



Extreme Risk Protection Orders—Red Flag Law **Contempt Proceedings for Violation of an Extreme Risk Protection Order**

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An action requesting that an **extreme risk protection order** be issued is an independent action initiated by filing a **complaint** with the family division of circuit court. An action under the Extreme Risk Protection Order Act (ERPO Act) may be initiated regardless of whether **respondent** owns or possesses a firearm. MCR 3.716(A)(1).

Initiating an action under the ERPO Act does not limit **petitioner’s** ability to initiate an action under MCL 600.2950 (domestic relations personal protection orders—domestic PPOs) or MCL 600.2950a (nondomestic PPOs).¹ MCL 691.1820(a). Nor does an action under the ERPO Act limit petitioner’s ability to initiate an action under MCL 330.1434 (petition asserting that a person requires mental health treatment). MCL 691.1820(b).

¹See the Michigan Judicial Institute’s *Domestic Violence Benchbook*, Chapter 5, for detailed information about personal protection orders (PPOs).

A. Enforcing Extreme Risk Protection Orders— MCR 3.721

- An ERPO is enforceable under MCL 691.1810(4)-(5) (compliance hearing/allegation that **respondent** under an ERPO has **possession or control** of a firearm or concealed pistol license), MCL 691.1815(4) (if respondent does not immediately comply when law enforcement responds after alleged violation of an ERPO), and MCL 691.1819 (criminal penalties for a respondent's refusal or failure to comply with an ERPO). MCR 3.721(A).

B. Motion To Show Cause—MCR 3.721(B)

- **Filing.** IF **respondent** violates the ERPO, the prosecuting attorney for the county in which the ERPO was issued or **law enforcement officer** **MAY** file a motion, supported by appropriate affidavit, to have respondent found in contempt.
 - ❑ There is **NO FEE** for bringing the motion.
 - ❑ IF the motion and affidavit establish probable cause for a finding of contempt, court **MUST EITHER**:
 - Order respondent to appear at a specified time to answer the contempt charge, **OR**
 - Issue a bench warrant for respondent's arrest. MCR 3.721(B)(1)(a)-(b).
- **Service.** Prosecuting attorney or law enforcement officer **MUST** serve the motion to show cause on respondent and **petitioner** as provided in MCR 2.107.
 - ❑ IF court issues an order to show cause, the hearing **MUST** be held within five days. MCR 3.721(B)(2).

C. Search Warrant—MCR 3.721(C)

- **Search warrant.** IF violation alleges that **respondent** has a firearm or concealed pistol license in respondent's possession or control, **law enforcement officer** or prosecuting attorney **MAY** file an affidavit requesting that court issue a search warrant to search the location(s) 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. MCR 3.721(C).

- Law enforcement officer's affidavit may include affirmative allegations appearing in the **complaint**.
- IF** affidavit establishes probable cause to believe the location(s) to be searched are places where the firearm(s) or concealed pistol license is believed to be, court **MUST** issue the search warrant.



D. Arraignment and Advice to Respondent— MCR 3.721 (D)

- Court **MUST** do the following at **respondent's FIRST APPEARANCE** before court for contempt:
 - Advise respondent:
 - Of the alleged violation, **AND**
 - Of respondent's right to contest the charge at a contempt hearing, **AND**
 - That respondent is entitled to a lawyer's assistance at the hearing,
 - AND IF** court determines it might sentence respondent to jail, that court² will appoint a lawyer at public expense if respondent wants one and is financially unable to retain one, **AND**
 - IF** requested and appropriate, appoint a lawyer or refer the matter to the appointing authority, **AND**
 - Set a reasonable bond pending a hearing of the alleged violation, **AND**
 - Take a guilty plea pursuant to MCR 3.721(E), **OR** schedule a hearing as provided in MCR 3.721(F). MCR 3.721(D)(1)-(4).



