



Michigan Supreme Court

State Court Administrative Office

Field Services Division

Michigan Hall of Justice

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MANUAL
Extreme Risk Protection Order Act
2023 PA 38

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Eligible Petitioners

The following individuals may file an action in the family division of the circuit court requesting the court enter an Extreme Risk Protection Order (ERPO). MCL 691.1805; MCR 3.716(A)(2).

1. The **spouse** of the respondent.
2. A **former spouse** of the respondent.
3. An **individual** who:
 - a. Has a child in common with the respondent.
 - b. Has or has had a dating relationship with the respondent¹.
 - c. Resides or has resided in the same household with the respondent.
4. A **family member**, including a:
 - a. Parent
 - b. Son or daughter
 - c. Sibling
 - d. Grandparent
 - e. Grandchild
 - f. Uncle or Aunt
 - g. First cousin
5. A **guardian**² of the respondent.
6. A **law enforcement officer**³.
7. A **healthcare provider**⁴, including a:
 1. Physician
 2. Physician's assistant
 3. Nurse practitioner
 4. Certified nurse specialist licensed under 1978 PA 368, MCL 333.16101 to MCL 333.18838.
 5. Mental health professional, as that term is defined in MCL 330.1100b.

Complaint

1. **Required Information:** To initiate an ERPO action, the petitioner must file a SCAO-approved complaint in the family division of the circuit court. MCL 691.1805(3). A complaint may be filed regardless of whether the respondent owns or possesses a firearm. A

¹ "Dating relationship" means a relationship that consists of frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. MCL 691.1803(b).

² "Guardian" means that term as defined in MCL 700.1101. MCL 691.1803(e).

³ "Law enforcement officer" means a law enforcement officer as that term is defined in MCL 28.602. MCL 691.1803(h).

⁴ A healthcare provider may file if filing and maintaining the action does not violate requirements of the health insurance portability and accountability act of 1996, Public Law 104-91, or regulations promulgated under the act, 45 CRF parts 160 and 164, or physician-patient confidentiality. MCL 691.1805(2)(i). Healthcare provider also includes a physician, physician's assistant, nurse practitioner, or certified nurse specialist licensed in another state. MCL 691.1803(f)(i).

proposed order must be prepared on a SCAO-approved form and submitted at the same time as the complaint. No summons is issued. MCR 3.716(A)(1).

- a. **Legal Standard:** The complaint must state with particularity any facts that show the issuance of an ERPO is necessary because:

The respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation, including facts that address the factors in MCL 691.1807(1) that the court must consider when determining whether to issue an ERPO order. MCR 3.716(B)(3).

- b. **Ex Parte Order:** The complaint must also state whether an ex parte order is being sought and, if so, state with particularity the facts that show the issuance of an ex parte order is necessary because:

- i. Immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice, or
- ii. The notice itself will precipitate adverse action before an order can be issued. MCR 3.716(B)(7).

- c. **Other ERPO Actions:** The complaint must state whether an ERPO action involving the respondent has been commenced in another jurisdiction and, if so, identify the jurisdiction. MCR 3.716(B)(8).

- d. **Other Pending Actions, Orders, Judgments:** The complaint must state whether there are any other pending actions, orders, or judgments affecting the parties, including the name of the court and the case number, if known. MCR 3.716(E).

- i. If complaint is filed in the same court as another pending action, order, or judgment, it shall be assigned to the same judge.
- ii. If there are other pending actions in another court, orders, or judgments, the court may contact the court where the pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.

2. **If Known:** If known by the petitioner, state whether any of the following circumstances are applicable:

- a. **Employment:** The respondent is required to carry a pistol as a condition of the respondent's employment and is issued a license to carry a concealed pistol. MCL 691.1805(5)(a); MCR 3.716(B)(4)(a).

- b. **Law Enforcement & Corrections:** The respondent is any of the following: MCL 691.1805(5)(b)-(h); MCR 3.716(B)(4)(b).
- a. A police officer licensed or certified under the Michigan Commission on Law Enforcement Standards Act (MCOLES), MCL 28.601 to MCL 28.615.
 - b. A sheriff or deputy sheriff.
 - c. A member of the Department of State Police.
 - d. A local corrections officer.
 - e. An employee of the Michigan Department of Corrections.
 - f. A federal law enforcement officer who carries a pistol during the normal course of the officer's employment or an officer of the Federal Bureau of Prisons.
- c. **Firearm Ownership/Possession:** If the petitioner knows or believes that the respondent owns or possesses firearms, the petitioner must state that in the complaint and, to the extent possible, identify the firearms, giving their location and any additional information that would help a law enforcement officer to find the firearms. MCL 691.1805(6); MCR 3.716(B)(5).
3. **Confidentiality:** The petitioner's address must not be disclosed in any pleading, paper, or in any other manner. The petitioner must provide the court with an address and contact information, including an email address and telephone number if available, in the form and manner established by the State Court Administrative Office. The clerk of the court must maintain the petitioner's address as confidential in the court file. MCR 3.716(C).
4. **Complaint Against a Minor:** In addition to the requirements outlined above, a complaint against a minor must also list, if known or can be easily ascertained, the names and addresses of the minor's parent(s), guardian, or custodian. MCR 3.716(D).
5. **Filing Fees:** There are no filing fees for an ERPO action. MCL 600.1908(3); MCR 3.716(A)(1).

SCAO Forms

The following SCAO-approved forms are used to initiate an ERPO action.

CC 452, Complaint for Extreme Risk Protection Order, Adult Respondent: This form is a complaint used by petitioners to initiate an ERPO proceeding against an *adult* respondent.

