, the court may consider all relevant evidence, including, but not limited to:

- a recent act or threat of violence;
- a pattern of acts or threats of violence within the past 12 months;
- any dangerous mental health issues of the respondent;
- a violation of a protection order or no-contact order;
- a previous or existing ERPO;
- a conviction for a crime that constitutes domestic violence;

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- the respondent's ownership, access to, or intent to possess firearms;
- the respondent's history of use or threatened use of physical force;
- any prior arrest for a felony offense or violent crime; and
- corroborated evidence of alcohol abuse or other controlled substance.

As part of an ERPO, the respondent is required to surrender all firearms in the person's custody or control, along with any CPL the person may have. If the respondent fails to surrender their firearms, the court may issue a warrant authorizing a search of locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to the search. After issuance, law enforcement must enter an ERPO into the National Instant Criminal Background Check System.

Any person who has a firearm in their control, with knowledge they are prohibited from doing so by an ERPO, is guilty of a misdemeanor and will then be prohibited from possessing a firearm for a period of five years from expiration of the order. A person's third conviction for violating an ERPO is a Class C felony.

Summary: A petition for an ERPO may be brought against a person under the age of eighteen years. No guardian or guardian ad litem need be appointed if the person is age sixteen or older. The juvenile court may hear a petition for an ERPO if the person is under the age of eighteen. Language is added to clarify that an ERPO may be directed to a person who has access to a firearm, not just a person who directly has custody, control, or possession of a firearm.

When an ERPO is issued against a person under the age of eighteen, a copy of the order must be served at any address where the minor resides, to the parent or guardian. The court must advise the parent or guardian in writing of the legal obligation to safely secure any firearm on the premises and the potential for criminal prosecution if a prohibited person were to obtain access to the firearm. Notice may be provided at the time the parent or guardian appears in court or may be served by law enforcement along with a copy of the order. If the minor against whom an ERPO is issued is the subject of a dependency or out of home placement, notice must also be provided to the Department of Children, Youth, and Families.

An ERPO entered against a person under the age of eighteen must be entered into and maintained in computer-based systems as required for any other ERPO. The restrained party may petition the court to seal the court records relating to an ERPO proceeding at the time the order is entered or anytime thereafter. The court must seal the records from public view if there are no other protection orders against the restrained party, no pending violations of the order, and the person has relinquished any firearms as required by the order.

The Administrative Office of the Courts is required to create a standard petition and order form titled Extreme Risk Protection Order—Respondent Under 18 Years, pattern forms to assist a person in sealing the court records related to such an order, and an informational brochure to be served on any respondent under the age of eighteen who is subject to an ERPO proceeding.

An ERPO may not be denied by the court on grounds that relief may be available via another action. The court shall give law enforcement priority for any ERPO proceeding and shall

allow law enforcement to petition after hours, recognizing the importance of immediate temporary removal of firearms in situations of extreme risk. The court may allow law enforcement to participate telephonically or allow the prosecutor's office to present information to the court. A police officer may arrest a person without a warrant when the officer has probable cause to believe the person has violated an ERPO.

A person's prior conviction for a hate crime is added to the factors the court may consider in determining whether grounds exist to issue an ERPO. Terminology throughout the chapters is updated to replace references to mental health and chemical dependency with behavioral health and references to mental health issues or crisis with language focusing on the person's behavior, for example, threatening behavior or behaviors that present an imminent risk of harm to self or others.

Votes on Final Passage:

Senate	43	5	
House	56	37	(House amended)
Senate	31	18	(Senate concurred)

Effective: July 28, 2019