

Extreme Risk Protection Orders (ERPOs)

[DRAFT] Primer
for
Prosecutors, Law Enforcement, and Community Members



 VERMONT

Department of Public Safety

Table of Contents

1	Overview of ERPOs	8	ERPOs v RFAs – How They Differ
2	Ex Parte ERPO – Overview of Process	9	ERPOs – Emerging Issues
3	Final ERPO – Overview of Process	10	ERPO – Glossary
4	Ex Parte and Final ERPOs – Other Issues	11	ERPO – Additional Resources
5	ERPOs – Examples Cases		
6	ERPOs -- Practice Tips		
7	ERPOs -- Tips for Community Members		



Overview of Extreme Risk Protection Orders



Extreme Risk Protection Orders, Generally

Extreme Risk Protection order (ERPOs) are also known as Red Flag Laws

- ERPOs allow courts to issue an order temporarily restricting access to dangerous weapons for individuals at an elevated risk of harming themselves or others

CA, CO, CT, DE, FL, HI, IL, IN, MD, MA, NV, NJ, NM, NY, OR, RI, VT, VA, WA, and Washington, DC have ERPO laws

- Depending on the state, family members, law enforcement, state's attorneys, and/or attorneys general may file a petition for an ERPO

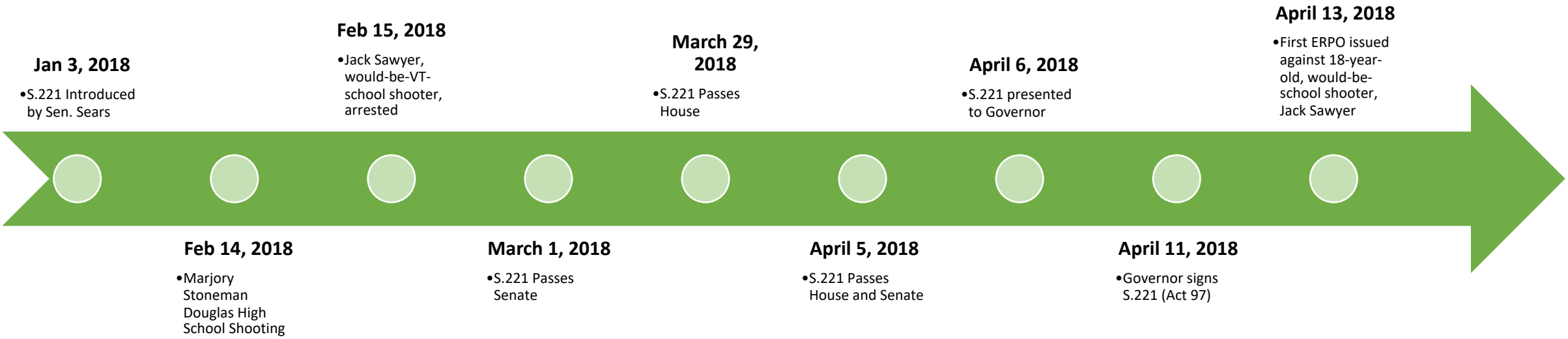
Early research suggests that ERPOs can prevent gun deaths (suicide and mass shootings)



 VERMONT

Department of Public Safety

History of ERPOs in Vermont (S.221)



Overview of Vermont ERPOs

What is an ERPO in Vermont?	A civil order that temporarily prohibits individuals who pose a danger of injury to self or others from purchasing, possessing or receiving any dangerous weapons, including firearms
Where is the law codified?	13 VSA § 4051 et seq
Who may petition for an ERPO in Vermont?	State's Attorney and the Office of the Vermont Attorney General
What type of orders are available?	<i>Ex Parte</i> ERPO Final ERPO
What court hears the petition?	Family Division of the Superior Court <i>Ex Parte</i> ERPOs may be issued by Criminal, Civil or Family Division of the Superior Court
What is the result of an ERPO?	Temporarily prohibits respondent from having control of, purchasing, possessing, or receiving a dangerous weapon, including firearms, and requires the dispossession of deadly weapons



 VERMONT

Department of Public Safety

FY 2022 Extreme Risk Protection Petitions Filed

County	Number of Petitions Filed	County	Number of Petitions Filed
Addison	6	Lamoille	0
Bennington	0	Orange	0
Caledonia	0	Orleans	2
Chittenden	2	Rutland	1
Essex	1	Washington	6
Franklin	0	Windham	0
Grand Isle	0	Windsor	0

Source: Report of Act 87 (S.4), An Act Relating to Procedures Involving Firearms, Therese M. Corsones, State Court Administrator (November 9, 2022)



 VERMONT

Department of Public Safety

FY 2022 ERPO Decisions

Type of Order	Granted	Denied
Temporary Orders	24	2
Final Orders	11	4*

*Three denials were related to petitions filed before FY2022 (i.e., before July 1, 2022)

Source: Report of Act 87 (S.4), An Act Relating to Procedures Involving Firearms, Therese M. Corsones, State Court Administrator (November 9, 2022)



Ex Parte and Final Extreme Risk Protection Orders – Statutory Framework



Ex Parte ERPOs and Final ERPOs

- The statute allows for *Ex Parte* ERPOs, which do not require a hearing, and Final ERPOs, which do require a noticed hearing
- You do not have to apply for an *Ex Parte* ERPO to petition for a Final ERPO
- The procedures for an *Ex Parte* ERPO and Final ERPO are separate processes even though the processes are nearly identical



Ex Parte ERPOs and Final ERPOs – How They Differ

Issue	Ex Parte ERPO	Final ERPO
What court hears petition?	May be issued by the Criminal, Civil or Family Division of the Superior Court	Family Division of the Superior Court
What is burden of proof?	Preponderance of the evidence	Clear and convincing evidence
How long is order in effect?	Up to 14 days	Up to six months
What must be proven?	Respondent poses an imminent and extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control	Respondent poses an extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control
Temporal requirements?	The statute requires the extreme risk be "imminent."	The statute is silent. At least one trial court has held the extreme risk must exist at the time of the hearing.