CC 452M, Complaint for Extreme Risk Protection Order, Minor Respondent: This form is a complaint used by petitioners to initiate an ERPO proceeding against a *minor* respondent.

CC 450, Confidential Information Extreme, Extreme Risk Protection Order Proceeding: This form is used to identify the petitioner's address and is filed at the same time as the complaint. The clerk of the court will maintain this form as confidential, pursuant to MCL 691.1805(7) and MCR 3.716(C).

CC 465, Request for Next Friend and Order, Extreme Risk Protection Order. This form is used to request a next friend because the individual is a minor or incompetent/legally incapacitated.

Venue

Any of the following is a proper county in which to file an ERPO action. MCL 691.1805(8); MCR 3.716(F).

1. **Adult:** If the respondent is an adult, the petitioner may file an ERPO action in any county in Michigan regardless of the parties' residency or location.
2. **Minor:** If the respondent is a minor, the petitioner must file an ERPO action in either the petitioner's or respondent's county of residence.
3. **Out-of-State:** If the respondent does not reside in Michigan, the petitioner must file an ERPO action in the petitioner's county of residence.

The court may enter an order to change the venue of an ERPO action for any reason allowed under the Michigan Court Rules, including, but not limited to, the convenience of the parties and witnesses. The court may consider the location of firearms owned or possessed by the respondent in deciding whether to change venue. MCL 691.1806(3).

Dismissals

Except as specified in MCR 3.718(A)(5), MCR 3.718(B), MCR 3.718(D), and MCR 3.720, an action for an ERPO may only be dismissed upon motion by the petitioner prior to the issuance of an order. There is no fee for such a motion. This does not preclude a dismissal as otherwise permitted by law. MCR 3.717.

Notice and Hearing

1. **When a Hearing is Required:** The court must schedule a hearing for the issuance of an ERPO in the following instances. MCR 3.718(D).
 - a. **The complaint does not request an ex parte order.**

The hearing must occur within 14 days of the date the complaint is filed.

 - **Service:** Petitioner must serve the respondent with the complaint and notice of the hearing as provided in MCR 2.105(A). If the respondent is a minor, and the whereabouts of the respondent's parent(s), guardian, or custodian are known, the petitioner must also, in the same manner, serve them.

b. The court refuses to enter an ex parte order and the petitioner timely requests a hearing.

The hearing must occur within 14 days of the petitioner's request for a hearing.

- **Service:** Petitioner must serve the respondent with the complaint and notice of the hearing as provided in MCR 2.105(A). If the respondent is a minor, and the whereabouts of the respondent's parent(s), guardian, or custodian are known, the petitioner must also, in the same manner, serve them.

c. The court entered an ex parte order and the respondent requests a hearing.

If a hearing is requested, the hearing must occur within **14 days after service** unless the respondent is a person described in MCL 691.1805(5).

- **Hearing Request:** Respondent must request this hearing within 7 days after the order is served.
- **Service:** The clerk of the court must serve the respondent's request for a hearing on the petitioner, as provided in MCR 2.107(C), due to the confidential nature of the petitioner's address.

If the respondent is a person described in MCL 691.1805(5), the hearing must occur within **5 days after service**, excluding weekends and holidays if the court is closed to the public.

- **Hearing Request:** Respondent must request this hearing within 3 days after the order is served. If the court is closed to the public upon the expiration of this 3-day period, the request must be made not later than the next business day.
- **Service:** The clerk of the court must serve the respondent's request for a hearing on the petitioner, as provided in MCR 2.107(C) due to the confidential nature of the petitioner's address. To ensure timely notice, the clerk of the court must notify the petitioner of this hearing at the email address and telephone number provided by the petitioner.

A respondent waives their right to a hearing on an ex parte order if the respondent does not request a hearing within the timeframes listed above. MCR 3.718(D)(3).

2. **Burden of Proof:** The petitioner must attend the hearing and carries the burden of proof. MCR 3.718(D)(6).
3. **Hearing Format:** The hearing must be held on the record. In accordance with MCR 2.407 and MCR 2.408, the court may allow the use of videoconferencing technology. MCR 3.718(D)(5).
4. **Legal Standard:** The court shall issue an ERPO if the court determines, by a preponderance of the evidence, that the respondent can reasonably be expected within the near future to,

intentionally or unintentionally, seriously physically injure themselves or another individual by possessing a firearm, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation. MCL 691.1807(1); MCR 3.718(D)(6).

- a. **Factors:** In determining whether to issue an ERPO, the court shall consider the following:
- **Physical Force:** Any history of use, attempted use, or threatened use of physical force by the respondent against another individual, or against the respondent, regardless of whether the violence or threat of violence involved a firearm. MCL 691.1807(1)(a).
 - **Serious Mental Illness or Serious Emotional Disturbance:** Any evidence of the respondent having a serious mental illness or a serious emotional disturbance, as those terms are defined in MCL 330.1100d, that makes the respondent dangerous to other individuals or to the respondent. MCL 691.1807(1)(b).
 - **Orders:** Any of the following orders against the respondent, whether previously entered or existing. MCL 691.1807(1)(c)(i)-(vi).
 - Extreme Risk Protection Order.
 - Personal Protection Order (PPO) under MCL 600.2950 and MCL 600.2950a.
 - Pretrial release order
 - Probation order
 - Parole order
 - Any other injunctive order.
 - **PPO & ERPO Violations:** Any violation by the respondent of a previous or existing ERPO or any violation of a previous or existing PPO issued under MCL 600.2950 or MCL 600.2950a. MCL 691.1807(1)(d)-(e).
 - **Criminal Offenses:** Any previous conviction of, criminal charges pending against, or previous or pending juvenile delinquency petitions against the respondent for the commission or attempted commission of any of the following offenses. MCL 691.1807(1)(f)(i)-(vii).
 - A misdemeanor violation of MCL 750.81, *Assault or assault and battery*.
 - A violation of MCL 750.411h, *Stalking* and MCL 750.411i, *Aggravated Stalking* or a similar offense in another jurisdiction.
 - An offense that has assault as an element.
 - An offense that has an element including a threat to person or property.
 - An offense that is a crime committed against the person or property of a spouse or intimate partner, as defined in MCL 600.2950k.
 - An offense involving cruelty or abuse of animals.
 - A serious misdemeanor, as that term is defined in MCL 780.811.

