

Extreme Risk Protection Order Model Policy

December 2022



**Municipal Police
Training Council**

New York State Division of Criminal Justice Services
80 South Swan Street, Albany, New York 12210

www.criminaljustice.ny.gov



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**Extreme Risk Protection Order
Model Policy**

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Extreme Risk Protection Order Model Policy

The Extreme Risk Protection Order Model Policy is designed to provide guidance to law enforcement in using this tool to prevent firearm access by those at risk of harming themselves or others and for the quick and safe removal of firearms, rifles, or shotguns in those individuals' possession.

The Municipal Police Training Council (MPTC) approved the model policy in December 2022.

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New York State Office of Attorney General

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I. Purpose

Law enforcement is uniquely situated to address high risk behavior of an individual by intervening through the utilization of extreme risk protection orders (ERPO). This policy is designed to provide guidance to law enforcement in using this tool to prevent firearm access by those at risk of harming themselves or others and for the quick and safe removal of firearms, rifles, or shotguns in those individuals' possession.

II. Policy

All police officers are statutorily required¹ to file an ERPO application pursuant to the requirements set forth in New York State Civil Practice Law and Rules (CVP) Article 63-a, including adhering to all provisions for the service of ERPOs and accounting for weapons voluntarily surrendered by or removed from the possession of individuals who are subject to ERPOs.

The filing of an application is a civil process that is distinct from arrests and other law enforcement interventions. As such, ERPOs should be utilized in conjunction with or independently of a variety of responses including arrest and prosecution, where appropriate. The ERPO process should also initiate an assessment of suitability for and referrals to a range of services and supports such as mental health evaluations and treatments, when it is determined, that an individual is in a crisis.

III. Definitions

A. **Application** – The process and forms required by the NYS Unified Court System to file a petition to request the issuance or extension of an extreme risk protection order that consists of an ERPO Application (UCS-6341)², a Request for Judicial Intervention (RJI)³, and an Application for Renewal of an Extreme Risk Protection Order⁴, and/or any supporting documentation⁵.

B. **Extreme Risk Protection Order (ERPO)**⁶ – A court-issued order prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun. There are two types of court orders that may be issued:

1. **Temporary Extreme Risk Protection Order (TERPO)**⁷ – An ex parte order sought and issued without notice to the respondent on the same day the petition is filed or on the business day immediately following. It is used to quickly mitigate risk in situations where emergency action is needed to prohibit a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun based on credible information that establishes probable cause to believe that an individual is likely to engage in conduct that would result in serious harm to themselves or others (as defined in NYS Mental Hygiene Law (MHL) §

¹ NY CVP § 6341

² [https://www.nycourts.gov/legacypdfs/forms/erpo/Application_Temporary_ERPO_\(UCS-6341\)_fillable.pdf](https://www.nycourts.gov/legacypdfs/forms/erpo/Application_Temporary_ERPO_(UCS-6341)_fillable.pdf)

³ <https://www.nycourts.gov/legacypdfs/forms/rji/UCS-840-fillable.pdf>

⁴ [https://www.nycourts.gov/legacypdfs/forms/erpo/Application_Renew_ERPO_\(UCS-6345A\)_fillable.pdf](https://www.nycourts.gov/legacypdfs/forms/erpo/Application_Renew_ERPO_(UCS-6345A)_fillable.pdf)

⁵ NY CVP § 6341

⁶ NY CVP § 6340(1)

⁷ NY CVP § 6342

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9.39).The court may conduct an examination under oath of the petitioner or any witness the petitioner may produce.⁸

2. **Final Extreme Risk Protection Order (FERPO)**⁹ – A final order issued, that is effective up to one year, following a hearing that occurs 3-6 business days after a TERPO is issued or within ten business days if the initial petition for a TERPO is denied. The petitioner, at the hearing, has the burden to present clear and convincing evidence that an individual is likely to engage in conduct that would result in serious harm to themselves or others (as defined in NYS Mental Hygiene Law § 9.39). The respondent has the opportunity to participate in the hearing, retain counsel, testify, present evidence, and defend against the allegations made.

