

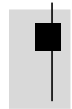


Extreme Risk Protection Orders—Red Flag Law **Orders: Content, Notice, and Motions to Modify, Terminate, or Extend**

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An action requesting that an **extreme risk protection order** (ERPO) 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 (complaint asserting that a person requires mental health treatment). MCL 691.1820(b).



A. Ex Parte Orders—MCR 3.718(A)

- Court **MUST** rule on **petitioner's** request for an ex parte **ERPO** within one business day of the filing date of the **complaint**. MCR 3.718(A)(1).
- Court **MUST** grant request for an ex parte order **IF** specific facts in a verified, written complaint clearly show that:
 - By a preponderance of the evidence after considering the factors in MCL 691.1807(1), “**respondent**^[2] can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm,” **AND**
 - Respondent “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**
 - “[T]here 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 will itself precipitate adverse action before an order can be issued.” MCR 3.718(A)(2)(a)-(b).
- Ex parte order expires one year after the date it was issued. MCR 3.718(A)(3).

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

²This document uses *respondent* in all places that refer to the individual against whom an order is sought and to the individual who is restrained by an ERPO already issued. *Respondent* and *restrained individual* are both terms used in some Red Flag Law provisions. This document limits its referral to *respondent* for the sake of clarity and consistency.

- **IF** an ex parte order is entered, the complaint and order **MUST** be served on respondent as set out in MCR 3.719(B). Failure to make service does NOT affect the validity or effectiveness of the ERPO. MCR 3.718(A)(4).
- **IF** court refuses to grant an ex parte order, it **MUST** state the reasons in writing **AND** it **MUST** advise petitioner of the right to request a hearing as provided in MCR 3.718(D). MCR 3.718(A)(5).
- **IF** petitioner does not request a hearing within 21 days of entry of the order, the order denying the complaint is final. MCR 3.718(A)(5).

B. Immediate Emergency Ex Parte Orders— MCR 3.718(B); MCL 691.1807(4)

- **Petitioner** who is **law enforcement officer** may make a verbal request by telephone that a judge or magistrate³ on duty within that jurisdiction⁴ immediately issue an emergency ex parte order under MCR 3.718(A):
 - **IF** officer is responding to a complaint that involves **respondent, AND**
 - Respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another person by possessing a firearm. MCR 3.718(B)(1); MCL 691.1807(4).
- Judge or magistrate **MUST** immediately rule on a verbal request made under MCR 3.718(B). MCR. 3.718(B)(2).
- **IF** court issues an immediate emergency ex parte order:⁵
 - Law enforcement officer who made the request **MUST** notify respondent of the ERPO and advise respondent where they can get a copy of the ERPO, **AND**

³The terms *judge* and *magistrate* are not defined in the ERPO Act. MCL 761.1(*l*) defines *magistrate* as “a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate[.]” The Legislature did not, in enacting the ERPO legislation, amend MCL 600.8511, which defines the authority of district court magistrates. Therefore, district court and municipal court judges may have the authority to issue an immediate emergency ERPO in response to law enforcement officer’s verbal request for an ERPO. However, district court magistrates likely do not have such authority. See the [SCAO Memorandum, Extreme Risk Protection Order Act — District & Municipal Courts](#), issued January 31, 2024.

⁴The circuit court in each county must file for approval with the State Court Administrative Office a plan to make a judge or magistrate on duty and available each day of the year to immediately review and rule on verbal requests for emergency ex parte ERPOs. MCR 3.718(B)(3).

⁵**IF** issuing court **IS NOT** the circuit court, issuing court **MUST** provide the circuit court with a copy of the petition. MCL 691.1807(4).

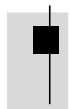
- Within one business day, officer **MUST** file a sworn written **complaint** detailing the facts and circumstances that were verbally presented to the judge or magistrate. MCR 3.718(B)(2)(a)-(b); MCL 691.1807(4).
- IF** officer does not file the complaint within one business day, court **MUST**:
 - Terminate the immediate emergency ex parte order, **AND**
 - Order that respondent, subject to the restrictions in MCL 691.1815, may reclaim any firearms that were seized, **AND**
 - Dismiss the case. MCR 3.718(B)(2)(c).