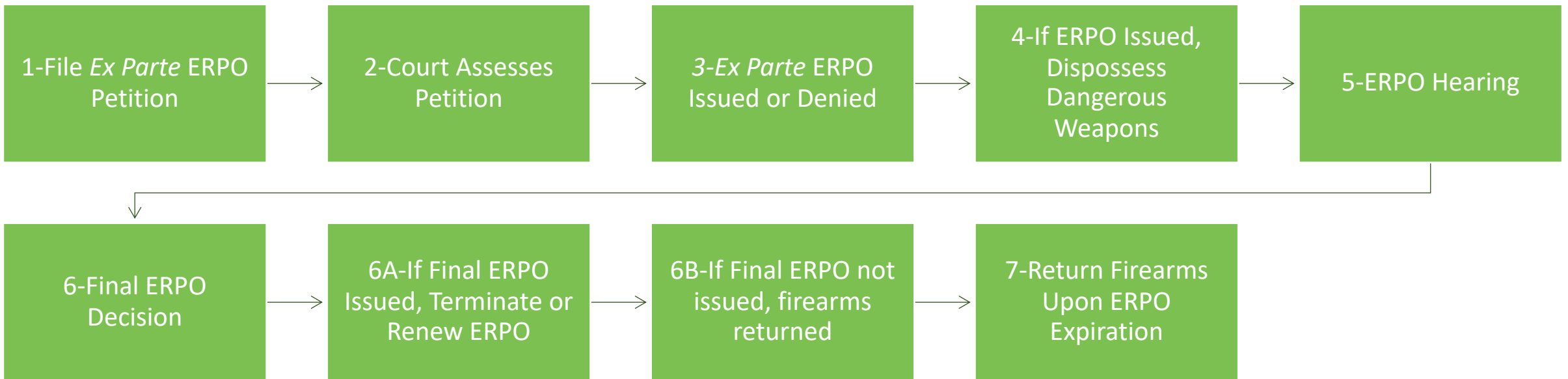
 VERMONT

Department of Public Safety

Ex Parte Extreme Risk Protection Order – Overview of the Process



Ex Parte ERPO Process



1

File *Ex Parte* ERPO
Petition

Complete Petition
for Extreme Risk
Protection Order
Form



Include Supporting
Affidavit(s)



File Petition and
Supporting
Affidavit(s) with
Court



 VERMONT

Department of Public Safety

1

File *Ex Parte* ERPO Petition

Petitioner describes to the court why the respondent poses an imminent and extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within respondent's custody or control.

Petition for Extreme Risk Protection Order Form

STATE OF VERMONT			
SUPERIOR COURT		FAMILY DIVISION	
Unit		Docket No.	
Petitioner	Respondent	Date Of Birth	
	V.		

Respondent's Full Physical Address: _____

PETITION FOR EXTREME RISK PROTECTION ORDER

Existing Court Order or Proceedings
Is there an existing order or a pending court proceeding involving the Respondent in this petition?

Relief from Abuse	No	Yes	Stalking or Sexual Assault	No	Yes
State(s): _____	<input type="checkbox"/>	<input type="checkbox"/>	County: _____	<input type="checkbox"/>	<input type="checkbox"/>

Docket Number: _____

Facts

On (date) _____ Respondent did the following:

- inflicted or attempted to inflict bodily harm on another
- by his/her threats or actions has placed others in reasonable fear of physical harm to themselves
- by his/her actions or inactions has presented a danger to persons in his/her care
- has threatened or attempted suicide or serious bodily harm

Request for Emergency Relief

The Petitioner requests that the Court prohibit the Respondent from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within his/her custody or control.

Other: _____

Request for Final Order

The Petitioner requests that the Court prohibit the Respondent from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within his/her custody or control.

Other: _____

The facts to support this request for relief can be found on the Petitioner's accompanying affidavit.

Dated _____

Signature of Petitioner _____

Printed Name of Petitioner _____

Address of Petitioner _____

400-00300 – Extreme Risk Petition (05/2018) Page 1 of 1



 VERMONT

Department of Public Safety

1

File *Ex Parte* ERPO Petition

Contents of Required Supporting Affidavit(s)

State specific facts in support of allegations in the petition

State any dangerous weapons the petitioner believes to be in the respondent's possession, custody or control

State whether the petitioner is aware of an existing abuse prevention order or order against stalking or sexual assault against the respondent



2

Court Considers Petition

Burden of Proof

Preponderance of the Evidence



What Must Be Proven

Respondent poses an imminent and extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control



Factors Considered

Has respondent inflicted or attempted to inflict bodily harm on another

Have respondent's threats or actions placed others in reasonable fear of physical harm

Have actions or inactions presented a danger to persons in respondent's care

Has respondent threatened or attempted suicide or serious bodily harm



 VERMONT

Department of Public Safety

3

If *Ex Parte* ERPO Issued

Respondent Present in Court

Respondent receives notice of the order in court on the record

Respondent Not Present in Court

Law enforcement serves the respondent with notice of the upcoming hearing, and a copy of the *ex parte* ERPO and petition



 VERMONT

Department of Public Safety

3

If *Ex Parte* ERPO Issued

If respondent not in court, complete Protection Order Service Information Form for law enforcement

After ERPO served, petitioner files Return of Service with Court Clerk

Protection Order Service Information Form

DO NOT GIVE TO DEFENDANT - FOR LAW ENFORCEMENT PURPOSES ONLY

DEPARTMENT OF PUBLIC SAFETY
PROTECTION ORDER SERVICE INFORMATION

In order to help us serve your order quickly and safely, please fill out this form as completely as possible. Use a pen and print clearly. **Note - The information contained on this form is for law enforcement purposes only and should not be released to the defendant.**

Today's Date: _____

PLAINTIFF INFORMATION

Your Name: Last _____ First _____ Middle _____ Your date of birth: _____

Do you wish to be notified after the order is served? Yes No Telephone number for notification of service: (This may be different than your home #) _____

Relationship Information - Check all that apply.

I am the spouse/former spouse of the defendant.
 I currently or have in the past lived with the defendant while having a sexual relationship with him/her.
 The defendant and I have a child or children in common.
 I am the defendant's child or step-child or I am filing on behalf of that child or step-child.
 I am the child of a person who currently or has in the past lived with the defendant while having a sexual relationship with him/her or I am filing on behalf of that child.

DEFENDANT INFORMATION (So we can quickly identify the defendant.)

Defendant's Name: Last _____ First _____ Middle _____ Suffix: 1st 2nd 3rd

Defendant's date of birth: _____ If you don't know, what is defendant's approximate age? _____

List other names that the defendant uses: _____

Sex: Male Female

Race: White African American Native American Asian Other

Skin Color/Tone: Light Medium Dark Other

Height: _____ Feet _____ Inches

Weight: _____ Pounds

Eye Color: Brown Blue Gray Green Hazel Other

Corrective Lenses: Glasses Contact Lenses

Hair Color: Brown Blond Black Red Gray/White Bald Other

Hair Length: Short Medium Long Bald

Facial Hair: Beard Mustache

Identifying Marks:

Tattoos - Describe location and design _____

Scars or marks - Describe location _____

Body piercing - Describe location _____

Other identifying marks _____

Please complete the second page of this form to ensure that your order is served as soon as possible.