C. **ERPO Coordinator** – An individual appointed by an agency to develop, maintain, and manage procedures consistent with ERPO statutory requirements and any local procedures including but not limited to, for the filing, service, renewal, and accounting for prohibited weapons obtained pursuant to an ERPO.

D. **Petitioner** – A police officer as defined in criminal procedure law (CPL) §1.20.¹⁰

E. **Prohibited Weapons** – Firearms, rifles, and shotguns that the respondent is temporarily not allowed to purchase or possess or attempt to purchase or possess pursuant to an ERPO.¹¹

F. **Respondent** – The person against whom an extreme risk protection order is or may be sought¹² which can include those legally prohibited from possessing firearms, rifles, and shotguns including but not limited to minors or convicted felons.

IV. Extreme Risk Protection Order Application Filing Process

A. When to file a TERPO application

1. Upon the receipt of credible information that shows there is probable cause to believe an individual is likely to engage in conduct that is a substantial risk of physical harm:

a) to the individual as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating danger to the individual; or

⁸ NY CVP § 6342(2)

⁹ NY CVP § 6343

¹⁰ NY CVP § 6340(2) Although in the context of this document a petitioner is referred to solely as a police officer, statute also requires District Attorneys to file a petition. It also permits, although not statutorily required, family or household members, school administrators and licensed individuals in the medical field, including specified mental health practitioners to serve as a petitioner. Individuals who are not required to file a petition may seek the assistance of a police officer to do so.

¹¹ NY CVP §§ 6342(1) and 6343(3)(b) and NY PL § 265.00(3)

¹² NY CVP § 6340

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- b) to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.¹³
 2. When considering the need to file a TERPO application, the central issue is not what is causing the crisis but whether there is probable cause to believe an individual is likely to engage in conduct that would result in serious harm to themselves or others and should therefore not have access to firearms, rifles, or shotguns.
 - a) Not all cases in which a person is suffering from mental illness and is, as a result, a danger to themselves, requires law enforcement to file a TERPO application.
 - b) Evidence of mental illness is not required for a TERPO application and is not one of the statutory factors the courts must consider when determining whether to issue an ERPO.
 - c) Some risks of harm that arise from mental illness – such as an inability to provide for one’s basic needs, e.g., food, bathing – are not meant to be addressed by an ERPO. In those cases, involuntary commitment and treatment are appropriate, but filing a TERPO application is not.
 3. Firearm use is not required to file a TERPO application, nor is evidence of immediate access to or possession of a firearm, rifle or shotgun by the respondent required. As such a TERPO may also be considered when an individual is otherwise prohibited from or otherwise unable to possess firearm, rifle or shotgun including but not limited to:
 - a) Minors.
 - b) Convicted felons.
 - c) Persons named in an active order of protection.
 - d) Incarcerated individuals.
- B. Statutory factors to consider when establishing probable cause to file a TERPO application include but are not limited to:¹⁴
 1. A threat or act of violence or use of physical force directed toward self, the petitioner, or another person;
 2. A violation or alleged violation of an order of protection;

¹³ NY MHL § 9.39(a)(1)(2)

¹⁴ NY CVP § 6342(2) These statutory factors are a key foundation to any TERPO application. However, the court is not limited to the consideration of these factors and other facts relevant to the court in determining whether grounds for a TERPO exist should be included in any application.

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3. Any pending charge or conviction for an offense involving the use of a weapon¹⁵;
 4. Reckless use, display or brandishing of a firearm, rifle or shotgun;
 5. Any history of a violation of an extreme risk protection order;
 6. Evidence of recent or ongoing abuse of controlled substance or alcohol within the six months prior to the date the petition was filed; or
 7. Evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument within the six months prior to the date the petition was filed.¹⁶
- C. Additional factors for consideration to support the filing of a TERPO application¹⁷ include but are not limited to:
1. Any other credible information to know, or have reason to believe, that the individual owns, possesses, or has access to a firearm, rifle or shotgun such as:
 - a) Witness, family, and subject statements.
 - b) Records documenting:
 - (1) Pistol permit licensing including a concealed carry permit.
 - (2) Recent firearm purchase.
 - (3) Prior calls for service and reports.
 - c) Family/co-habitants have firearms, rifles, or shotguns that are not reasonably secured from the individual.
 2. Any other evidence that establishes the risk of harm posed by the respondent, including, but not limited to information from:
 - a) Department of Motor Vehicles database,¹⁸
 - b) Local Record Management System,
 - c) Crime Analysis Centers (CAC),