C. Immediate Surrender and Anticipatory Search Warrants—MCR 3.718(C); MCL 691.1807(8)

- **IF** court orders that **respondent's** firearm(s) be immediately surrendered, **law enforcement officer** serving the ERPO pursuant to MCR 3.719(B)(2) **MAY** file an affidavit requesting court to issue an anticipatory search warrant authorizing a **law enforcement agency** to do the following:
 - Search the location(s) where the firearm(s) or concealed pistol license is believed to be, **AND**
 - Seize any firearm(s) or concealed pistol license discovered during the search in compliance with MCL 780.651-MCL 780.659. MCR 3.718(C).
- Law enforcement officer's affidavit **MAY** include affirmative allegations found in the **complaint**. MCR 3.718(C).
- An anticipatory search warrant issued under MCR 3.718(C) is subject to and contingent on the failure or refusal of respondent, following service of the ERPO, to immediately comply and immediately surrender to law enforcement officer any firearm(s) or concealed pistol license in respondent's **possession or control**. MCR 3.718(C).
- Court **MUST** issue an anticipatory search warrant **IF** the affidavit establishes probable cause to believe that **IF** respondent refuses to immediately comply with the ERPO there is a fair probability that respondent's firearm(s) or concealed pistol license will be found in the location(s) to be searched. MCR 3.718(C).

D. Service of an Extreme Risk Protection Order—MCR 3.719(B)-(C); MCL 691.1813

- **IF** court ordered immediate surrender of **respondent's** firearms, **law enforcement officer MUST** personally serve respondent with the ERPO. MCR 3.719(B)(2); MCL 691.1813(2).
- **UNLESS** law enforcement officer was required to personally serve respondent with an ERPO, **petitioner MUST** serve the ERPO on respondent as provided in MCR 2.105(A) (in person, by registered or certified mail, return receipt requested, by delivery to respondent's last known address, or by any other means allowed under Michigan court rules). MCR 3.719(B)(1); MCL 691.1813(1).
 - **IF** respondent is a **minor** and the whereabouts of the minor's parent(s), **guardian**, or custodian are known, petitioner **MUST**, in the same manner, serve the ERPO on the minor's parent(s), guardian, or custodian. MCR 3.719(B)(1).
 - On an appropriate showing, court **MAY** allow service in another manner as provided in MCR 2.105(J). MCR 3.719(B)(1).
 - Failure to serve the ERPO **DOES NOT** affect its validity or effectiveness. MCR 3.719(B)(1).
- Proof of service **MUST** be filed with court within one business day after service. MCR 3.719(B)(3). See also MCL 691.1813(3) (indicating that proof of service is required but giving no time specification).
- Proof of service **MUST** be filed with the clerk of the issuing court **AND** with petitioner. MCL 691.1813(3).
- **IF** law enforcement officer gave oral notice of the ERPO to respondent as described in MCL 691.1813(3), law enforcement officer **MUST** file with court proof of oral notification within one business day after the notification. MCR 3.719(C). See also MCL 691.1813(3) (indicating that proof of service is required but giving no time specification).
- **IF** respondent has **NOT** been served, law enforcement officer who knows that the ERPO exists **MAY** inform respondent of the ERPO by **EITHER**
 - Serving respondent with a true copy of the ERPO, **OR**
 - Advising respondent that the ERPO exists, the specific conduct enjoined, the penalties for violating the ERPO, and where respondent may get a copy of the ERPO. MCL 691.1813(2).