DO NOT GIVE TO DEFENDANT - FOR LAW ENFORCEMENT PURPOSES ONLY
DPS #132

DO NOT GIVE TO DEFENDANT - FOR LAW ENFORCEMENT PURPOSES ONLY

PROTECTION ORDER SERVICE INFORMATION - Page 2

SERVICE INFORMATION (So we can quickly locate the defendant.)

Defendant's Telephone Numbers: Home _____ Cell Phone _____ Work _____ Other _____

Defendant's Address: House # _____ Street or Town Road # _____ City/Town _____ State _____

Map must be drawn if street number is not available.

Physical description of Defendant's residence: _____

Best days and times to contact defendant at residence? _____

Defendant's employer? Name _____ Address _____

What is the defendant's work schedule? - Enter defendant's schedule for each day below.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday

Where may the defendant be if not at home or work? (List the address and telephone number for other locations the defendant might be in the space provided below.)

House # _____ Street/Town Road # _____ City/Town _____ State _____ Telephone # _____

House # _____ Street/Town Road # _____ City/Town _____ State _____ Telephone # _____

Defendant's Vehicle: Plate # _____ Year _____ Make _____ Model _____ Color _____

SERVICE ISSUES (So we can serve your order safely.)

Will the defendant try to avoid being served this order? Yes No

Does the defendant have guard/vicious dogs? Yes No

Is the defendant likely to be under the influence of drugs or alcohol? Yes No

Will the officer who serves this order be in any danger? Yes No

If you answered yes, why will the officer be in danger? _____

DO NOT GIVE TO DEFENDANT - FOR LAW ENFORCEMENT PURPOSES ONLY
DPS #132



VERMONT

Department of Public Safety

4

Comply with *Ex Parte* Order

Firearms

Respondents must relinquish any firearm in their possession, custody, or control upon service of an ERPO to law enforcement, a federally licensed firearms dealer, or, if the court orders, a third party

Dangerous Weapons

Respondents must relinquish any dangerous weapons, other than a firearm, in their possession, custody, or control upon service of an ERPO to law enforcement



5

ERPO Hearing

The court shall hold a hearing within 14 days after the issuance of *ex parte* ERPO.

Burden of Proof

Clear and Convincing Evidence



What Must Be Proven

Respondent poses an extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control



Factors Considered

Has respondent inflicted or attempted to inflict bodily harm on another

Have respondent's threats or actions placed others in reasonable fear of physical harm

Have respondent's actions or inactions presented a danger to persons in respondent's care

Has respondent threatened or attempted suicide or serious bodily harm

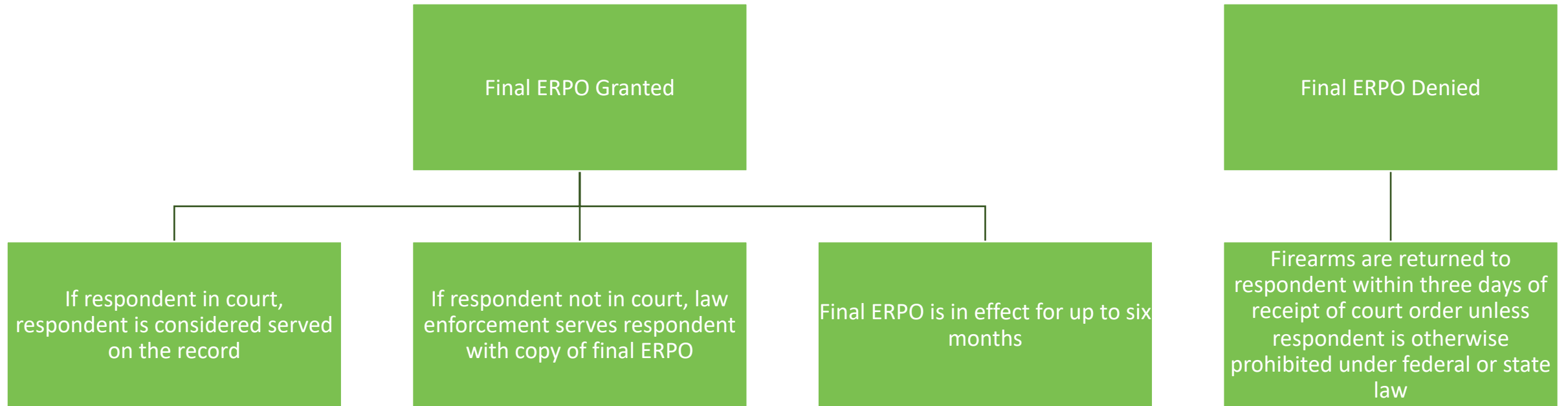


 VERMONT

Department of Public Safety

6

Final ERPO Decision



7

Terminate or Renew ERPO

TERMINATE: Respondent may file a motion to terminate an ERPO one time while final ERPO is in effect

RENEW: Petitioner may file a motion requesting that the court renew a final ERPO for an additional period of up to six months

Motion to Terminate/Renew ERPO Form

STATE OF VERMONT		
SUPERIOR COURT	FAMILY DIVISION	
Unit	Docket No.	
Petitioner	Respondent	Date Of Birth
State of Vermont	V.	

MOTION TO TERMINATE/RENEW EXTREME RISK PROTECTION ORDER

An Order for extreme protection was entered in the above case on: _____.

The Petitioner Respondent requests that this Order of the Court be:

Terminated

Renewed until _____

Affidavit in Support of Request

In support of this request, subject to the penalties for perjury, I state the following facts to be true to the best of my knowledge and belief. *(Specifically describe the facts that support your request.)*

Dated _____

Signature _____

Print Name _____

Signed and sworn to before me:

Date	Signature of Notary Public	Expiration Date
------	----------------------------	-----------------

NOTICE

This affidavit will be served on opposing party with a copy of the Motion to Terminate/Renew the Extreme Risk Protection Order.