¹⁵ The NYS Division of Criminal Justice Services can only release Federal or State criminal history record information (CHRI) for criminal and civil purposes when explicitly authorized in accordance with Executive Law § 837, 9 NYCRR Part 6051 and related laws which govern the authority of a requesting party to receive CHRI information. The ERPO statute does not explicitly authorize the release of criminal history record information; therefore, an application for an ERPO does not permit access. This does not preclude law enforcement from accessing locally "owned" criminal history reports for this purpose.

¹⁶ Any inquiry requesting information on all weapons known to be registered to the respondent can be made to the New York State Police Pistol Permit section.

¹⁷ NY CVP § 6343(2)

¹⁸ Department of Motor Vehicle database search will provide name-based information on order of protections, warrants, extreme risk protection orders, and supervision status.

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- d) Domestic Incident Report Repository,
 - e) Order of Protection Registry,
 - f) Results of validated danger assessment tools,¹⁹
 - g) National Instant Criminal Background Check System
 - h) Electronic evidence: social media posts, texts, calls and computer aided dispatch (CAD) system; and
 - i) Relevant local and state law enforcement agencies and individuals who may have information about the respondent, including prior conduct or access to firearms, rifles, or shotguns.
- D. Where applicable, communicate with family/household members and service providers who may be able to help address the root cause of the respondent's crisis and dangerous behavior. In addition to an ERPO, other interventions may be appropriate, to ensure that individuals in crisis get the help they need to ensure that they no longer pose a serious threat of harm to themselves or others.
- E. Prior to filing an application
- 1. Notify direct supervisor and ERPO coordinator of intent to file.
 - 2. Provide any necessary notifications required by established local ERPO procedures and consult with relevant city, county, or other assigned counsel to ensure necessary counsel representation is obtained.
 - 3. Notify any persons who may be at a risk of harm by the respondent.
 - a) It's important to connect at risk parties with victim advocates or outside service providers to safety plan and prevent threats.
 - b) Since ERPOs only provide one type of protection of temporarily removing and limiting access to firearms, rifles, or shotguns, orders of protections should also be considered to: prohibit a respondent from coming near or contacting a protected individual; remove the respondent from a home shared with the individual; and address child custody and support. At risk parties who are members of the same family or household as the respondent should be advised to seek an order of protection in family court, regardless of whether or not an ERPO or criminal court order of protection is issued.

¹⁹ Various disciplines have screening tools that assess dangerousness, including but not limited to domestic violence, probation, or mental health.

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F. Filing an application

1. Complete and submit the necessary TERPO application and forms required by the NYS Office of Court Administration as well as any supporting documentation to the Supreme Court of the county which the respondent resides.²⁰ If the Supreme Court is closed (at night or on the weekends): Outside New York City, call 800-430-8457 or email: emergency@nycourts.gov. In Bronx, Brooklyn, Manhattan, Queens or Staten Island, go to the Criminal Court.
 - a) A TERPO application must be filed in the county which the respondent resides, however; in situations where a respondent is temporarily residing in a county, then a TERPO application should be filed in the county of temporary residence
 - b) If a respondent has no residence in New York State, then the TERPO application should be filed in the county in which the conduct gave rise to the need to file an application.²¹
 - (1) Consideration should be given to file a TERPO application in this instance to prevent a respondent from purchasing a prohibited weapon in any state as a result of New York courts entering the ERPO into the National Instant Criminal Background Check System.
 - (2) Consider notifying an appropriate police department in the subject's home state that a New York ERPO has been issued, and that department can then consider whether to secure weapons from the subject.
 - c) If a respondent has multiple residences
 - (1) Provide details on additional residences in the application. If necessary, the details can be provided as an attachment if there is not enough room on the application.
 - (2) Explain in the application why a search is needed for other residences if the petitioner has probable cause to believe it's necessary.
 - (3) Specify address of physical location of prohibited weapons in application.