- **Controlled Substances:** Any evidence of recent unlawful use of controlled substances by the respondent. MCL 691.1807(1)(g).
 - **Alcohol Abuse:** Any recent abuse of alcohol. MCL 691.1807(1)(h).
 - **Deadly Weapons & Ammunition:** Any previous unlawful possession, use, display, or brandishing of a deadly weapon by the respondent. Any evidence of an acquisition or attempted acquisition within the previous 180 days by the respondent of a deadly weapon or ammunition. MCL 691.1807(1)(i)-(j).
 - **Additional Reliable Information:** Any additional information the court finds to be reliable, including a statement by the respondent, or relevant information from family and household members concerning the respondent. The court may also consider any other facts that the court believes are relevant. MCL 691.1807(1)(k)-(l).
5. **Reasons for Decision:** The court must state on the record the reasons for granting, denying, or continuing an ERPO and enter the appropriate order. Additionally, the court must immediately state the reasons for granting, denying, or continuing an ERPO in writing. MCR 3.718(D)(8).

SCAO Forms

CC 453, Extreme Risk Protection Order, Adult Respondent: This form is an extreme risk protection order for an *adult* respondent.

CC 453M, Extreme Risk Protection Order, Minor Respondent: This form is an extreme risk protection order for a *minor* respondent.

CC 456, Order Denying Extreme Risk Protection Order: This form is used to deny an extreme risk protection order. CC 456 may be used to deny requests for both ex parte and non-exparte orders.

Ex Parte & Immediate Emergency Ex Parte Orders

1. *Ex Parte Orders*

- a. **Timing:** The court must rule on a request for an ex parte within one business day of the filing date of the complaint. The court must expedite and give priority to ruling on a request for an ex parte order. MCR 3.718(A).
- b. **Legal Standard:** An ex parte order must be granted if it clearly appears from the specific facts shown by a verified, written complaint that:

- i. **Preponderance of the Evidence:** by a preponderance of the evidence, after considering the factors in MCL 691.1807(1), the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm, and has engaged in an act or acts or made significant threats that substantially support the expectation that the respondent will intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm; and
 - ii. **Clear and Convincing Evidence:** Pursuant to MCL 691.1807(2), there is clear and convincing evidence that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice itself will precipitate adverse action before an order can be issued. MCR 3.718(A)(2).
- c. **Order Denied:** If the court refuses to grant an ex parte order, it must immediately state the reasons in writing and advise the petitioner of the right to request a hearing. If the petitioner does not request a hearing within 21 days of the entry of the order, the order denying the complaint is final. MCR 3.718(A)(5).

2. *Immediate Emergency Ex Parte Orders:*

- a. **Timing:** The judge or magistrate must immediately rule on a verbal request to issue an immediate emergency ERPO. MCR 3.718(B)(2).
- b. **Legal Standard:** A petitioner who is a law enforcement officer may **verbally request by telephone** that a judge or magistrate⁵ on duty within that jurisdiction immediately issue an emergency ex parte order if the officer is responding to a complaint involving the respondent and the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure the respondent or another individual by possessing a firearm. MCL 691.1807(4); MCR 3.718(B).
- c. **Law Enforcement Responsibilities:** If an immediate emergency ex parte order is issued:
 - i. The officer must notify the respondent of the order and advise where they can obtain a copy of the order.
 - ii. Within one business day, the officer must file a sworn written petition detailing the facts and circumstances presented verbally to the judge or magistrate. If the officer does not file the petition within one business day, the court must, unless good cause is shown:

⁵ The term “magistrate” is not defined in the Extreme Risk Protection Order Act. Please see the memo [Extreme Risk Protection Order Act – District & Municipal Courts](#) that discusses these definitions in greater detail.

1. Terminate the immediate emergency ex parte order;
 2. Order that the respondent, subject to the restrictions in MCL 691.1815, may reclaim any seized firearm(s); and
 3. Dismiss the case.
3. **Plan of Availability:** In each county, the circuit court must file for approval with the state court administrator a plan to make a judge or magistrate on duty and available each day of the year to immediately review and rule on a verbal request. The court must provide their approved plan to all law enforcement agencies within their jurisdiction. MCR 3.718(B)(3).

SCAO Forms

The following SCAO-approved forms are used to issue an immediate emergency ERPO.

CC 454, Immediate Emergency Ex Parte Extreme Risk Protection Order: This form is an immediate emergency extreme risk protection order. It is only used when a law enforcement officer verbally requests an immediate emergency extreme risk protection order under MCL 691.1807(4).

CC 455, Sworn Written Petition After Immediate Emergency Ex Parte Extreme Risk Protection Order: If the court grants a law enforcement officer's request to issue an immediate emergency extreme risk protection order, the officer must, within one business day, file with the court a sworn written petition detailing the facts and circumstances presented to the court. CC 455 is used by law enforcement for this purpose.