E. Notice to Respondent at the Time of an Alleged Violation of the ERPO—MCL 691.1815(3)-(4)

■ **Response to alleged violation. Law enforcement agency or officer responding to a call alleging an ERPO violation MUST:**

- IF **respondent** has not been served with the ERPO, serve respondent with a true copy **OR**
- IF respondent has not been served with the ERPO, verbally advise respondent of the following:
 - Existence of the ERPO.
 - Specific conduct enjoined.
 - Penalties for violating the ERPO.
 - Where respondent may get a copy of the ERPO. MCL 691.1815(3).
- Give respondent an opportunity to comply with the ERPO before making a custodial arrest for violation of the ERPO. MCL 691.1815(4).
- Respondent's failure to comply with the ERPO is grounds for an immediate custodial arrest. MCL 691.1815(4).
 - An arrest under MCL 691.1815(4) does not preclude an arrest under MCL 764.15 (circumstances under which a peace officer may make a warrantless arrest) or MCL 764.15a (warrantless arrest permitted in cases of domestic violence).

■ **Respondent's failure to comply with the ERPO after notice. IF respondent does NOT comply with the ERPO after having been advised of its existence, law enforcement officer MUST**

- Enforce the ERPO and immediately enter or cause to be entered into the LEIN (law enforcement information network) and reported to the FBI that respondent has actual notice of the ERPO. MCL 691.1815(3).
- Comply with MCL 691.1813(3), which requires law enforcement officer who gives oral notice of the ERPO to file proof of service or proof of oral notice with the court clerk that issued the ERPO and **petitioner**. MCL 691.1815(3).

E. Form, Scope, and Content of Orders—
MCR 3.719; MCL 691.1809

The following provisions **MUST** be included in an ERPO order. MCR 3.719; MCL 691.1809.

- **Respondent's responsibilities.** MCR 3.719(A)(1); MCL 691.1810(1).

- Respondent **MUST** complete the filing requirements listed in MCR 3.719(D)(1) within one business day after respondent receives a copy of the ERPO or has received actual notice of the ERPO.
- Failure to comply with the filing requirements prescribed in MCR 3.719(D)(1) **WILL RESULT** in the issuance of either a warrant or an order to show cause why respondent should not be held in contempt.
- **Prohibition against owning/possessing firearm(s).** MCR 3.719(A)(2); MCL 691.1809(1)(a).
 - Respondent **MUST NOT** purchase or possess a firearm.
 - IF** respondent has been issued a license under MCL 28.422 and has not used the license and the license is not yet void, respondent **MUST NOT** use it **AND MUST** surrender it to the **law enforcement agency** designated under MCL 691.1809(1)(g).
- **Prohibition against acquiring/possessing a concealed pistol license.** MCR 3.719(A)(3); MCL 691.1809(1)(b).
 - Respondent **MUST NOT** apply for a concealed pistol license.
 - IF** respondent has been issued a license to carry a concealed pistol, the license will be suspended or revoked under MCL 28.428 once the ERPO is entered into the LEIN.
 - Respondent **MUST** surrender the license to carry a concealed pistol as required by MCL 28.428.
- **Surrender of firearm(s).** MCR 3.719(A)(4); MCL 691.1809(1)(c); MCL 691.1809(1)(h); MCL 691.1813(2).
 - Respondent **MUST, WITHIN 24 HOURS**, or at court's discretion immediately after being served with the ERPO, surrender any firearms in respondent's **possession or control** to the law enforcement agency designated under MCL 691.1809(1)(g), **OR** if court allows, to a licensed firearm dealer on the list prepared under MCL 691.1818.
 - IF** court orders respondent to immediately surrender respondent's firearm(s), the ERPO **MUST** include a statement that the law enforcement agency designated under MCL 691.1809(1)(g) **MUST** proceed to seize respondent's firearm(s) after respondent is served with or receives actual notice of the ERPO, **AND** after giving respondent an opportunity to surrender respondent's firearm(s).
 - UNLESS** **petitioner** is **law enforcement officer** or **health care provider**, there is a presumption that respondent will have 24 hours to surrender respondent's firearm(s).