²⁰ See definition of application in Section III of this policy for required forms necessary to be filed.

²¹ ERPOs issued by New York courts are entered into the National Instant Criminal Background Check System (NICS) as a universal prohibitor, which means that a NICS denial will be issued if the subject attempts to purchase a prohibited weapon in any state.

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- d) When filing in a county other than the petitioner's jurisdictional county, contact the Supreme Court of the respondent's residence to determine available filing options.²²
2. The petitioner listed on the application must be a name of a person; it cannot be the name of an institution (e.g., police department, district attorney office).²³
3. Deliver in person the application to the County Clerk's Office for the county which the respondent resides for an Index Number to be assigned to the application.
4. Once the application has been accepted for filing and an Index Number is assigned, deliver the application to the Supreme Court Chief Clerk's Office for a judicial review.
5. Redaction of sensitive information
 - a) The full name of the respondent under the age of 18 shall be omitted, except the individual's initials, when completing the application.²⁴
 - b) Consider requesting the court²⁵ to redact for safety reasons the petitioner's name and/or contact information from the order and related papers served.
6. Upon submission of the application, the court may conduct an examination under oath of the petitioner or any witness the petitioner may produce. As such, the petitioner and any witnesses shall be prepared to testify under oath. ²⁶
7. If there is probable cause to believe that the respondent possesses specific firearms, rifles or shotguns at a specific location or locations, the petitioner may request issuance of a "search order" – an optional portion of a TERPO that authorizes law enforcement officials to search for and remove prohibited weapons currently in the respondent's possession. To obtain a search order, the petitioner must inform the judge of the requested authority to search for and seize prohibited weapons in the respondent's possession and ask the judge to issue a "search order" as part of the TERPO. The petitioner must be prepared to fully explain the basis for the probable cause determination regarding the prohibited weapons possessed and where they are likely to be found.

²² Some options may include in-person filing, virtual filing of application and files by secured transmission or usage of the Electronic Document Delivery System <https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm>, or providing an affidavit to a local agency to file on behalf of the out of county law enforcement agency.

²³ NY CVP § 6340(2)

²⁴ 22 New York Codes Rules and Regulations 202.5(e)(1)(iii); Although the full name of the respondent may not appear on public documents including the application, the full name of the respondent will be entered into NICS.

²⁵ NY CVP § 6342 (6)(a)

²⁶ NY CVP § 6342(3)

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8. To prevent unexpected delays where safety is critical, seek information from the court on how long it will take for the judge to review the filing and pull together the certified order and packets.
9. If the application for a TERPO is not granted by the court
 - a) The petitioner should notify all parties who have a stake in the application to determine whether to withdraw the application or continue with the scheduled hearing for issuance of a FERPO.²⁷
 - b) If the petitioner elects to proceed with a FERPO hearing, the court will schedule a hearing date and issue a Notification of Hearing for FERPO, which must be served upon the respondent.

V. Service

A. Prior to service of an ERPO

1. A law enforcement agency, who has jurisdiction in serving a TERPO and has been directed to do so by the court or serves a TERPO on behalf of another individual legally allowed to apply for a TERPO²⁸, is required to conduct a background investigation on the respondent prior to a FERPO hearing. In instances when a TERPO is denied, the court will require a background investigation to be conducted by the law enforcement agency having jurisdiction. The following areas are required to be investigated and reported to the court prior to a FERPO hearing.²⁹
 - a) Existence of a prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence, including any criminal charge or violation pending.
 - b) Whether the respondent is currently on parole or probation.
 - c) If the respondent possesses any registered firearms, rifles or shotguns.
 - d) If the respondent has been, or is, subject to any order of protection or has violated or allegedly violated any order of protection.
2. Conduct a threat assessment prior to service regarding the risk of lethality to respondent and others upon first notification of the court. Consider the following areas to be assessed.
 - a) Prior incidents of assault, threats, violence, or attempts to do so (DV and non-DV) against:

²⁷ NY CVP § 6342(5)

²⁸ When serving an ERPO on behalf of a petitioner, law enforcement may not charge the petitioner for such service pursuant to NY CVP § 6342(6)(b)