ERPO Contents

1. **Order Requirements:** If the court issues an ERPO, the order must include the following:
 - a. **Respondent Responsibilities:** The respondent must complete the filing requirements contained in MCR 3.719(D)(1). A failure to comply with the filing requirements will result in the issuance of either a warrant or an order to show cause why the respondent should not be held in contempt of court. MCR 3.719(A)(1).
 - b. **Purchase/Possession of Firearms:** The respondent must not purchase or possess a firearm. If the respondent has been issued a license under MCL 28.422 that the respondent has not used and that is not yet void, the respondent must not use it and must surrender it to the law enforcement agency designated under MCL 691.1809(1)(g). MCL 691.1809(1)(a); MCR 3.719(A)(2).

- c. **Concealed Pistol License:** The respondent must not apply for a concealed pistol license and, if the respondent has been issued a license to carry a concealed pistol, the license will be suspended or revoked under MCL 28.428 once the order is entered into the law enforcement information network (LEIN). The respondent must surrender the license as required by MCL 28.428. MCL 691.1809(1)(b); MCR 3.719(A)(3).
- d. **Firearm Surrender:** The respondent must, within 24 hours or, at the court's discretion, immediately after being served with the order, surrender any firearms in the respondent's possession or control⁶ to the law enforcement agency designated under MCL 691.1809(1)(g) or, if allowed as ordered by the court, to a licensed firearm dealer on the list prepared under MCL 691.1818. MCL 691.1809(1)(c); MCR 3.719(A)(4).
 - i. **Immediate Surrender**⁷: If the court orders the respondent to immediately surrender the individual's firearms, the order must include a statement that the law enforcement agency designated under MCL 691.1809(g) must proceed to seize the respondent's firearms after the respondent is served with or receives actual notice of the ERPO, after giving the respondent an opportunity to surrender the individual's firearms. MCL 691.1809(1)(l); MCR 3.719(A)(4).
 - ii. **24 Hour Surrender:** Unless the petitioner is a law enforcement officer or health care provider, there is a presumption that the respondent will have 24 hours to surrender the firearms. MCL 691.1809(1)(l); MCR 3.719(A)(4).
- e. **Firearm Description:** If the petitioner has identified any firearms in the complaint, a specific description of the firearms to be surrendered or seized. MCL 691.1809(1)(d); MCR 3.719(A)(5).
- f. **Hearing Request:** If the ERPO was issued without written or oral notice to the respondent, the order must include a statement that the respondent may request and

⁶ "Possession or control" includes, but is not limited to, actual possession or constructive possession by which the individual has the right to control the firearm, even though the firearm is in a different location than the individual. Possession or control does not require the individual to own the firearm. MCL 691.1803(j).

⁷ **Anticipatory Search Warrant:** If the court orders the firearms immediately surrendered, the law enforcement officer serving the order may file an affidavit requesting that the court issue an anticipatory search warrant authorizing a law enforcement agency to search the location or locations where the firearm(s) or concealed pistol license is believed to be and to seize any firearm(s) or concealed pistol license discovered during the search in compliance with MCL 780.651 to 780.659.

The law enforcement officer's affidavit may include affirmative allegations contained in the complaint. An anticipatory search warrant issued under MCR 3.718(C) is subject to and contingent on the failure or refusal of the respondent, following service of the order, to immediately comply with the order and immediately surrender to a law enforcement officer any firearm or concealed pistol license in the individual's possession or control. The court must issue the anticipatory search warrant if the affidavit establishes probable cause to believe that if the respondent refuses to immediately comply with the order, there is a fair probability that the respondent's firearm(s) or concealed pistol license will be found in the location or locations to be searched. MCR 3.718(C).

attend a hearing to modify or rescind the order as provided in MCR 3.718(D)(3). MCL 691.1809(1)(e); MCR 3.719(A)(6).

- g. **Motions:** A statement that the respondent may file a motion to modify or rescind the order as allowed under MCL 691.1801 *et seq.*, and that motion forms and filing instructions are available from the clerk of the court. MCL 691.1809(1)(f); MCR 3.719(A)(7).
 - h. **Law Enforcement Agency Designation:** A designation of the law enforcement agency that is responsible for forwarding the order to the Federal Bureau of Investigation under MCL 691.1815(1). The designated law enforcement agency must be an agency within whose jurisdiction the respondent resides. MCL 691.1809(1)(g); MCR 3.719(A)(8).
 - i. **LEIN Entry:** Directions to a local entering authority or the law enforcement agency designated under MCL 691.1809(1)(g) to enter the order into LEIN. MCL 691.1809(1)(h); MCR 3.719(A)(9).
 - j. **Order Violations:** A statement that violating the order will subject the respondent to the following. MCL 691.1809(1)(i); MCR 3.719(A)(10).
 - i. Immediate arrest;
 - ii. Contempt of court;
 - iii. An automatic extension of the order; and
 - iv. Criminal penalties, including imprisonment for up to one year for an initial violation and up to five years for a subsequent violation.
 - k. **Right to an Attorney:** A statement that the respondent has the right to seek the advice of, and be represented by, an attorney. MCL 691.1809(j); MCR 3.719(A)(11).
 - l. **Expiration Date:** An expiration date that is one year after the date of issuance. MCL 691.1809(k); MCR 3.719(A)(12).
2. **Immediate Effect:** An ERPO is effective and enforceable immediately after it is issued by the court. The order may be enforced anywhere in Michigan by a law enforcement agency that receives a true copy of the order, is shown a copy of it, or has verified its existence in LEIN as provided by the C.J.I.S. Policy Council Act or on an information network maintained by the FBI. MCL 691.1809(2).

SCAO Form

CC 458a, Affidavit For Anticipatory Search Warrant Extreme Risk Protection Order:
This form is used by a law enforcement officer to request an anticipatory search warrant pursuant to MCR 3.718(C).