- **Description of any firearm(s).** MCR 3.719(A)(5); MCL 691.1809(1)(d).
 - ❑ IF petitioner has identified any firearm(s) in the **complaint**, the ERPO **MUST** contain a specific description of the firearm(s) to be surrendered or seized.
- **Hearing MAY be requested.** MCR 3.719(A)(6); MCL 691.1807(3); MCL 691.1809(1)(e).
 - ❑ IF the ERPO was issued **WITHOUT** written or oral notice to respondent, it **MUST** include a statement that respondent may request and attend a hearing to modify or rescind the ERPO as provided in MCR 3.718(D)(3).
- **Motion MAY be filed.** MCR 3.719(A)(7); MCL 691.1809(1)(f).
 - ❑ Statement that respondent **MAY** file a motion to modify or rescind the ERPO as permitted under MCL 691.1801 *et seq.*, **AND** that motion forms and filing instructions are available from the clerk of the court.
- **Designation of law enforcement agency.** MCR 3.719(A)(8); MCL 691.1809(1)(g).
 - ❑ Law enforcement agency responsible for forwarding the ERPO to the FBI under MCL 691.1815(1) **MUST** be designated.
 - ❑ Designated law enforcement agency **MUST** be an agency within whose jurisdiction respondent resides.
- **LEIN entry.** MCR 3.719(A)(9); MCL 691.1809(1)(h).
 - ❑ Directions to local entering authority or law enforcement agency designated under MCL 691.1809(1)(g) to enter the ERPO into the LEIN.
- **Consequences of violating an ERPO.** MCR 3.719(A)(10); MCL 691.1809(1)(i).
 - ❑ Statement that violating the ERPO will subject respondent to the following:
 - ❑ Immediate arrest.
 - ❑ Contempt of court.
 - ❑ Automatic extension of the ERPO.
 - ❑ Criminal penalties, including imprisonment for up to one year for an initial violation and up to five years for a subsequent violation.
- **Right to an attorney.** MCR 3.719(A)(11); MCL 691.1809(1)(j).

- Statement that respondent has the right to seek an attorney's advice and be represented by an attorney.
- **Expiration date.** MCR 3.719(A)(12); MCL 691.1809(1)(k).
- Statement that the ERPO expires one year after the date it was issued.



G. Respondent's Responsibilities—MCR 3.719(D); MCL 691.1810(1)

An ERPO must include a list of **respondent's** responsibilities that arise when respondent is served with or given notice of an ERPO against respondent.

- Respondent **MUST** do one of the following not later than 24 hours (MCR 3.719(D)(1))/one business day (MCL 691.1810) after receiving a copy of the ERPO or having received actual notice of the ERPO. MCR 3.719(D)(1)(a)-(b); MCL 691.1810(1)(a)-(b).
 - EITHER** file one or more documents or other evidence with court that issued the ERPO verifying that **ALL** of the following are true, MCR 3.719(D)(1)(a)(i)-(iii); MCL 691.1810(1)(a):
 - All firearms previously in 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 court, to a licensed firearm dealer pursuant to the list prepared under MCL 691.1818, **AND**
 - Respondent surrendered to the county clerk any concealed pistol license as required by the ERPO and MCL 28.428, **AND**
 - At the time of the required verification, respondent does **NOT** have possession or control of any firearm(s) or a concealed pistol license.
 - OR** file one or more documents or other evidence with court that issued the extreme risk protection order verifying that **BOTH** of the following are true, MCR 3.719(D)(1)(b)(i)-(ii); MCL 691.1810(1)(b)(i)-(ii):
 - At the time the ERPO was issued, respondent did not have a firearm or concealed pistol license in respondent's possession or control, **AND**
 - At the time of the verification, respondent does **NOT** have a firearm or concealed pistol license in respondent's possession or control.