WARNING

MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058

400-00303 – Extreme Risk Motion to Renew/Terminate Protection Order (06/2018)

Page 1 of 1



7

Terminate ERPO

What must be filed and when

Motion

No more than one time during the effective period of the order



Burden of Proof

State bears burden of proof by clear and convincing evidence



What must be proved

The court shall grant the motion and terminate the extreme risk protection order unless it finds by clear and convincing evidence that the respondent continues to pose an extreme risk of causing harm to self or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control



 VERMONT

Department of Public Safety

7

Renew ERPO

What Must Be Filed and When

Affidavit and Motion

Filed not more than 30 days and not less than 14 days before expiration of ERPO



Burden of Proof

State bears burden by clear and convincing evidence



What Must Be Proven

Respondent continues to pose an extreme risk of causing harm to respondent or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control



 VERMONT

Department of Public Safety

8

Return Dangerous Weapons and Firearms

Return Dangerous Weapons and Firearms

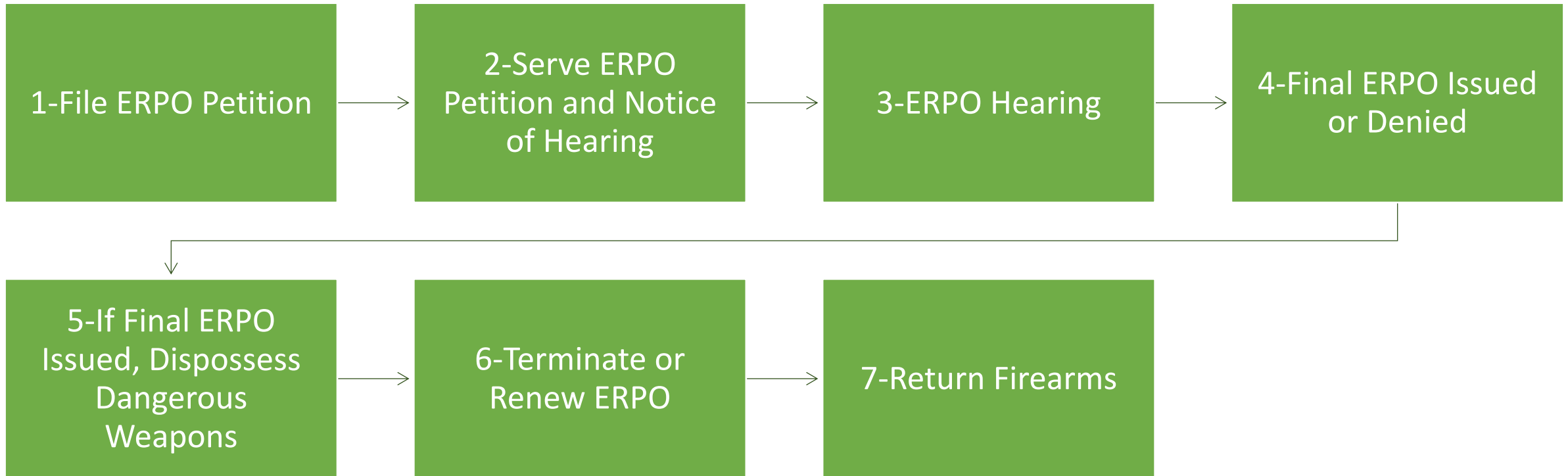
Upon expiration of the final ERPO, the respondent's firearms and dangerous weapons are returned to respondent within three business days after receipt of the order unless respondent is otherwise prohibited under federal or state law



Final Extreme Risk Protection Order – Overview of the Process



Final ERPO Process



1

File ERPO Petition

Complete Petition
for Extreme Risk
Protection Order
Form



Include Supporting
Affidavit(s)



File Petition and
Supporting
Affidavit(s) with
Court



 VERMONT

Department of Public Safety

1

File ERPO Petition

Petitioner describes to the court why the respondent poses an extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within respondent's custody or control.

Petition for Extreme Risk Protection Order Form

STATE OF VERMONT

SUPERIOR COURT	FAMILY DIVISION
Unit	Docket No.

Petitioner _____	v. Respondent _____	Date Of Birth _____
------------------	---------------------	---------------------

Respondent's Full Physical Address: _____

PETITION FOR EXTREME RISK PROTECTION ORDER

Existing Court Order or Proceedings
Is there an existing order or a pending court proceeding involving the Respondent in this petition?

Relief from Abuse	No	Yes	Stalking or Sexual Assault	No	Yes
State(s): _____	<input type="checkbox"/>	<input type="checkbox"/>	County: _____	<input type="checkbox"/>	<input type="checkbox"/>

Docket Number: _____

Facts

On (date) _____ Respondent did the following:

- inflicted or attempted to inflict bodily harm on another
- by his/her threats or actions has placed others in reasonable fear of physical harm to themselves
- by his/her actions or inactions has presented a danger to persons in his/her care
- has threatened or attempted suicide or serious bodily harm

Request for Emergency Relief

The Petitioner requests that the Court prohibit the Respondent from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within his/her custody or control.

Other: _____

Request for Final Order

The Petitioner requests that the Court prohibit the Respondent from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within his/her custody or control.

Other: _____

The facts to support this request for relief can be found on the Petitioner's accompanying affidavit.

Dated _____	Signature of Petitioner _____
	Printed Name of Petitioner _____
	Address of Petitioner _____

400-00300 – Extreme Risk Petition (05/2018) Page 1 of 1



1

File ERPO Petition

Contents of Required Supporting Affidavit(s)

State specific facts in support of allegations in the petition

State any dangerous weapons the petitioner believes to be in the respondent's possession, custody or control

State whether the petitioner is aware of an existing abuse prevention order or order against stalking or sexual assault against the respondent



2

Serve ERPO Petition and Notice of Hearing



Law enforcement serves the respondent with a copy of the ERPO petition and notice of the hearing



After ERPO petition and notice served, petitioner files Return of Service with Court Clerk



3

ERPO Hearing

Burden of Proof

Clear and convincing evidence



What Must Be Proven

Respondent poses an extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control



Factors Considered

Has respondent inflicted or attempted to inflict bodily harm on another

Have respondent's threats or actions placed others in reasonable fear of physical harm

Have actions or inactions presented a danger to persons in respondent's care

Has respondent threatened or attempted suicide or serious bodily harm



 VERMONT

Department of Public Safety

4

If Final ERPO Granted, Comply

Firearms

Respondents must relinquish any firearm in their possession, custody, or control upon service of an ERPO to law enforcement, a federally licensed firearms dealer, or, if the court orders, a third party

Dangerous Weapons

Respondents must relinquish any dangerous weapons, other than a firearm, in their possession, custody, or control upon service of an ERPO to law enforcement



5

Terminate or Renew ERPO

TERMINATE: Respondent may file a motion to terminate an ERPO one time while final ERPO is in effect

RENEW: Petitioner may file a motion requesting that the court renew a final ERPO for an additional period of up to six months

Motion to Terminate/Renew ERPO Form

STATE OF VERMONT		
SUPERIOR COURT	FAMILY DIVISION	
Unit	Docket No.	
Petitioner	Respondent	Date Of Birth
State of Vermont	V.	

MOTION TO TERMINATE/RENEW EXTREME RISK PROTECTION ORDER

An Order for extreme protection was entered in the above case on: _____.

The Petitioner Respondent requests that this Order of the Court be:

Terminated
 Renewed until _____

Affidavit in Support of Request
In support of this request, subject to the penalties for perjury, I state the following facts to be true to the best of my knowledge and belief. *(Specifically describe the facts that support your request.)*

Dated _____ Signature _____
Print Name _____

Signed and sworn to before me:

Date	Signature of Notary Public	Expiration Date
------	----------------------------	-----------------

NOTICE
This affidavit will be served on opposing party with a copy of the Motion to Terminate/Renew the Extreme Risk Protection Order.