CC 458, Anticipatory Search Warrant (Extreme Risk Protection Order): If a court orders the respondent's firearms be immediately surrendered, the court must also issue an anticipatory search warrant subject to the provisions in MCR 3.718(C). This form is used for that purpose.

Serving an Order

1. ***Service by Petitioner:*** Unless the court ordered the immediate surrender of firearms, the petitioner is responsible for service of the order on the respondent as provided in MCR 2.105(A). If the respondent is a minor, and the whereabouts of the respondent's parent(s), guardian, or custodian is known, the petitioner must also in the same manner serve the order on the respondent's parent(s), guardian, or custodian. On an appropriate showing, the court may allow service in another manner as provided in MCR 2.105(J). Failure to serve the order does not affect its validity or effectiveness. MCR 3.719(B)(1).
2. ***Service by Law Enforcement:*** If the court ordered the immediate surrender of the respondent's firearms, the order **must** be served personally by a law enforcement officer. MCR 3.719(B)(2). If the respondent has not been served, a law enforcement officer who knows that the order exists may, at any time, serve the respondent with a true copy of the order or advise the respondent of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the respondent may obtain a copy of the order. MCL 691.1813(2).
3. ***Proof of Service:*** The individual who serves an ERPO, or the law enforcement officer who gives oral notice of the order, must file proof of service or proof of oral notice **within one business day** after service. MCL 691.1813(3); MCR 3.719(B)(3).
4. ***Service Fees:*** A person shall not charge or collect a fee for serving process issued in an action brought under the ERPO Act, or for serving any order issued in the action. MCL 600.2559(9).

SCAO Form

CC 457, Proof of Personal Service/Oral Notice (Extreme Risk Protection Order): Law enforcement officers may use this form to file proof of service that they either personally served or orally notified the respondent of the ERPO.

Respondent Responsibilities

1. **Required Action:** Not later than 24 hours after the respondent receives a copy of the ERPO or has actual notice of the order, the respondent must do one of the following:
 - a. **Filing (Surrender):** File with the court that issued the order one or more documents or other evidence verifying that all of the following are true:
 - i. All firearms previously in the respondent's possession or control were surrendered to or seized by the local law enforcement agency designated under MCL 691.1809(1)(g), or if allowed as ordered by the court, to a licensed firearm dealer on the list prepared under MCL 691.1818, and;
 - ii. Any concealed pistol license was surrendered to or seized by the local law enforcement agency designated under MCL 691.1809(1)(g) or surrendered to the county clerk as required by the order and MCL 28.428, and;
 - iii. At the time of the verification, the respondent does not have a firearm or a concealed pistol license in the respondent's possession or control. MCL 691.1810(1)(a); MCR 3.719(D)(1)(a).
 - b. **Filing (No Firearm/CCW):** File with the court that issued the order one or more documents or other evidence verifying that both of the following are true:
 - i. At the time the order was issued, the respondent did not have a firearm or a concealed pistol license in the respondent's possession or control; and
 - ii. At the time of the verification, the respondent does not have a firearm or a concealed pistol license in the respondent's possession or control. MCL 691.1810(b); MCR 3.719(D)(1)(b).

If the court is closed when this 24-hour period expires, the respondent must complete the required filing not later than the next business day. MCR 3.719(D)(1).

SCAO Form

CC 459, Verification of Compliance with Extreme Risk Protection Order: This form can be used by respondents to complete this required verification filing with the court.

Clerk Responsibilities

1. **Review Proof of Service:** The clerk of the court must review the proof of service filed with the court and determine whether the respondent has complied with the filing requirements in

MCR 3.719(D)(1). If the respondent has **not** complied with the filing requirements, the clerk must notify the local law enforcement agency identified in the order and the assigned judge of the respondent's failure to comply with the filing requirements. The clerk of the court must again notify the local law enforcement agency and the assigned judge when the respondent has complied with the filing requirements. MCR 3.719(D)(2).

- a. **Court Action:** If the respondent fails to comply with the filing requirements, the court must issue either a bench warrant or an order to show cause.
 - i. **Show Cause:** If issuing an order to show cause, the hearing must be scheduled within 5 days of the date the proof of service is filed with the court. The court may cancel the show cause if the respondent makes the required filings. If the respondent fails to appear for the show cause hearing, the court must issue a bench warrant. MCR 3.719(D)(2)(b).
 - ii. **Bench Warrant:** If issuing a bench warrant, a law enforcement officer may file an affidavit requesting that the court issue a search warrant to search the location or locations where the firearm(s) or concealed pistol license is believed to be and to seize any firearm(s) or concealed pistol license discovered during the search. The law enforcement officer's affidavit may include affirmative allegations contained in the complaint. If the affidavit establishes probable cause to believe the location or locations to be searched are places where the firearm(s) or concealed pistol license is believed to be, the court must issue the search warrant.

The court may recall the bench warrant if the respondent makes the required filings. MCR 3.719(D)(2)(b).

2. **Additional Responsibilities:** The clerk of the court that issues an ERPO must also do all of the following immediately after issuance and without requiring a proof of service on the respondent. MCL 691.1811
 - a. Provide a true copy of the order to the law enforcement agency designated under MCL 691.1809(1)(g).
 - b. Provide the petitioner with at least two true copies of the order.
 - c. If the respondent is identified in the complaint as an individual described in MCL 691.1805(5), notify the individual's employer, if known, of the existence of the order.
 - d. Notify the Michigan State Police and the clerk of the respondent's county of residence of the ERPO for the purposes of performing their duties under MCL 28.421 to MCL 28.435.
 - e. Inform the petitioner that the petitioner may take a true copy of the order to the law enforcement agency designated under MCL 691.1809(1)(g) to be immediately

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provided to the FBI and, unless a local entering authority is designated under MCL 691.1809(1)(h), into LEIN.