- **IF** court is closed when 24-hour/one business day period for verification expires, respondent **MUST** complete the required filing not later than the next business day. MCR 3.719(D)(1).
- **Schedule compliance hearing.** MCL 691.1810(4).
 - Court **MUST** schedule a compliance hearing to be held not later than five days after an ERPO is served on respondent or after respondent receives actual notice of the ERPO. MCL 691.1810(4).
 - **IF** respondent has complied with the filing requirements of MCL 691.1810(1)(a) or MCL 691.1810(1)(b) before the scheduled compliance hearing, court **MAY** cancel the hearing. MCL 691.1810(4).
 - **IF** respondent fails to comply with the filing requirements or fails to appear at the compliance hearing, court **MUST** issue a bench warrant **AND** issue a search warrant under MCL 780.651-MCL 780.659 to seize any firearms **AND MAY** hold respondent in contempt.
- **Respondent's failure to file as required.** MCR 3.719(D)(2).
 - Court clerk **MUST** review the proof of service filed with court⁶ and determine whether respondent has complied with the filing requirements of MCR 3.719(D)(1).
 - **IF** respondent **HAS NOT** complied with the filing requirements in MCR 3.719(D)(1) and MCL 691.1810(1) within 24 hours/one business day of service or actual notice of the ERPO, the clerk and court **MUST** take the following actions:
 - **Court clerk's duties.** MCR 3.719(D)(2)(a).
 - Court clerk **MUST** notify the local law enforcement agency designated in MCL 691.1809(1)(g) and the assigned judge of respondent's failure to comply with the filing requirements. MCL 691.1810(2).⁷
 - **IF** notice of respondent's failure to comply is provided to the local law enforcement agency, the court clerk **MUST AGAIN** notify the local law enforcement agency and assigned judge when respondent has complied with the filing requirements.
 - **Court's duties.** MCR 3.719(D)(2)(b).

⁶Note: No proof of service requirements appear in MCR 3.719(D) with regard to a respondent's duty to file evidence of surrender/seizure of firearm(s)/concealed pistol license.

⁷A local law enforcement agency that receives a notification under MCL 691.1810(2) **MUST** make a good-faith effort to determine whether there is evidence that respondent has failed to surrender a firearm or concealed pistol license in respondent's possession or control as required. MCL 691.1810(3).

- ❑ Court **MUST** issue **EITHER** a bench warrant **OR** an order to show cause to initiate contempt proceedings under MCR 3.721.
 - **Order to show cause.** MCR 3.719(D)(2)(b).
 - ❑ **IF** court issues an order to show cause, the hearing **MUST** be scheduled within five days of the date the proof of service is filed.
 - ❑ Court **MAY** recall the bench warrant **OR** cancel the order to show cause **IF** respondent files the information required by MCR 3.719(D)(1); MCL 691.1810(1).
 - ❑ **IF** respondent fails to appear for the show cause hearing, court **MUST** issue a bench warrant.
 - **Bench warrant.** MCR 3.719(D)(2)(b).
 - ❑ **IF** court issues a bench warrant under MCR 3.719(D)(2)(b), **law enforcement officer MAY** file an affidavit requesting court to issue a 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.
 - ❑ Law enforcement officer's affidavit may include affirmative allegations contained in the **complaint**.
 - ❑ **IF** the affidavit establishes probable cause to believe the location(s) to be searched are places where the firearm(s) or a concealed pistol license is believed to be, court **MUST** issue a search warrant.

H. Court Clerk's Responsibilities—MCR 3.719(E); MCL 691.1811

The court clerk that issues an ERPO **MUST** complete the actions identified in MCL 691.1811. MCR 3.719(E).

- ❑ Court clerk that issues an ERPO **MUST** do **ALL** of the following **IMMEDIATELY** after issuing the ERPO and without requiring proof of service on **respondent**. MCL 691.1811(1).
 - Provide the **law enforcement agency** named in MCL 691.1809(1)(g) with a true copy of the ERPO. MCL 691.1811(1)(a).

