
Extreme Risk Protection Orders

340.1 BACKGROUND

Beginning January 1, 2024 the provisions of §624.7171 through §624.7178 set forth the framework for the courts to issue Extreme Risk Protection Orders (ERPO) which, "enjoin and prohibit the respondent from possessing or purchasing firearms for as long as the order remains in effect." A petition for an ERPO, "shall allege that the respondent poses a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm."

340.2 REQUESTS FOR EXTREME RISK PROTECTION ORDERS

The chief law enforcement officer, the chief's designee, a city or county attorney, family or household members of the respondent, or the respondent's guardian may file a petition for an ERPO.

Requests are for assistance in obtaining an ERPO against an individual who resides in the city. Persons who seek assistance in obtaining an ERPO against someone who resides in other cities will be referred to the potential ERPO respondent's city of residence.

340.3 REQUESTS TO THE CITY ATTORNEY'S OFFICE.

The city attorney's office will refer the individual seeking an ERPO to the police department for an investigation into the facts and circumstances that prompted the individual to seek assistance in obtaining an ERPO. Upon request, the city attorney's office will assist the police department by using court records databases to investigate factors 3, 4, 5, 6, 8, and 9 below and report the results of that investigation to the officer.

340.4 REQUESTS TO THE POLICE DEPARTMENT

An officer will be assigned to perform a brief and prompt investigation of the facts and circumstances that caused the individual to seek an ERPO. The officer shall investigate the following factors that are considered by the court pursuant to Minnesota Statutes §624.7172, Subdivision 2(b) and (c) in determining whether the respondent poses a significant danger to other persons or is at a significant risk of suicide by possessing a firearm and whether issue an ERPO:

1. A history of threats or acts of violence by the respondent directed toward another person.
2. The history of use, attempted use, or threatened use of physical force by the respondent against another person.
3. A violation of any court order, including but not limited to orders issued under §624.7171 to §624.7178 or chapter 260C or 518B.
4. A prior arrest for a felony offense.

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5. A conviction or prior arrest for a violent misdemeanor offense, for a stalking offense under §609.749, or for domestic assault under §609.2242.
6. A conviction for an offense of cruelty to animals under chapter 343.
7. The unlawful and reckless use, display, or brandishing of a firearm by the respondent.
8. Suicide attempts by the respondent or a serious mental illness.
9. Whether the respondent is named in an existing order in effect under §624.7171 to §624.7178 or chapter 260C or 518B, or party to a pending lawsuit, complaint, petition, or other action under §624.7171 to §624.7178 or chapter 518B.
10. Any other evidence that bears on whether respondent poses a danger to others or is at risk of suicide.

The officer shall also investigate the types and location of any firearms believed to be possessed by the respondent and prepare a list of the firearms and their locations to be used in a petition for an ERPO.

After performing the investigation, the officer shall prepare a report relating to it and determine what the appropriate police response is. Possible outcomes of the investigation may include:

1. A determination that there is not sufficient evidence to prove by clear and convincing evidence that an ERPO is warranted and no further action should be taken.
2. A determination that there is not sufficient evidence to prove by clear and convincing evidence that an ERPO is warranted but that the complaining party's concern should be referred to the police department social worker for possible mediation or voluntary transfer of firearms.
3. A determination that there is probable cause to believe that:
 - (a) the respondent poses a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm
 - (b) the respondent presents an immediate and present danger of either bodily harm to others or of taking their life, and therefor an immediate referral of the matter should be made to the city attorney's office to seek an emergency ERPO under §624.7174.
4. A determination that there is sufficient evidence to prove by clear and convincing evidence that an ERPO is warranted and a referral to the city attorney's office for preparation of a petition for an ERPO.
5. A determination that the person against whom an ERPO is sought has committed a crime and should be arrested.
6. A determination that the person against whom an ERPO is sought should be placed on a health and welfare transport hold.

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340.5 ACTION BY CITY ATTORNEY'S OFFICE FOLLOWING REFERRAL

The city attorney's office will review the officer's investigation and recommendation. If the city attorney's office agrees with the recommendation for an ERPO or emergency ERPO, it will prepare an appropriate petition. Because the ERPO law allows either the Chief of Police or his designee to petition for the ERPO the petition will be prepared with either the Chief or his designee as the petitioner. The City Attorney's Office will file the petition and represent the petitioner in hearings resulting from the filing.

If the city attorney's office disagrees with the officer's recommendation it will issue a deferral or declination notice. At this point the person seeking the ERPO is free to petition the court directly.