The clerk shall also immediately notify the law enforcement agency designated under MCL 691.1809(1)(g) if any of the following occur.

- a. The clerk receives proof that the respondent has been served.
- b. The order is rescinded, modified, or extended.
- c. The order expires without being extended.

Law Enforcement Responsibilities

1. **Required Action:** Upon receiving a true copy of the ERPO, the law enforcement agency designated in the order shall immediately, and without requiring proof of service, do both of the following. MCL 691.1815(1).
 - a. **LEIN Entry:** Unless a local entering authority is designated under MCL 691.1809(1)(h), enter the ERPO into LEIN as provided by the C.J.I.S. Policy Council Act.
 - b. **FBI Reporting:** Report the entry of the ERPO to the Criminal Justice Information Services Division of the FBI for purposes of the national crime information center.

The law enforcement agency must also enter information into LEIN and report to the FBI regarding the ERPO being served, rescinded, modified, extended, or expired. MCL 691.1815(2).

2. **Service:** If an ERPO has not been served on the respondent, a law enforcement agency or officer responding to a call alleging a violation of the ERPO shall serve the respondent with a true copy of the ERPO or advise the respondent of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the respondent may obtain a copy of the order. MCL 691.1815(3).

Subject to the compliance section below, the law enforcement officer shall enforce the order and immediately enter or cause to be entered into LEIN and report to the FBI that the respondent has actual notice of the order. *Id.*

- a. **Compliance:** Under these circumstances, the law enforcement officer must give the respondent an opportunity to comply with the ERPO before the law enforcement officer makes a custodial arrest for violating the order. The failure by the respondent to comply with the order is grounds for an immediate custodial arrest. This does not preclude an arrest under MCL 764.15 or MCL 764.15a. MCL 691.1815(4).

3. **Seizure:** The law enforcement agency ordered to seize a firearm under an ERPO shall do all of the following: (1) seize the firearm identified in the ERPO from any place or from any individual who has possession or control of the firearm and (2) seize any other firearms discovered that are owned by or in the possession or control of the respondent or if allowed under other applicable law. MCL 691.1815(5).
 - a. **Tabulation:** A law enforcement officer who seizes a firearm under an ERPO shall give a tabulation of firearms seized as required by MCL 780.655 to the individual from whom the firearms were taken. If no individual is present at the time of seizure, the officer shall leave the tabulation in the place where the officer found the firearms that were seized. MCL 691.1815(6).
 - b. **Storage:** The law enforcement agency that seizes a firearm under an ERPO shall retain and store the firearm subject to order of the court that issued the ERPO. MCL 691.1815(7).
 - i. **Court Action:** In addition to any other order that the court determines appropriate, the court shall order that the respondent may reclaim the firearm when the ERPO expires or is terminated unless the respondent is prohibited for another reason from owning or possessing a firearm, or order that the firearm be transferred to a licensed firearm dealer if the respondent sells or transfers ownership of the firearm to the dealer. *Id.*

Subject to MCL 691.1815(7)-(8), if an individual other than the respondent claims title to a firearm seized under an ERPO, the firearm must be returned to the claimant if the court determines that the claimant is the lawful owner. MCL 691.1815(11).

Before allowing the respondent to reclaim a firearm and to determine whether the respondent is prohibited from owning or possessing a firearm for another reason, the law enforcement agency shall conduct a verification under LEIN and the national instant criminal background check system in the same manner as required under section 5b(6) of 1927 PA 372, MCL 28.425B.

A law enforcement agency from whom a respondent reclaims a firearm under MCL 691.1815(7) shall enter into LEIN and notify the FBI that the court has ordered the firearm returned on expiration of the ERPO. MCL 691.1815(8).

If the respondent fails to reclaim a firearm within 90 days after the ERPO expires or is terminated, the law enforcement agency storing the firearm shall proceed as for a firearm subject to disposal under MCL 750.239 and MCL 750.239a, or follow the procedures for property under MCL 434.21 to MCL 434.29. MCL 691.1815(10).

4. **Failure to File:** If the law enforcement agency is notified by the clerk of the court that the respondent has not complied with the filing requirements of MCR 3.719(A)(1), the local law enforcement agency must make a good-faith effort to determine whether there is evidence

that the respondent has failed to surrender a firearm or concealed pistol license in the respondent's possession or control as required. MCL 691.1810(3).

Motions to Modify or Rescind an ERPO

1. **Petitioner:** The petitioner may file a motion to modify or terminate the ERPO and request a hearing at any time after the ERPO is issued. MCR 3.720(A)(1)(a). There are no motion fees.
2. **Respondent:**
 - a. **Original Order:** The respondent may file one motion to modify or terminate an ERPO during the first six months that the order is in effect and one motion during the second six months that the order is in effect. MCR 3.720(A)(1)(b).
 - b. **Extended Order:** If the ERPO is extended under MCR 3.720(B), the respondent may file one motion to modify or terminate the order during the first six months that the extended order is in effect, and one motion during the second six months that the extended order is in effect. *Id.*
 - c. **Additional Motions:** If the respondent files more than one motion during these times, the court must review the motion before a hearing is held and may summarily dismiss the motion without a response from the petitioner and without a hearing. *Id.*
3. **Burden and Legal Standard:** The moving party carries the burden and must prove by a preponderance of the evidence that the respondent no longer poses a risk to seriously physically injure another individual or the respondent by possessing a firearm. MCR 3.720(A)(1)(c).
4. **Service:** The nonmoving party must be served, as provided in MCR 2.107 at the mailing address or addresses provided to the court, the motion to modify or terminate and the notice of hearing at least 7 days before the hearing date. MCR 3.720(A)(2).
 - a. **Petitioner's Motion:** The petitioner must serve the petitioner's motion on the respondent.
 - b. **Respondent's Motion:** The clerk of the court must serve the respondent's motion on the petitioner due to the confidential nature of the petitioner's address.⁸
5. **Scheduling:** The court must schedule and hold a hearing on a motion to modify or terminate an ERPO within 14 days of the filing of the motion. MCR 3.720(A)(3).