WARNING
MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058

400-00303 – Extreme Risk Motion to Renew/Terminate Protection Order (06/2018) Page 1 of 1



5

Terminate ERPO

What must be filed and when

Motion

No more than one time during the effective period of the order



Burden of Proof

State bears burden of proof by clear and convincing evidence



What must be proved

The court shall grant the motion and terminate the extreme risk protection order unless it finds by clear and convincing evidence that the respondent continues to pose an extreme risk of causing harm to self or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control



 VERMONT

Department of Public Safety

5

Renew ERPO

What Must Be Filed and When

Affidavit and Motion

Filed not more than 30 days and not less than 14 days before expiration of ERPO



Burden of Proof

State bears burden by clear and convincing evidence



What Must Be Proven

Respondent continues to pose an extreme risk of causing harm to respondent or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control



 VERMONT

Department of Public Safety

6

Return Dangerous Weapons and Firearms

Return Dangerous Weapons and Firearms

Upon expiration of the final ERPO, the respondent's firearms and dangerous weapons are returned to respondent within three business days after receipt of the order unless respondent is otherwise prohibited under federal or state law



Ex Parte ERPO and Final ERPO – Other Issues



What Must be Surrendered

All dangerous weapons, including firearms, in the respondent's possession.

ERPO does not give law enforcement search and seizure authority.



 VERMONT

Department of Public Safety

ERPO Enforcement

- Law enforcement officers authorized to enforce ERPOs
- Search warrant possible if probable cause to believe respondent in violation of ERPO
- Enforcement may include collecting and disposing of dangerous weapons and arrest
- Violation of ERPO may be prosecuted as criminal contempt
- Penalties include imprisonment for not more than one year or fined not more than \$1,000, or both



Penalty for False ERPO Petitions and Affidavits

Imprisonment for not more than one year or fined not more than \$1,000, or both, if

- Petitioner knowingly submits affidavit in support of ERPO petition with false information, or
- Petitioner submits petition and affidavit with the intent to harass the respondent



 VERMONT

Department of Public Safety

Appeals

- ERPO is considered a final order for purposes of appeal
- Appeal may be taken by respondent or petitioner to the Supreme Court under the Vermont Rules of Appellate Procedure
- Notice of appeal must be in writing and filed within 30 days of ERPO with the Clerk of the court that issued the ERPO
- The appeal shall be determined forthwith



Extreme Risk Protection Order – Example Cases



ERPO issued against Vermont parent over school threats

Issue	Facts
County	Essex
Petitioner	State's Attorney Vince Illuzi
Affiant	Law enforcement officer
Respondent	Shane Gobeil, 36 years old, from Canaan, Vermont
What was extreme risk?	Respondent threatened to shoot up a Vermont school if transgender students or drag queens approach respondent's kids. He told Vermont State Police he planned to get an AK-47. At the time, the Canaan school system was on summer break.
Where was threat made?	New Hampshire



 VERMONT

Department of Public Safety

Ex Parte and Final ERPO issued against Vermont student over school threats

Issue	Facts
County	Washington
Petitioner	State's Attorney Rory Thibault
Affiant	Law enforcement officer
Respondent	18-year-old Montpelier high school student
What was extreme risk?	Police received a call that a student from Montpelier High School had been talking about actions he would take if he were to "shoot up the school." The student was known to keep a handgun and bullets in his car. The student also said he needed to upgrade to an AK-47 assault rifle for hunting.
Where was threat made?	Washington County
What was seized?	Two firearms and ammunition



Department of Public Safety

Final ERPO denied against Addison County sheriff

Issue	Facts
Petitioner	State's Attorney Rory Thibault
Affiant	Respondent's ex-wife submitted affidavit in support of ERPO
Respondent	Addison County Sheriff Peter Newton
What was extreme risk?	Addison County Sheriff was arrested on felony sexual assault charges. <i>Ex parte</i> ERPOs were granted after Newton taped a long and sometimes rambling video, in which he talked about having been suicidal.
Where was threat made?	Addison County
Why was Final ERPO denied?	Superior Court Judge Kirstin Schoonover ruled that "the State has failed to establish clear and convincing evidence that respondent presents an extreme risk of harm to others at the time of the hearing."



 VERMONT

Department of Public Safety

Ex Parte ERPO against Student Under Age 18

Issue	Facts
Petitioner	Deputy State's Attorney Timothy J. Lueders-Dumont
Affiant	Investigating law enforcement officer
Respondent	Student under age 18
What was extreme risk?	Following a high-profile, out-of-state school shooting, student made a threat at school. Same student had earlier brought a BB-gun to school. Child lived in home with access to firearms.
Where was threat made?	Elementary School
Disposition	<i>Ex parte</i> ERPO granted. School worked out a plan with student and parents involving student engaging in mental health counseling. State's Attorney agreed to dismiss the petition for Final ERPO without prejudice.



 VERMONT

Department of Public Safety

Extreme Risk Protection Orders – Practice Tips



Stipulated ERPOs

- Stipulations can help overcome proof challenges
- Unrepresented respondents may find a stipulation more appealing than a contested hearing
- Some courts will conduct voluntariness colloquy when respondent is unrepresented
- No right to counsel in ERPO proceeding

Sample Stipulation

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

FAMILY DIVISION
[REDACTED]

STATE OF VERMONT }
v. }
[REDACTED] }
} STIPULATED MOTION TO ISSUE A
} FINAL ORDER FOR EXTREME RISK
} PROTECTION

NOW COMES the Petitioner, the State of Vermont, pursuant 13 V.S.A. § 4053, by and through its counsel, Deputy State's Attorney Timothy Lueders-Dumont, Esq., and counsel for the Respondent, [REDACTED], who jointly set forth the following Stipulation concerning issuance of a final order for extreme risk protection:

STIPULATION

1. The parties waive factual findings and stipulate and request that this Court issue a final order for extreme risk protection to remain in effect, pursuant to 13 V.S.A. § 4053, for the next six months.

WHEREFORE the State and Petitioner respectfully request that this Court grant approval of this Stipulation and order, into effect, a final order for extreme risk protection.