- Provide at least two true copies of the ERPO to **petitioner**. MCL 691.1811(1)(b).
- **IF** respondent is identified in the complaint as an individual employed as described in MCL 691.1805(5) (list of individuals required or authorized to carry a firearm under certain circumstances), notify respondent's employer, if known, of the existence of the ERPO.
 - The intent of the Legislature is that respondent's employer work with respondent's union or bargaining representative to avoid having respondent lose employment or compensation and benefits while the ERPO is in effect. MCL 691.1811(1)(c).
- Notify the department of state police and the clerk in the county where respondent resides of the existence of the ERPO for purposes of performing their duties under MCL 28.421-MCL 28.435. MCL 691.1811(1)(d).
- Inform petitioner that petitioner may take a true copy of the ERPO to the law enforcement agency designated under MCL 691.1809(1)(g) to be immediately provided to the FBI and, unless a local entering authority is specified under MCL 691.1809(1)(h), into the LEIN. MCL 691.1811(1)(e).
 - A local entering authority designated under MCL 691.1809(1)(h) **MUST** enter the ERPO into the LEIN. MCL 691.1811(3).
- Clerk of the court that issued the ERPO **MUST** immediately notify the law enforcement agency designated under MCL 691.1809(1)(g) **IF** any of the following occur:
 - Clerk receives proof that respondent has been served. MCL 691.1811(2)(a).
 - Order is rescinded, modified, or extended. MCL 691.1811(2)(b).
 - Order expires without being extended. MCL 691.1811(2)(c).

I. Respondent's Refusal or Failure To Comply— MCL 691.1819

- An individual who refuses or fails to comply with an ERPO is guilty of a felony and subject to the penalties as described in MCL 691.1819(1):

- FIRST OFFENSE** is a felony punishable by not more than one year of imprisonment, or a fine of not more than \$1,000, or both. MCL 691.1819(1)(a).
- SECOND OFFENSE** is a felony punishable by not more than four years of imprisonment, or a fine of not more than \$2,000, or both. MCL 691.1819(1)(b).
- THIRD or SUBSEQUENT OFFENSE** is a felony punishable by not more than five years of imprisonment, or a fine of not more than \$20,000, or both. MCL 691.1819(1)(c).
- A penalty described in MCL 691.1819(1)(a)-(c) “may be imposed in addition to a penalty imposed for another criminal offense arising from the same conduct.” MCL 691.1819(1).
- IF court or a jury finds that **respondent** has refused or failed to comply with an ERPO, court that issued the ERPO **MUST** issue an extended ERPO effective for a period of one year after expiration of the preceding ERPO. MCL 691.1819(2).
- Court may enforce an ERPO by charging respondent with contempt of court under MCL 600.1701-MCL 600.1745. MCL 691.1819(3). Contempt of court proceedings resulting from respondent’s failure or refusal to comply with an ERPO are discussed in a separate QRM.

J. Modification or Termination of an Order— MCR 3.720; MCL 691.1807(5)-(6)

- **Number and timing of motions for modification or termination.** MCR 3.720(A)(1)(a)-(b); MCL 691.1807(5).
 - Petitioner** **MAY** file a motion to modify or terminate an ERPO **AND** request a hearing at any time after the ERPO is issued.
 - Respondent** **MAY** file one motion⁸ to modify or terminate an ERPO during the first six months of the ERPO’s effect under MCL 691.1809(1)(k)—original one-year effective period of an ERPO.
 - Respondent **MAY** file one motion to modify or terminate an ERPO during the second six months of the ERPO’s effect under MCL 691.1809(1)(k)—original one-year effective period of an ERPO.

⁸In addition to requesting a hearing under MCR 3.718(D)(3) after issuance of an ex parte or immediate emergency ex parte ERPO.