⁸ Unless the petitioner electronically filed the case under MCR 1.109(G) and the respondent has registered with the electronic-filing system. In that instance, the respondent must serve the petitioner electronically at the petitioner's registered email address.

6. **Notice of Modification/Termination:** If an ERPO is modified or terminated, the clerk must immediately notify the law enforcement agency specified in the order of the change. A modified or terminated order must be served on the respondent as provided in MCR 2.107.

SCAO Forms

INST CC 460, Instructions for Motion to Modify, Terminate, or Extend Extreme Risk Protection Order: These are instructions for how to file a motion to modify, terminate, or extend an ERPO.

CC 460, Motion to Modify, Rescind, or Extend Extreme Risk Protection Order: This form may be used by either the petitioner or respondent to motion the court to modify, rescind, or extend the ERPO.

CC 461, Order on Motion to Modify, Terminate, or Extend Extreme Risk Protection Order: This is an order the court may enter when ruling on a motion to modify, terminate, or extend an ERPO.

ERPO Extensions

1. **Motion:** Upon motion by the petitioner or the court's own motion, the court may issue an extended ERPO that is effective for one year after the expiration of the preceding order. There are no motion fees.
 - a. **Service:** The respondent must be served the motion to extend the order and the notice of hearing at least 7 days before the hearing date as provided in MCR 2.107 at the mailing address or addresses provided to the court. Failure to timely file a motion to extend the effectiveness of an ERPO does not preclude the petitioner from commencing a new ERPO action regarding the same respondent, as provided in MCR 3.716.
 - i. **Petitioner's Motion:** The petitioner must serve the petitioner's motion on the respondent.
 - ii. **Court's Own Motion:** The clerk of the court must serve both the petitioner and the respondent if upon the court's own motion.
 - b. **Legal Standard:** The court must only issue the extended order under MCR 3.720(B)(1) if the preponderance of the evidence shows that the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation. MCR 3.720(B)(1)(b).

2. ***Automatic Extensions:*** If the court or a jury finds that the respondent has refused or failed to comply with an ERPO, the court that issued the order must issue an extended ERPO effective for one year after the expiration of the preceding order. MCR 3.720(B)(2).
3. ***Minors and Legally Incapacitated Individuals:*** Petitioners or respondents who are minors or legally incapacitated individuals must proceed through a next friend, as provided in MCR 3.716(G).
4. ***Notice of Extension:*** If the court issues an extended ERPO, it must enter an amended order. The clerk must immediately notify the law enforcement agency specified in the order if the court enters an amended order. The petitioner must serve an amended order on the respondent as provided in MCR 2.107. MCR 3.720(B)(3).

ERPO Violations

1. ***Contempt of Court:*** If the respondent violates the ERPO, the prosecuting attorney for the county in which the order was issued or a law enforcement officer may file a motion, supported by appropriate affidavit, to have the respondent found in contempt. There is no fee for such a motion. If the motion and affidavit establish probable cause for finding contempt, the court must either:
 - a. **Show Cause:** Order the respondent to appear at a specified time to answer the contempt charge. The hearing must be held within 5 days. The prosecuting attorney or law enforcement officer must serve the motion to show cause and the order on the respondent and petitioner as provided in MCR 2.107; or
 - b. **Bench Warrant:** Issue a bench warrant for the arrest of the respondent.
2. ***Search Warrant:*** If the violation alleges that the respondent has a firearm or concealed pistol license in the respondent's possession or control, a law enforcement officer or prosecuting attorney may also file an affidavit requesting that the court issue a search warrant to search the location or locations where the firearm(s) or concealed pistol license is believe to be and to seize any firearm(s) or concealed pistol license discovered during the search. The law enforcement officer's affidavit may include affirmative allegations contained in the complaint. If the affidavit establishes probable cause to believe the location or locations to be searched are places where the firearm(s) or concealed pistol license is believe to be, the court must issue the search warrant. MCR 3.721(C).
3. ***Arraignment:*** At the respondent's first appearance before the court for arraignment on a contempt charge, the court must advise the respondent:
 - a. Of the alleged violation;
 - b. Of the right to contest the charge at a contempt hearing; and

- c. That they are entitled to a lawyer's assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court, or the local funding unit's appointing authority if the local funding unit has determined that it will provide representation to respondents alleged to have violated an ERPO, will appoint a lawyer at public expense if the individual wants one and is financial unable to retain one

The court must also appoint a lawyer or refer the matter to the appointing authority (if requested and appropriate), set a reasonable bond pending a hearing, and take a guilty plea or schedule a hearing.

4. **Guilty Pleas:** The respondent may plead guilty to the violation, but the court must first advise the respondent:
 - a. That by pleading guilty they are giving up their right to a contested hearing, and if the respondent is proceeding without legal representation, the right to a lawyer's assistance;
 - b. Of the maximum possible jail sentence for the violation; and
 - c. That if they plead guilty to violating the ERPO, the court will automatically extend the duration of the ERPO for one year after the expiration of the preceding order.