[REDACTED]
Timothy Lueders-Dumont, Esq.
Deputy State's Attorney

Date [REDACTED]

So Ordered:
[REDACTED]



Criminal Charges versus ERPO

- If criminal charges are available, better practice is to use conditions of release to prohibit firearms possession and seek ERPO in case criminal charges dismissed
- If no pending criminal charges but concerns about firearms access, officer can ask subject about firearms; if subject falsely denies possession, consider charging subject with false report to law enforcement authorities pursuant to 13 VSA §1754; if such a charge is pursued, include a firearms prohibition in conditions of release



ERPOs against Minors

- ERPOs may be issued against minors
- If minor's interests adverse to parents, court may appoint a Guardian Ad Litem
- Filing ERPO against minor does not automatically trigger DCF involvement
- Advisable to involve minor's school and local mental health agency; school can trigger DCF involvement by requesting a Coordinated Service Plan meeting
- ERPO against minor can include removal of firearms and dangerous weapons in care, custody and control of parents, if accessible to minor



 VERMONT


Department of Public Safety

Extreme Risk Protection Orders – Tips for Community Members



Do you have grounds for an ERPO?

Does respondent have access to firearms or other dangerous weapons and has respondent, through actions or inactions:

- 
- Inflicted or attempted to inflict bodily harm on others ✓ Grounds for an ERPO.
 - Made threats or actions placing others in fear of physical harm ✓ Grounds for an ERPO.
 - Presented a danger to persons in respondent's care ✓ Grounds for an ERPO.
 - Threatened or attempted suicide or serious bodily harm ✓ Grounds for an ERPO.



 VERMONT

Department of Public Safety

How community members can obtain ERPO

- Write down all the facts that explain why you're concerned
- Include statements made or actions taken by respondent
- Describe dangerous weapons in care, custody or control of respondent

Prepare Affidavit



- Ask law enforcement to notarize your affidavit
- Ask law enforcement to make you a copy of the affidavit
- Tell law enforcement you want help with an *Ex Parte* ERPO

Take Affidavit to Law Enforcement Agency



- Follow up with State's Attorney office, if you desire
- It's up to the State's Attorney whether to petition for an ERPO

Law Enforcement Transmits Affidavit to State's Attorney Office



 VERMONT

Department of Public Safety

Tips for preparing affidavit

Format – First Paragraph

Insert the following boilerplate text:

*Now comes [insert your name],
Affiant, being duly sworn and on
oath, deposes and states the
following information is accurate to
the best of my knowledge and belief:*



 VERMONT

Department of Public Safety

Tips for preparing affidavit (cont'd)

Format – Second paragraph

- State your occupation
- State the town where you live and for how long
- Describe your relationship to the respondent or how you know the respondent



 VERMONT

Department of Public Safety

Tips for preparing affidavit (cont'd)

- Number each following paragraph
- Start a new, numbered paragraph for each, new significant fact
- State the facts in chronological order
- Be as specific as possible; use dates and times, where possible

Sample Affidavit

AFFIDAVIT

Now comes **Sergeant [REDACTED]**, Affiant, being duly sworn and on oath, deposes and states the following information is accurate to the best of my knowledge and belief:

I am a Sergeant with the [REDACTED] ice. I have been certified as a full-time law enforcement officer by the Vermont Criminal Justice Training Council since December 2008.

1. On 05.26.2022, at approximately 0813 hours, I was notified of a possible school threat at [REDACTED] spoke with the complainant, Principal [REDACTED] over the phone. [REDACTED] told me that she had a 5th-grade student, Juvenile [REDACTED], threaten a teacher by stating something to the effect of he wanted to kill her or wanted her dead.
2. [REDACTED] said they separated the student from class without issue and searched him and the school for weapons; none were located. [REDACTED] told me that the school was not in lockdown and was operating normally, and they did not need a Trooper to respond. I was told that the student's parent, [REDACTED] was notified and given the option to either pick his son up or he could finish the day in the office. I was advised that [REDACTED] picked up [REDACTED] from school. Further, the school said they would also report this incident to DCF.
3. I then had dispatch contact [REDACTED] Mental Health and have them speak to the school and the father to offer services. Next, I talked to [REDACTED] over the phone. [REDACTED] stated that he understood the situation and said he spoke with his son. [REDACTED] that his boys were "at each other" this morning, and he thought [REDACTED] actions at school may have stemmed from that. Further, [REDACTED] stated that [REDACTED] had no clue about what happened in Texas and did not realize the seriousness of the situation when he made the statement.
4. Further, [REDACTED] told me that he spoke with a worker from mental health and was taking [REDACTED] for an evaluation later today. [REDACTED] said he did have firearms in his home, but he kept them in a locked gun safe to which [REDACTED] did not have access.
5. On 05.31.2022, I spoke with the [REDACTED] over the telephone. [REDACTED] told me that a few months back, [REDACTED] brought a firearm, later discovered to be a BB gun, to school in his backpack. [REDACTED] told me that late in the afternoon on 05.25.2022, [REDACTED] told a fellow student that he was going to "shoot his teacher." [REDACTED] said that the Principal, [REDACTED] learned of the incident on 05.26.2022, notified the State Police, and suspended [REDACTED].
6. Further, [REDACTED] said that [REDACTED] Mental Health was notified of this situation and that they spoke with [REDACTED] and told him [REDACTED] needed to come in for an evaluation. [REDACTED] said [REDACTED] agreed to have [REDACTED] screened. It should be noted, as I



Tips for preparing affidavit (cont'd)

- State whether respondent has inflicted or attempted to inflict bodily harm on self or another; or has placed others in reasonable fear of physical harm; or has presented a danger to persons in respondent's care
- State why risk of harm is near at hand
- Identify firearms or dangerous weapons in respondent's care, custody or control


Sample Affidavit

stated earlier in this affidavit, [REDACTED] also told me that he spoke with mental health and was going to take [REDACTED] to be screened.

7. [REDACTED] told me that he learned on 05.27.22 that [REDACTED] parents did not get [REDACTED] screened by mental health and were uncooperative.
8. On 05.31.22, I spoke to SA [REDACTED] and learned that [REDACTED] has still not been seen by mental health for an evaluation, and the parents are uncooperative as of this writing. SA [REDACTED] told me that DCF refused to accept an intake on this matter to initiate a family services case. However, since [REDACTED] was not screened, this matter fell back to the SA Office and the State Police as a public safety issue.
9. SA [REDACTED] requested that I prepare an affidavit in support of an Extreme Risk Protection Order, as [REDACTED] lived in a home where access to firearms was possible. Further, it was discussed that although [REDACTED] stated that his guns were locked up, [REDACTED] did bring a BB Gun to school in his backpack, causing a lockdown prior to this incident occurring.
10. Based on the aforementioned facts and circumstances, and that at this point, [REDACTED] parents are not cooperating with officials attempting to mitigate further risk, coupled with the fact that [REDACTED] previously brought a BB Gun to the school, causing a lockdown, I have probable cause to believe an Extreme Risk Protection Order should be issued. [REDACTED] threats or actions have placed others in reasonable fear of physical harm to themselves, and therefore the court should order that be prohibited from possessing, or receiving a dangerous weapon or having a dangerous weapon within his custody or control, to include those accessible within his household.