- IF** respondent files more than one motion during these times, court **MUST** review the motion before a hearing is held **AND MAY** summarily dismiss the motion without petitioner's response and without a hearing.
- No fee.** There are **NO** motion fees for modifying or terminating an ERPO. MCR 3.720(D).
- **Number and timing of motions to modify or terminate an ERPO after extension of the ERPO.** MCR 3.720(A)(1)(b); MCR 3.720(B)(1)(a)-(b); MCL 691.1807(5); MCL 691.1817; MCL 691.1819(2).
 - IF an ERPO is extended under MCR 3.720(B) on petitioner's or court's own motion, respondent **MAY** file one motion to modify or terminate the ERPO during the first six months of the extended ERPO's effect.
 - IF** an ERPO is extended under MCR 3.720(B) on petitioner's or court's own motion, respondent **MAY** file one motion to modify or terminate the ERPO during the second six months of the extended ERPO's effect.
 - IF** respondent files more than one motion during these times, court **MUST** review the motion before a hearing is held **AND MAY** summarily dismiss the motion without petitioner's response and without a hearing.
 - No fee.** There are **NO** motion fees for modifying or terminating an ERPO after its extension. MCR 3.720(D).
- **Burden of proof.** Party moving for modification or termination **MUST** prove by a preponderance of the evidence that respondent no longer poses a risk of seriously physically injure another individual or respondent by possessing a firearm. MCR 3.720(A)(1)(c); MCL 691.1807(6).
- **Notice required.** Nonmoving party **MUST** be given notice of the motion. MCR 3.720(A)(2).
 - Nonmoving party **MUST** be served notice as provided in MCR 2.107 at the mailing address(es) provided to court of the motion to modify or terminate an ERPO at least seven days before the hearing date.
 - Petitioner **MUST** serve petitioner's motion on respondent.
 - Court clerk **MUST** serve respondent's motion on petitioner due to the confidential nature of petitioner's address, unless petitioner electronically filed the case under MCR 1.109(G) and respondent has registered with the electronic-filing system.
 - If petitioner filed electronically and respondent is registered with the electronic-filing system, respondent must serve

petitioner electronically at petitioner's registered email address.

- **Hearing within 14 days.** 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).
- **Notice to law enforcement agency.** **IF** an ERPO is modified or terminated, court clerk **MUST** immediately notify the law enforcement agency specified in the ERPO of the change. MCR 3.720(A)(4).
- **Notice to respondent.** **IF** an ERPO is modified or terminated, it **MUST** be served on respondent as provided in MCR 2.107. MCR 3.720(A)(4).



K. Possession or Control of Firearm(s)/Concealed Pistol License While Under Order— MCL 691.1810(5)

- **Affidavit alleging possession or control of firearm(s)/concealed pistol license.**
 - At any time while an ERPO is in effect, the prosecuting attorney in the county in which the ERPO was issued or **law enforcement officer** **MAY** file an affidavit with court that issued the ERPO alleging that **respondent** has a firearm(s) or concealed pistol license in respondent's possession or control.
 - IF** an affidavit alleging that respondent is in possession or control of a firearm(s) or concealed pistol permit is filed, court **MUST** determine whether probable cause exists to believe respondent has a firearm(s) or concealed pistol license in respondent's possession or control.
 - **IF** court finds probable cause to believe the allegation, court **MAY** issue an arrest warrant **OR** order a hearing.
 - **IF** court finds probable cause to believe the allegation, court **MUST** also issue a search warrant under MCL 780.651-MCL 780.659.
 - Search warrant **MUST** describe the firearm(s) or concealed pistol license believed to be in respondent's possession or control.
 - Search warrant **MUST** authorize a designated **law enforcement agency** to search location(s) where firearm(s)

or concealed pistol license is believed to be **AND** to seize any firearm(s) or license discovered by the search.

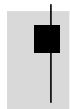
L. Knowingly Placing a Firearm in a Respondent's Possession—MCL 691.1819(5)

- An individual who **knowingly places a firearm in the possession of an individual restrained under an ERPO** is guilty of a **felony** punishable by imprisonment for not more than one year, or a fine of not more than \$1,000, or both. MCL 691.1819(5).