E. Guilty Pleas—MCR 3.721 (E)

- **Respondent MAY** plead guilty to the violation. Before accepting a guilty plea, court **MUST** speak directly to respondent and receive respondent's response, and:
 - Advise respondent:

²If the local funding unit has determined that it will provide representation to **respondents** alleged to have violated an ERPO, the local funding unit's appointing authority will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one. MCR 3.721(D)(1)(c).

- That by pleading guilty, respondent is giving up the right to a contested hearing, and if respondent is proceeding without legal representation, that respondent has the right to a lawyer's assistance as provided in MCR 3.721(D)(1)(c), **AND**
- Of the maximum possible jail sentence for the violation, **AND**
- That **IF** respondent pleads guilty to violating the ERPO, court will **AUTOMATICALLY EXTEND** the duration of the ERPO for one year after the expiration of the preceding ERPO, **AND**
- Ascertain that respondent's plea is understandingly, voluntarily, and knowingly made, **AND**
- Establish factual support for a finding that respondent is guilty of the alleged violation. MCR 3.721(E)(1)-(3).

F. Scheduling or Postponing Hearing—MCR 3.721(F)

- Following **respondent's** appearance or arraignment, court **MUST** do the following:
 - Set a hearing date at the earliest practicable time. MCR 3.721(F)(1).
 - Hearing for respondent in custody for an alleged violation of an ERPO **MUST** be held within **72 HOURS** after the arrest, **UNLESS** extended by court on motion of the arrested individual or prosecuting attorney.
 - Court **MUST** set a reasonable bond pending the hearing **UNLESS** court determines that release will not reasonably ensure the safety of respondent or any other individual(s). MCR 3.721(F)(1)(a).
 - **IF** respondent is released on bond pending the hearing, bond **MAY** include any condition specified in MCR 6.106(D) necessary to reasonably ensure the safety of respondent and other individuals, including continued compliance with the ERPO.
 - The release order **MUST** comply with MCL 765.6b. MCR 3.721(F)(1)(b).
 - **IF** alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecutor, court **MAY** postpone the hearing for the outcome of that prosecution. MCR 3.721(F)(1)(c).

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




G. Prosecution After Arrest—MCR 3.721(G)

- **IF** court holds a contempt hearing, the prosecuting attorney **MUST** prosecute the proceeding. MCR 3.721(G).



H. Violation Hearing—MCR 3.721(H)

- There is **NO** right to a jury trial. MCR 3.721(H)(1).
- **Respondent** has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. MCR 3.721(H)(2).
- Rules of evidence apply to both criminal and civil contempt proceedings. MCR 3.721(H)(3).
 - Criminal contempt.** Prosecuting attorney has the burden of proving respondent's guilt of criminal contempt **beyond a reasonable doubt**.
 - Civil contempt.** Prosecuting attorney has the burden of proving respondent's guilt of civil contempt by **clear and convincing evidence**.
- When the hearing concludes, court **MUST** make find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. MCR 3.721(H)(4).
 - Court **MUST** state its findings and conclusion on the record **OR** in a written opinion made a part of the record.
- **IF** respondent is found in contempt, court **MAY** impose sanctions as provided by MCL 600.1701 *et seq.* MCR 3.721(H)(5).



I. Appeals—MCR 3.722

- Except as provided in MCR 3.722, appeals involving an ERPO **MUST** comply with subchapter 7.200 (court rules applicable to Court of Appeals proceedings).
- **Petitioner** and **respondent** have an appeal of right from:
 - An order granting, denying, or continuing an ERPO after a hearing under MCR 3.718(D) (hearing when **complaint** does not request ex parte order, hearing at petitioner’s request following court’s denial of ex parte order, or hearing at respondent’s request following court’s issuance of ex parte or immediate emergency ex parte order). MCR 3.722(B)(1)(a).
 - An order granting or denying an extended ERPO after a hearing under MCR 3.720(B) (hearing for extension of ERPO). MCR 3.722(B)(1)(b).
- Appeals of all other orders are by leave to appeal. MCR 3.722(B)(2).
- Respondent has an appeal of right from a judgment of sentence for criminal contempt after a contested hearing. MCR 3.722(C).