²⁹ NY § CVP 6342(9)

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- (1) Children,
 - (2) Law enforcement,
 - (3) Victim, or
 - (4) Animals.
- b) Any type of physical violence, stalking, or sexual harm toward victims.
 - c) Conviction or arrest involving violent acts.
 - d) History of alcohol or substance abuse.
 - e) Behavioral crisis in the past that may be indicative of dangerousness to self and/or others including suicidality.
 - f) Existence of outstanding warrants.
 - g) Information about respondent's firearm licenses and any firearms, rifle or shotguns that may be possessed or accessible to the respondent.
 - h) Computer Aided Dispatch System reports that may indicate firearm, shotgun or rifle ownership or possession.
 - i) Pawn history of firearm, rifle or shotguns purchases, sales, or holds for loans.
 - j) Attempts by respondent to purchase a firearm, rifle or shotgun.³⁰
 - k) Existence of any hunting license respondent possesses.
3. When serving the court order, the number of officers and, where applicable, officers with specialized crisis response training should be considered to ensure the safety of officers, the respondent, and others who may be present at the location.
 4. Review list of prohibited weapons contained in the court order.
 5. Verify whether respondent will require interpretation services to understand directions and terms of the court order.
 6. Consider service of these orders to take priority over the service of other orders due to the underlying emergency nature and purpose of ERPOs, except for orders of a similar emergency nature.

³⁰ A search of the National Criminal Background Check System would indicate any attempts by a respondent to purchase a prohibited weapon.

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7. Coordinate with the local law enforcement agency that has jurisdiction where respondent resides, if outside the petitioner's jurisdictional area of coverage, to ensure there is collaboration of service of the TERPO among agencies.

B. Serving Respondent

1. Service of an ERPO cannot be made by the petitioner³¹; however, if the petitioner is a law enforcement officer, it's permissible for that officer to accompany another law enforcement officer who is serving the ERPO. The petitioner may speak with the respondent, conduct a legally authorized search, and secure custody of any prohibited weapons that are surrendered or removed.
2. While service cannot be made upon person on a Sunday, or on a Saturday if the individual keeps Saturday as the Sabbath (holy time),³² a request to the court to immediately serve the order should be made due to the emergency nature of the ERPO.
3. Promptly serve copies of documents provided by the court to the name of the person named in the order³³ along with a clear explanation of the parameters of the ERPO. Ensure service of the documents is consistent with any procedures established by the ERPO coordinator. The documents served depending on the type of ERPO may consist of:
 - a) TERPO court order (UCS ERO-1)³⁴
 - b) Notice of hearing date to determine whether to issue a FERPO (UCS-6342/N)³⁵
 - c) FERPO court order if the respondent is not present in court³⁶
 - d) A copy of the petition and any supporting documentation³⁷
 - e) Form for respondent to complete which describes firearms, rifles, or shotguns possessed by respondent and their location (UCS-6342/L)³⁸
 - f) Notice of ERPO renewal application, where applicable³⁹
4. Service of a minor⁴⁰ who is the respondent

³¹ NY CVP §2103(a)

³² NY General Business Law §§11 and 13

³³ NY CVP §6342(6)(b)

³⁴ NY CVP § 6342(4)

³⁵ NY CVP §§ 6342(4)(d)(ii) and 6342(5)

³⁶ NY CVP § 6343(1)

³⁷ NY CVP § 6342(6)(a)

³⁸ NY CVP § 6342(4)(e)

³⁹ NY CVP § 6345(2)

⁴⁰ NY CVP §105(j)