M. Extension of an Extreme Risk Protection Order—MCR 3.720(B); MCL 691.1817

- **Extension.** Court **MAY** issue an extended ERPO that is effective for one year after expiration of the preceding order. MCR 3.720(B)(1)(a); MCL 691.1817.
 - Petitioner** may file a motion for extension.
 - Court may make its own motion for extension.
- **No fee.** There are **NO** motion fees for extending an ERPO. MCR 3.720(D).
- **Service on respondent.** Respondent **MUST** be served the motion to extend the ERPO and the notice of hearing at least seven days before the hearing date as provided in MCR 2.107 at the mailing address(es) provided to court. MCR 3.720(B)(1)(a); MCL 691.1817.
 - Petitioner or court, as applicable, **MUST** give respondent written notice of a hearing on a motion to extend the ERPO.
 - Petitioner **MUST** serve petitioner's motion on respondent.
 - Clerk of court **MUST** serve both petitioner and respondent **IF** the motion for extension is court's own motion.
- **Untimely filing.** Failure to timely file a motion to extend the effectiveness of the ERPO does **NOT** preclude petitioner from **commencing a new ERPO action** regarding the same respondent, as provided in MCR 3.716. MCR 3.720(B)(1)(a).
- **Burden of proof.** Court **MUST ONLY** issue the extended ERPO **IF** the preponderance of the evidence shows that:
 - Respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another person by possessing a firearm, **AND**

- Respondent has engaged in an act(s) or made significant threats that are substantially supportive of the expectation. MCR 3.720(B)(1)(b); MCL 691.1817.
- **Automatic extensions of an ERPO's effectiveness.** MCR 3.720(B)(2).
 - IF** court or a jury finds that respondent has refused or failed to comply with an ERPO, court that issued the ERPO **MUST** issue an extended ERPO effective for one year after the expiration of the preceding ERPO.
- **Notice of extension.** MCR 3.720(B)(3).
 - IF** court issues an extended ERPO, it **MUST** enter an amended order.
 - IF** court issues an amended ERPO, the court clerk **MUST** immediately notify the **law enforcement agency** specified in the ERPO.
 - Petitioner **MUST** serve an amended ERPO on respondent as provided in MCR 2.107.
- **Minors and legally incapacitated individuals.** MCR 3.720(C).
 - Petitioners or respondents who are minors or legally incapacitated individuals **MUST** proceed through a next friend as provided in MCR 3.716(G).



N. Respondent May Reclaim Firearms After Expiration or Termination of an Order— MCR 3.720(A)(5); MCL 691.1815(7)

- **Reclaiming firearm(s).** **IF** an ERPO expires or is terminated, court **MUST** order, subject to the restrictions in MCL 691.1815, that **respondent** may reclaim any seized firearm(s).
 - Upon motion of respondent, court **MAY** also order, at any time, the transfer of respondent's firearm(s) seized by law enforcement under the ERPO to a licensed firearm dealer **IF** respondent sells or transfers ownership of the firearm(s) to the dealer. MCR 3.720(A)(5); MCL 691.1815(7).
 - Court's order that respondent may reclaim firearm(s) that were seized pursuant to an ERPO is in addition to any other order that court determines is appropriate. MCL 691.1815(7).
- **Limits on reclaiming firearm(s).** Respondent **MAY** reclaim a seized firearm when the ERPO expires or is terminated **UNLESS**

respondent is prohibited for another reason from owning or possessing a firearm. MCL 691.1815(7).

- ❑ Before allowing respondent to reclaim a firearm(s) and to determine whether respondent is prohibited from owning or possessing a firearm(s) for another reason, the **law enforcement agency** **MUST** conduct a verification under the LEIN and national instant criminal background check system in the same manner as required under MCL 28.425b(6).

- **Other individuals claiming title to a firearm(s).** MCL 691.1815(11). Subject to MCL 691.1815(7) or MCL 691.1815(8), **IF** any individual other than respondent claims title to a firearm seized under the ERPO Act, the firearm **MUST** be returned to the claimant **IF** court determines that the claimant is the lawful owner.

O. 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].⁹ 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).
- **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).

⁹“An individual seeking an [ERPO] is petitioning a court for relief.” MCR 3.715(1).

- ❑ **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)(i)-(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)(i)-(ii).
 - ❑ 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)(j)-(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 crime¹⁰ or serious misdemeanor enumerated in MCL 780.811(1)(a)(i)-(xxii) but subsequently

¹⁰*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).

reduced to or pleaded to as a misdemeanor. MCL 780.811(1)(a)(j)-(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).