J. Definitions—for purposes of MCR 3.716–MCR 3.722, and the Extreme Risk Protection Order Act, MCL 691.1801 *et seq.*

- **Complaint**—“for the purposes of [MCR 3.716 to MCR 3.722] only, means the act of petitioning the court to issue an [ERPO].³ Petitioning the court in this manner commences an independent action for an [ERPO] and is not considered a motion as defined in MCR 2.119.” MCR 3.715(1).
- **Dating relationship** is “a relationship that consists of frequent, intimate associations primarily characterized by the expectation of affectional involvement,” and “does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.” MCL 691.1803(b); MCR 3.715(2).
- **Existing action**—“an action in any court in which both **petitioner** and **respondent** are parties; existing action includes, but is not limited to, pending and completed domestic relations actions, and other actions for personal protection or [ERPOs].” MCR 3.715(3).

³“An individual seeking an [ERPO] is petitioning a court for relief.” MCR 3.715(1).

- **Extreme risk protection order**—“that term as defined in MCL 691.1803.” MCR 3.715(4). MCL 691.1803(c) provides that an ERPO is an order issued by a court under MCL 691.1807, which describes in detail the requirements and conditions necessary to support the issuance of an ERPO.
- **Family member, guardian, health care provider, and law enforcement officer**—“those terms as defined in MCL 691.1803.” MCR 3.715(5).
 - **Family member**—is an individual related to **respondent** as any of the following:
 - Parent.
 - Son or daughter.
 - Sibling.
 - Grandparent.
 - Grandchild.
 - Uncle or aunt.
 - First cousin. MCL 691.1803(d)(j)-(vi).
 - **Guardian**—means the term as it is defined in MCL 700.1104. MCL 691.1803(e). MCL 700.1104 defines guardian as “a person who has qualified as a guardian of a **minor** or a legally incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in [MCL 700.5205, MCL 700.5206, and MCL 700.5306],” and “does not include a guardian ad litem.” MCL 700.1104(n).
 - **Health care provider**—means any of the following:
 - Physician, physician’s assistant, nurse practitioner, or certified nurse specialist licensed under Michigan’s Public Health Code or licensed in another state.
 - A mental health professional as defined in MCL 330.1100b, or a mental health professional licensed in another state. MCL 691.1803(f)(j)-(i).
 - MCL 330.1100b(19) defines *mental health professional* as an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is one of the following: a physician, a psychologist, a registered professional nurse, a licensed master’s social worker, a licensed professional counselor, or a marriage and family

therapist qualified by relevant licensure or other statutory requirements.

- Law enforcement officer**—is a law enforcement officer as the term is defined in MCL 28.602. MCL 691.1803(h). MCL 28.602(f)(i)(A)-(MM) lists 39 employment descriptions considered to be law enforcement officers. MCL 28.602(f)(ii)(A)-(Z) lists 26 employment descriptions that do NOT qualify as law enforcement officers.
- **Law enforcement agency**—means any of the following:
 - A sheriff's department.
 - The department of state police.
 - A police department of a township, village, or incorporated city.
 - The public safety department of an institution of higher education created under or described in Const 1963, Art VIII.
 - The public safety department of a community or junior college.
 - The public safety department or office of a private college. MCL 691.1803(g)(i)-(vi).
- **Minor**—“a person under the age of 18.” MCR 3.715(6).
- **Petitioner**—“the party seeking an [ERPO]”; “the individual who requests an [ERPO] in an action under [MCL 691.1805].” MCR 3.715(7); MCL 691.1803(i).
- **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”; “does not require the individual to own the firearm.” MCL 691.1803(j); MCR 3.715(8).
- **Respondent**—“the party to be restrained by the [ERPO]”; “the individual against whom an [ERPO] is requested in an action under [MCL 691.1805]” MCR 3.715(9); MCL 691.1803(k).
- **Restrained individual** is “the individual against whom an [ERPO] has been issued and is in effect.” MCL 691.1803(l).
- **Serious emotional disturbance** “means a diagnosable mental, behavioral, or emotional disorder affecting a **minor** that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or

functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

- (a) A substance use disorder.
- (b) A developmental disorder.
- (c) 'V' codes in the Diagnostic and Statistical Manual of Mental Disorders." MCL 330.1100d(3).

- **Serious mental illness** "means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities"; "includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance," and "does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- (a) A substance use disorder.
- (b) A developmental disorder.
- (c) A 'V' code in the Diagnostic and Statistical Manual of Mental Disorders." MCL 330.1100d(4).

- **Serious misdemeanor** "means 1 or more of the following:
 - ❑ A violation of MCL 750.81, assault and battery, including domestic violence.
 - ❑ A violation of MCL 750.81a, assault; infliction of serious injury, including aggravated domestic violence.
 - ❑ A violation of MCL 780.81c, threatening a Department of Health and Human Services' employee with physical harm.
 - ❑ A violation of MCL 750.115, breaking and entering or illegal entry.
 - ❑ A violation of MCL 750.136b, fourth-degree child abuse.
 - ❑ A violation of MCL 750.145, contributing to the neglect or delinquency of a **minor**.

- A misdemeanor violation of MCL 750.145d, using the internet or a computer to make a prohibited communication.
- Beginning January 1, 2024, a violation of MCL 750.174a(2) or MCL 750.174a(3)(b), embezzlement from a vulnerable adult of an amount of less than \$200.
- Beginning January 1, 2024, a violation of MCL 750.174a(3)(a), embezzlement from a vulnerable adult of an amount of \$200 to \$1,000.
- A violation of MCL 750.233, intentionally aiming a firearm without malice.
- A violation of MCL 750.234, discharge of a firearm intentionally aimed at a person.
- A violation of MCL 750.235, discharge of an intentionally aimed firearm resulting in injury.
- A violation of MCL 750.335a, indecent exposure.
- A violation of MCL 750.411h, stalking.
- A violation of MCL 257.601b(2), injuring a worker in a work zone.
- Beginning January 1, 2024, a violation of MCL 257.601d(1), moving violation causing death.
- Beginning January 1, 2024, a violation of MCL 257.601d(2), moving violation causing serious impairment of a body function.
- A violation of MCL 257.617a, leaving the scene of a personal injury accident.
- A violation of MCL 257.625, operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual.
- Selling or furnishing alcoholic liquor to an individual less than 21 years of age in violation of MCL 436.1701, if the violation results in physical injury or death to any individual.
- A violation of MCL 324.80176(1) or MCL 324.80176(3), operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual.

- A violation of a local ordinance substantially corresponding to a violation enumerated in MCL 780.811(1)(a)(i)-(xxi).
 - A violation charged as a crime⁴ or serious misdemeanor enumerated in MCL 780.811(1)(a)(i)-(xxii) but subsequently reduced to or pleaded to as a misdemeanor. MCL 780.811(1)(a)(i)-(xxiii).
- **Spouse or intimate partner** means all of the following:
- Spouse.
 - Former spouse.
 - An individual with whom **petitioner** has had a child in common.
 - An individual residing or having resided in the same household as petitioner.
 - An individual with whom petitioner has or has had a dating relationship as that term is defined in MCL 600.2950. MCL 600.2950k(3)(a)-(e).

⁴*Crime* means a violation of a penal law of Michigan for which the offender, upon conviction, may be punished by imprisonment for more than one year or an offense expressly designated by law as a felony. MCL 780.752(1)(b); MCL 780.811(1)(a)(xxiii).