The court must also ascertain that the plea is understandingly, voluntarily, and knowingly made; and establish factual support for a finding that the respondent is guilty of the alleged violation. MCR 3.721(E).

5. **Hearings**

- a. **Scheduling:** Set a date for the hearing at the earliest practicable time. If the respondent is in custody for an alleged ERPO violation, the hearing must be held within 72 hours after arrest, unless extended by the court on the motion of the respondent or prosecuting attorney.

If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecutor, the court may postpone the hearing for the outcome of that prosecution. MCR 3.721(F)(1)(c).

- b. **Notification:** The court must notify the prosecuting attorney, the petitioner and petitioner's attorney, if any, and the law enforcement officer that filed the motion, if applicable, of the contempt proceeding and direct the party to appear at the hearing and give evidence on the charge of contempt. MCR 3.721(F)(2)-(3).

c. **Conduct of Hearing**

- i. The prosecuting attorney must prosecute the proceeding.

- ii. There is no right to a jury trial.
- iii. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses.
- iv. The rules of evidence apply. The prosecutor carries the burden of proof.
- v. Upon the conclusion of the hearing, the court must find facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment.
- vi. The court must state its findings and conclusion on the record or in a written opinion made a part of the record.
- vii. If the respondent is found in contempt, the court may impose sanctions as provided by MCL 600.1701 *et seq.* MCR 3.721(H).

SCAO Forms

CC 462, Motion to Show Cause for Violating Extreme Risk Protection Order: This form is used for filing a motion for the respondent to answer a contempt of court charge.

CC 463, Order Regarding Show Cause for Violating Extreme Risk Protection Order: This form is used to order the respondent to appear for a show cause hearing, or to order a bench warrant be issued.

CC 464, Order After Hearing on Show Cause for Violating Extreme Risk Protection Order: This form is used to enter an order following a hearing for violating an ERPO.

6. **Criminal Penalties:** An individual who refuses or fails to comply with an ERPO is guilty and subject to the penalties as follows, which may be imposed in addition to a penalty imposed for another criminal offense arising from the same conduct. MCL 691.1819(1).
- a. **First Offense:** Felony punishable by a maximum of 1 year imprisonment and a \$1,000 fine. MCL 691.1819(1)(a).
 - b. **Second Offense:** Felony punishable by a maximum of 4 years and a \$2,000 fine. MCL 691.1819(1)(b).
 - c. **Third or Subsequent Offense:** Felony punishable by a maximum of 5 years and a \$20,000 fine. MCL 691.1819(1)(c).

List of Licensed Firearm Dealers

Each circuit court shall prepare a list of trusted⁹ licensed firearm dealers located in the jurisdiction of the circuit court. In preparing this list, the court may obtain [a list of currently licensed firearm dealers in the court's jurisdiction](#) from the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives. MCL 691.1818.

Additional Criminal Penalties

1. ***False Statements—Petitioner:*** A petitioner who knowingly and intentionally makes a false statement to the court in the complaint or in support of the complaint for an ERPO is guilty and subject to the following penalties. MCL 691.1819(4).
 - a. **First Offense:** Misdemeanor punishable by a maximum of 93 days imprisonment and a \$500 fine. MCL 691.1819(4)(a).
 - b. **Second Offense:** Felony punishable by a maximum of 4 years and a \$2,000 fine. MCL 691.1819(4)(b).
 - c. **Third or Subsequent Offense:** Felony punishable by a maximum of 5 years and a \$20,000 fine. MCL 691.1819(4)(c).
2. ***Knowingly Place Firearm—Possession of Respondent:*** An individual who knowingly places a firearm in the possession of an individual who is restrained under an extreme risk protection order is guilty of a felony punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

Annual Report

1. ***Required Actions:*** The State Court Administrative Office, acting at the direction of the Michigan Supreme Court, shall prepare an annual report on and relating to the application of the ERPO Act by the courts. The report must be published annually and be provided to the legislature and the legislative committees with jurisdiction over judicial matters. MCL 691.1821(1).

The data used to prepare the report must be made available annually to individuals, including, but not limited to, the Institute for Firearm Injury and other researchers affiliated with institutions of higher education who are conducting academic or policy research, including, but not limited to, any disproportionate or discriminatory impact of the ERPO Act on members of protected classes. MCL 691.1821(4).

⁹ The Extreme Risk Protection Order Act does not define “trusted” or explain how such a determination should be made.

The report must contain the following information:

- a. **Numerical Data:** Information on the number of:
 - i. Actions filed for an ERPO
 - ii. Requests made for an ERPO to be issued without notice.
 - iii. ERPO's issued and denied.
 - iv. ERPO's issued and denied without notice.
 - v. ERPO's that are rescinded,
 - vi. ERPO's that are entered without notice that are rescinded.
 - vii. ERPO's that are renewed.

- b. ***New Criminal Offenses:*** To the extent ascertainable from available state court data, then number of individuals who are restrained under an ERPO who, within 30 days after entry of the order, are charged with a criminal offense. The report must identify the nature of the criminal offense, whether it was an offense for the violation of the ERPO, and the disposition or status of the offense.

- c. ***Petitioner Prosecutions:*** To the extent ascertainable from available state court data, the number of petitioners who were prosecuted for knowingly and intentionally making a false statement to the court in a complaint or in support of the complaint for an ERPO.

- d. ***Firearm and Ammunition Prosecution:*** To the extent ascertainable from available state court data, the number of individuals who were prosecuted for knowingly placing a firearm or ammunition in the possession of a restrained individual.

- e. ***Demographic Information:*** Demographic data regarding the individuals who are petitioners and respondents in actions for ERPO's.