Subscribed and sworn to before me on

This 31st day of May, 2022


(Notary Public)


(Affiant)

5.31.2022
(Date)



 VERMONT

Department of Public Safety

Tips for preparing affidavit (cont'd)

Content – Final Paragraph

Insert a version of the following text:

Based on the foregoing facts and circumstances, respondent poses an imminent and extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. I request the court issue an extreme risk protection order prohibiting respondent from purchasing, possessing or receiving a dangerous weapon or having a dangerous weapon within respondent's custody or control.



 VERMONT

Department of Public Safety

Extreme Risk Protection Order & Relief from Abuse Order – How They Differ



ERPO versus RFA Orders, In general

Issue	ERPO	RFA Order
Definition	A civil order that temporarily prohibits individuals who pose a danger of injury to self or others from purchasing, possessing or receiving any dangerous weapons, including firearms	A civil order issued by a judge that provides various forms of relief from abuse, including ordering respondent to refrain from abuse and threatening abuse, prohibiting contact, and awarding temporary child custody
Petitioners	A State's Attorney or the Office of the Attorney General	Family, household members, adults in dating relationships, household members on behalf of minor child, a minor 16 years of age or older, a minor of any age who is in a dating relationship



ERPO versus RFA Orders, In general (cont'd)

Issue	ERPO	RFA Order
What results from court order?	Temporarily prohibits respondent from controlling, purchasing, possessing and/or receiving a dangerous weapon, including firearms, and requires the dispossession of firearms and other dangerous weapons	The court may order relief, including but not limited to, ordering the respondent to refrain from: <ul style="list-style-type: none">• Abusing the plaintiff and any children• Cruelly treating or killing any animal owned, possessed, leased, kept, or held as a pet by respondent or plaintiff or by a minor child resident in the household• Interfering with the personal liberty of the plaintiff or the plaintiff's children, or both• Indirectly or directly contacting plaintiff and/or the plaintiff's children• Coming within a fixed distance of plaintiff, the plaintiff's children, the plaintiff's residence, or the plaintiff's place of employment



ERPO versus RFA Orders, In general (cont'd)

Issue	ERPO	RFA Order
What results from order? (cont'd)		<ul style="list-style-type: none">• The court may also order the respondent to vacate the household immediately and may order sole possession of the premises to the plaintiff• Upon a finding that there is immediate danger or physical or emotional harm to minor children, the court may award temporary custody of the minor children to the plaintiff or to other persons• Any other relief the court considers necessary to protect the plaintiff or children



ERPO versus RFA Orders, In general (cont'd)

Issue	ERPO	RFA Order
What results from order? (cont'd)		<p>Upon a finding that there is immediate danger or physical or emotional harm to minor children, the court may award temporary custody of the minor children to the plaintiff or to other persons</p> <p>Any other relief the court considers necessary to protect the plaintiff or children</p>
Protections	One type of protection – temporarily prohibit purchase, possession or receipt of dangerous weapons for duration of order	An RFA order does not require a firearm purchase and possession prohibition, however, court may order dangerous weapon relinquishment



ERPO versus RFA Orders, In general (cont'd)

Issue	ERPO	RFA Order
What is the burden of proof?	<p><u>Ex Parte ERPO</u>: preponderance of the evidence</p> <p><u>Final ERPO</u>: clear and convincing evidence</p>	<p><u>Emergency RFA Order</u>: Not specified in the statute</p> <p><u>Final RFA Order</u>: preponderance of the evidence</p>
What must be proven for <i>ex parte</i>/ emergency order?	<p><u>Ex Parte ERPO</u>: the respondent poses an imminent and extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control</p>	<p><u>Emergency RFA Order</u>: respondent has abused the plaintiff AND immediate danger of further abuse</p>



ERPO versus RFA Orders, In general (cont'd)

Issue	ERPO	RFA Order
What must be proven for final order?	<u>Final ERPO</u> : the respondent poses an extreme risk of causing harm to self or others by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control	<u>Final RFA Order</u> : the respondent has abused the plaintiff, and (1) there is a danger of further abuse or (2) the respondent is currently incarcerated and has been convicted of one of the following: murder, attempted murder, kidnapping, domestic assault, aggravated domestic assault, sexual assault, aggravated sexual assault, stalking, aggravated stalking, lewd or lascivious conduct with a child, use of a child in a sexual performance, or consenting to a sexual performance



 VERMONT

Department of Public Safety

ERPO versus RFA Orders, In general (cont'd)

Issue	ERPO	RFA Order
What factors may the court consider?	<p>An extreme risk of harm to self or others may be shown by establishing that:</p> <ul style="list-style-type: none">• The respondent has inflicted or attempted to inflict bodily harm on another• The respondent's threats or actions have placed others in reasonable fear of physical harm• The respondent's actions or inactions have presented a danger to persons in the respondent's care• The respondent has threatened or attempted suicide or serious bodily harm	Not specified in statute



ERPO versus RFA Orders, In general (cont'd)

Issue	ERPO	RFA Order
May a minor be the respondent to the order?	The law does not explicitly state minors are eligible respondents; however, courts have granted ERPOs against minors	Yes
Can the order be issued 24/7?	Yes	Yes
How long is the order in effect?	<u>Ex Parte ERPO</u> : up to 14 days <u>Final ERPO</u> : up to 6 months	<u>Emergency RFA Order</u> : up to 14 days <u>Final RFA Order</u> : for a fixed period to be ordered by the court
May the order be modified, terminated or renewed?	The order may be terminated or renewed	The order may be modified or terminated
Are court records confidential?	No	No (with a few exceptions)



 VERMONT

Department of Public Safety

Extreme Risk Protection Orders – Emerging Issues



(2023) H.98 – an act relating to firearms crimes and procedures

- Short-form bill introduced by Rep. Emma Mulvaney-Stanak (P/D-Chittenden-17)
- Bill has 31 additional sponsors
- Read for the first time and referred to House Committee on Judiciary on January 24, 2023
- Among other things, the bill proposes to permit a family or household member to file a petition for an emergency risk protection order



(2023) H.230 – an act relating to mechanisms to reduce suicide

- Introduced by Rep. Alyssa Black
- Bill has 23 sponsors
- Referred to House Committee on Health Care and House Committee on Judiciary
- Bill would amend ERPO law to allow a “family or household member” to file an *Ex Parte* Petition for Extreme Risk Protection Order
- If “family or household member” granted *ex parte* ERPO, state’s attorney or attorney general would become responsible for handling final ERPO process



