



Michigan Supreme Court

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Thomas P. Boyd
State Court Administrator

MEMORANDUM

DATE: January 31, 2024

TO: Circuit, Probate, District, and Municipal Court Chief Judges
Circuit, District, and Municipal Court Administrators and Probate Registers

FROM: Thomas P. Boyd, State Court Administrator

SUBJECT: Extreme Risk Protection Order Act – District & Municipal Courts

Several courts have inquired whether district court judges or district court magistrates have authority to issue extreme risk protection orders under 2023 PA 38.

As a general rule, extreme risk protection order (ERPO) actions are initiated by filing a summons and complaint in the family division of the circuit court. See MCL 691.1805(1). However, MCL 691.1807(4) provides a specific provision for law enforcement officers to verbally request an immediate emergency ERPO over the telephone when they are responding to a complaint involving the respondent. In these limited situations, “the *judge or magistrate* on duty within that jurisdiction may issue the extreme risk protection order.” *Id.* (emphasis added). The officer must file a sworn written petition detailing the facts and circumstances presented to the court within one business day. The issuing court, “if other than the circuit court,” shall provide a copy of the petition to the circuit court. *Id.*

On Duty Judge and Magistrate

The language of MCL 691.1807(4) clearly contemplates the issuance of an immediate emergency ERPO by a court other than the circuit court. Unfortunately, the terms “judge” and “magistrate” are not defined in the Extreme Risk Protection Order Act. As such, courts may need to look to other definitions to determine the Legislature’s intent. In the Code of Criminal Procedure, magistrate is defined as “a judge of the district court or a judge of the municipal court. Magistrate does not include a district court magistrate[.]” MCL 761.1(*l*). Significantly, the Legislature did not amend MCL 600.8511—the source of district court magistrate authority—when enacting the Extreme Risk Protection Order Act. As such, district and municipal court *judges* may have authority to issue immediate emergency ERPO’s; however, it is unlikely that district court *magistrates* may exercise such authority.

Circuit, District, and Municipal Court Coordination

I strongly recommend the chief judges of each circuit meet, pursuant to MCR 8.110(C)(2)(d), to determine ERPO implementation as part of your coordinated community response to violence. Each circuit court's ERPO procedures must include the issuance of immediate emergency orders. To facilitate this, **I request each circuit court chief judge convene a meeting of all chief judges within your circuit before February 13, 2024, to plan for immediate emergency ERPOs.**

Please note that the ERPO Act imposes numerous additional responsibilities on the "court that issued the order," which include the following:

Verification Compliance: The respondent must file with "the court that issued the order" one or more documents verifying that they have complied with the ERPO. MCL 691.1810(1).

Law Enforcement Notification: The "clerk of the court that issued the order" must inform the local law enforcement agency if the respondent fails to comply with the filing requirements. MCL 691.1810(2). The "clerk of the court that issued the order" must also notify law enforcement when they receive proof of service, and when the order is rescinded, modified, extended, or expired. MCL 691.1811(2).

ERPO Violations: The prosecuting attorney or a law enforcement officer may file an affidavit "with the court that issued the order" alleging the respondent has violated the ERPO. MCL 691.1810(5).

Proof of Service: The individual who serves the order must file proof of service or proof of oral notice with "the clerk of the court that issued the order." MCL 691.1813(3).

ERPO Extensions: If a court or jury finds that the respondent refused or failed to comply with the ERPO, "the court that issued the order" shall issue an extended ERPO. MCL 691.1819(2).

As such, district or municipal judges who issue immediate emergency ERPOs in their district or municipal capacities might also be responsible for completing these additional responsibilities under the Act.¹ It may therefore be prudent to only issue ERPO orders under the circuit court's jurisdiction. This could be accomplished by amending your plan of concurrent jurisdiction under MCL 600.401, allowing district judges to exercise this power and jurisdiction of the circuit court. Alternatively, courts could request their regional administrator assign district court judges as circuit judges for the limited purpose of ruling on requests for and issuing of immediate emergency ERPOs.

¹ Please note that the JIS DCS system is not programmed to accept or process ERPO filings. Additionally, ERPO forms have only been developed for use in the circuit court.

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These approaches authorize more judges to review and issue immediate emergency ERPOs, while consolidating cases within the circuit court's jurisdiction. If you haven't already done so, please consider [registering](#) for the MJI ERPO webinar being held on Thursday, February 8, 2024. Training resources will include a comprehensive manual of ERPO procedures, and the new forms developed to effectuate the ERPO Act.

Please continue to contact your [regional administrator](#) with any ERPO-related questions.