



## Extreme Risk Protection Orders: Q&A on Michigan's Red Flag Gun Laws

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Michigan's recently enacted Red Flag gun laws became effective in February 2024. One of the measures authorizes civil courts to issue temporary Extreme Risk Protection Orders (ERPOs), which legally prevent persons at risk of harming themselves or others from possessing or purchasing firearms.

The state's ERPO Act allows law enforcement personnel, family and household members, health care providers and others to file an ERPO petition asking that a judge review a potentially dangerous situation and, if necessary, act immediately to seize or remove firearms.

### **ERPO Background**

Michigan is the 21<sup>st</sup> state to enact Red Flag gun laws, which all include legal mechanisms enabling law enforcement to seize firearms from persons in conjunction with certain court procedures.

Since the law first took effect in Michigan, more than 100 requests for an ERPO have been made across the state. Other states with these laws have requested ERPOs which have resulted in the civil seizure of more than 15,000 firearms.

### **How is an ERPO Requested in Michigan?**

A petition may be made to a circuit court requesting an ERPO for an individual who can "reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself or another person by possessing a firearm and has engaged in an act or acts or made significant threats..."

The petitioner must provide detailed evidence in the form of specific behaviors, written or spoken threats made in the real or virtual world and other actions that have led them to this belief.

### **Who Can File an ERPO Petition?**

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#### **PRACTICE AREAS**

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Criminal Law

Firearm Regulation Law

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Those eligible to petition include law enforcement, family members, spouses, former spouses, healthcare providers and others who have a close relationship with the respondent, or person identified as the subject of the ERPO.

### **What Types of Situations Have Been Cited by Petitioners in Requesting ERPOs?**

To date, Michigan law enforcement authorities have been authorized to remove firearms in conjunction with the following determinations:

- The home of a 10-year-old threatening to shoot his elementary school classmates.
- A volatile husband making threats to kill his wife amid a separation.
- A woman experiencing delusions who brought a loaded shotgun to a convenience store.
- A young man who threatened to shoot up a supermarket with his father's gun.

### **What Occurs After a Judge Approves the Execution of an ERPO?**

Depending on the circumstances and urgency of the matter, a judge may order the respondent to surrender all firearms and empower law enforcement to immediately seize firearms from the respondent's residence and other guns to which they may have access. Alternatively, an ERPO may be issued which allows the respondent to surrender firearms within 24 hours or other designated time. Respondents may also file a motion to rescind an ERPO order and request a hearing within 14 days of its issuance.

### **How Can Law Enforcement Use ERPOs in their Respective Communities?**

Michigan's Red Flag laws include a provision that authorizes law enforcement to request an ERPO over the telephone directly with a judge (or magistrate on duty) who can issue an order to seize firearms which can be immediately carried out. When ordered to do so, law enforcement agencies must seize all identified firearms and securely store them according to their standard policies and procedures relating to seized property. Requests from law enforcement personnel account for more than 80 percent of ERPOs.

### **What are the Legal Consequences if an Individual Resists or Refuses to Comply with an ERPO?**

Under the new laws, the refusal to surrender firearms may result in immediate arrest, the filing of contempt charges and possible additional criminal charges. ERPO non-compliance can lead to penalties, including fines, one year in prison for first-time offenders and up to five years in prison for subsequent violations.

### **How Can I Ensure My Agency or Entity is Safely and Legally Executing ERPOs?**

To make sure their actions are compliant with the evolving legal landscape, it's important for agency employees and other ERPO stakeholders to avail themselves of available resources and legal counsel. Foster Swift's firearm practice group is monitoring the implementation of these new laws and can assist agencies and municipalities in staying abreast of the ever-changing landscape.



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*The attorneys of Foster Swift's Firearms Law Group understand the complexities of federal, state and local gun laws, including the ERPO Act. With their longstanding experience in compliance with firearms laws and regulations, our attorneys work closely with government and law enforcement agencies on all matters related to ERPOs, including the development of guidelines, policies and procedures. To discuss ERPOs or other issues related to gun laws, please contact Courtney Gabbara Agrusa at [cagrusa@fosterswift.com](mailto:cagrusa@fosterswift.com) or 248-538-6326 or another member of the Firearm Law team.*

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