Glossary



Glossary

Term	Definition
Abuse	As defined by 15 VSA section 1101 (1) , “abuse” means the occurrence of one or more of the following acts between family or household members: <ul style="list-style-type: none">• Attempting to cause or causing physical harm• Placing another in fear of imminent serious physical harm• Abuse to children as defined in 33 V.S.A. chapter 49, subchapter 2• Stalking as defined in 12 V.S.A. § 5131(6)• Sexual assault as defined in 12 V.S.A. § 5131(5)
Affiant	A person who swears to an affidavit.
Affidavit	A written statement of fact, signed and sworn to in front of a notary or a person who has the right to administer an oath, for use as evidence in court



Glossary (cont'd)

Term	Definition
Burden of Proof	The standard that a party seeking to prove a fact in court must satisfy to have that fact legally established.
Clear and convincing evidence	Clear and convincing evidence is a type of burden of proof. To satisfy the clear and convincing evidence standard, there must be evidence indicating that the thing to be proven is highly probable. The clear and convincing evidence standard does not require that evidence in support of a fact be uncontradicted but does require that the fact's existence be "highly probable." Clear and convincing evidence is a very demanding standard, requiring less than evidence beyond a reasonable doubt, but more than a preponderance of the evidence.



Glossary (cont'd)

Term	Definition
<i>Ex Parte</i>	<p>Latin meaning "for one party."</p> <p>The term refers to motions, hearings or orders granted on the request of and for the benefit of one party only. This is an exception to the basic rule of court procedure that both parties must be present at any argument before a judge, and to the otherwise strict rule that an attorney may not notify a judge without previously notifying the opposition. <i>Ex parte</i> matters are usually temporary orders pending a formal hearing or an emergency request.</p>
Extreme Risk	<p>Risks of very bad outcomes or "high consequence," but of low probability. At least one Vermont court has held that "extreme risk" must be present at the time of the final ERPO hearing. (See State v. Newton)</p>



Glossary (cont'd)

Term	Definition
Imminent	To be imminent, a danger must be, or must reasonably appear to be, threatening to occur immediately, near at hand, and impending. <i>State of Vermont v. Warshow</i> , 410 A.2d 1000 (1979), citing <i>State v. Huett</i> , 340 Mo. 934, 950, 104 S.W.2d 252, 262 (1937).
Petition	A formal written request to a court for an order of the court.
Petitioner	The party who presents a petition to the court.
Preponderance of the evidence	Preponderance of the evidence is a type of burden of proof. To satisfy the preponderance of the evidence standard, there must be evidence indicating that the thing to be proven is more likely than not. It is the least demanding burden of proof. In contrast, beyond a reasonable doubt is the most demanding burden of proof.
Respondent	The party who is required to answer a petition for a court order.



Additional Resources



Sample ERPO Pleadings

- [Petition for Extreme Risk Protection Order](#)
- [Return of Service](#)
- [Final Order for Extreme Risk Protection](#)
- [Decision and Order](#) (State of Vermont v Peter Newton)



Vermont Judiciary ERPO Forms

- [Petition For Extreme Risk Protection Order](#) (400-00300)
- [Motion To Terminate/Renew Extreme Risk Protection Order](#) (400-00303)
- [Protection Order Service Information](#) (DPS132)

[عربي](#) | [Français](#) | [नेपाली](#) | [Soomaali](#) | [Español](#) | [Kiswahili](#) | [Tiếng Việt](#)



 VERMONT

Department of Public Safety

ERPO Law – 13 VSA § 4051 et seq.

Title 13, Chapter 95 (Weapons), Subchapter 2 (Extreme Risk Protection Orders)

[§ 4051. Definitions](#)

[§ 4052. Jurisdiction and venue](#)

[§ 4053. Petition for extreme risk protection order](#)

[§ 4054. Emergency relief; temporary ex parte order](#)

[§ 4055. Termination and renewal motions](#)

[§ 4056. Service](#)

[§ 4057. Procedure](#)

[§ 4058. Enforcement; criminal penalties](#)

[§ 4059. Relinquishment, storage, and return of dangerous weapons](#)

[§ 4060. Appeals](#)

[§ 4061. Effect on other laws](#)

[§ 4062. Annual reporting; Office of Court Administrator and Agency of Human Services](#)



 VERMONT

Department of Public Safety

Vermont Court Rules

- [Vermont Rules for Family Proceedings](#)
- [Vermont Rules of Evidence](#)
- [Vermont Rules of Appellate Procedures](#)



State's Attorneys Contact Info (as of 3/31/2023)

County	State's Attorney	County	State's Attorney
Addison	Eva P. Vekos (802) 388-7931 Eva.Vekos@Vermont.gov	Essex	Vincent Illuzi (802) 754-2880 Vincent.Illuzi@Vermont.gov
Bennington	Erica Marthage (802) 442-8116 Erica.Marthage@Vermont.Gov	Franklin	John Lavoie (802) 524-7920 John.Lavoie@vermont.gov
Caledonia	Jessica Zaleski (802) 748-6657 Jessica.Zaleski@Vermont.gov	Grand Isle	Douglas DiSabito (802) 372-5422 Douglas.DiSabito@vermont.gov
Chittenden	Sarah George (802) 863-2865 Sarah.George@Vermont.gov	Lamoille	Todd Shove (802) 888-7945 Todd.Shove@vermont.gov



Department of Public Safety

State's Attorneys Contact Info (as of 3/31/2023) (cont'd)

County	State's Attorney	County	State's Attorney
Lamoille	Todd Shove (802) 888-7945 Todd.Shove@vermont.gov	Washington	Michael Donnelly (802) 479-4220 Michael.Donnelly@vermont.gov
Orange	Dickson Corbett (802) 685-3036 Dickson.Corbett@vermont.gov	Windham	Tracy Kelly Shriver (802) 257-2860 Tracy.Shriver@vermont.gov
Orleans	Farzana Leyva (802) 334-2037 Farzana.Leyva@Vermont.gov	Windsor	Ward Goodenough (802) 295-8870 Ward.Goodenough@Vermont.gov
Rutland	Ian Sullivan (802) 786-5851 Ian.Sullivan@Vermont.gov		



Comments, Questions, Concerns



Wilda L. White
Department of Public Safety
Policy and Training Consultant
Wilda.White@Vermont.gov



 VERMONT

Department of Public Safety

Authors

Dee Barbic, M. Ed.

Director
Violence Prevention
Office of Governor Philip B. Scott

Mourning Fox, LCMHC

Director of Mental Health Programs
Department of Public Safety

Wilda L. White, JD, MBA

Policy and Training Consultant
Department of Public Safety

Acknowledgement

The authors thank Timothy J. Lueders-Dumont, Esq., for lending his expertise to this project.

Any errors are those of the authors.



 VERMONT

Department of Public Safety