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- a) A minor who is the age of 14 but less than 18 years, shall also be served along with a parent or any guardian or any person having legal custody of the minor.⁴¹
 - b) A parent or any guardian or any person having legal custody of the minor must be served if the minor is less than 14 years of age.
5. A minimum of two additional attempts should be made if the first attempt at serving the ERPO is unsuccessful. Additional service locations should be considered if the respondent is unable to be located.
- a) If service on respondent is not effectuated despite ongoing risk, law enforcement should notify any victim or third-party who may be at personal risk of the inability to serve.
 - b) All attempts to serve the ERPO shall be documented, and such documentation should include any concerning behavior on the part of the respondent when contact is made such as threats, evasion of service, denials of ownership, and behaviors that suggest an ongoing risk of harm to self and/or others.
 - c) Depending upon the activity observed at the time of service, consider if any criminal charges may be appropriate (e.g., menacing).
- C. Removal of prohibited weapons
1. Request the named person on the ERPO to immediately surrender all prohibited weapons as required by the order⁴² unless the judge denies the TERPO application, but the petitioner has elected to proceed with a FERPO hearing. In this case, no weapons will be secured when serving the FERPO hearing papers until directed by the court after the final hearing.
 - a) Clearly explain the surrender portion of the ERPO to the respondent.
 - (1) Explain that the order is already in effect and the respondent is prohibited from purchasing or possessing firearms for the duration of the order.
 - (2) Explain the order requires immediate surrender of all prohibited weapons in respondent's custody, control, or possession.

⁴¹ NY CVP § 309(a)

⁴² NY CVP §§ 6342(8) and 6343(3)(d)

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- (3) Explain that failure to surrender prohibited weapons is a violation of the court's order and may result in civil and criminal penalties.
 - b) Instruct the respondent to complete the Listing of Firearms, Rifles, and Shotguns form to identify the prohibited weapons the respondent is in possession of.⁴³
 - c) Consider accompanying the respondent, where legally allowed, to recover prohibited weapons from their location.
 - d) Take reasonable steps to separate any parties that are present prior to completing service or collecting prohibited weapons.
 - e) Investigate respondent's claim(s) that any firearms, rifles, or shotguns have been transferred or that the respondent does not possess firearms, rifles, or shotguns.
 - f) Remove any prohibited weapons that are in plain sight or that are recovered pursuant to a lawful search, including a consent search. Obtain written voluntary consent to search in any case where a respondent or third-party gives you their consent to search.
2. If the ERPO authorizes a search and seizure of weapons, execute the ERPO "search order" in the same manner as a search warrant issued pursuant to CPL Article 690.
3. Take possession of all firearms, rifles, or shotguns surrendered, observed in plain sight, or discovered pursuant to a lawful search.⁴⁴ Take possession of and remove all firearms, rifles, or shotguns identified in this manner whether or not they are specified in the order. This includes any firearms, rifles, or shotguns owned by a third-party that a respondent has access to.⁴⁵
4. All prohibited weapons removed shall be handled, secured, and transported consistent with firearm safety handling guidelines.

D. Search Order

1. An ERPO on its own without a "search order" does not authorize law enforcement to search for firearms, rifles, or shotguns. In an ERPO case, as always, all rules governing search and seizure remain in effect.
2. If a search order was not requested at time of filing, consider seeking a search warrant under CPL Article 690 based upon probable cause of

⁴³ Possess means to have physical possession or otherwise to exercise dominion or control over tangible property pursuant to NY Penal Law § 10.00(8)

⁴⁴ NY CVP §§ 6342(8) and 6343 (3)(d)

⁴⁵ NY CVP §§ 6343(3)(b) and 6343(5)(a)

During a final extreme risk protection order hearing, the court will determine if any prohibited weapons removed when serving the TERPO should be returned to another individual permitted by law to own or possess, or to be returned directly to the respondent.

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criminal contempt 2nd or some other offense having been committed when there is reasonable belief that a respondent failed to surrender prohibited weapons specified in the court order or if additional information is obtained that the respondent possesses firearms, rifles, or shotguns at another location not previously known.

3. The same proof required to obtain a search warrant in any other investigation is required in the ERPO process.⁴⁶
 - a) Probable cause to believe that there are firearms, rifles, or shotguns in the respondent's possession, custody, or control is required.
 - b) Provide specifics about firearms, rifles, or shotguns to be targeted in the search and alleged locations.

E. Receipt of property⁴⁷

1. Issue a receipt/voucher to the owner from whom the prohibited weapon is taken, describing the property in detail.
2. In cases where the owner is not present:
 - a) Issue the receipt/voucher in the place where the property was found; or
 - b) Mail a copy of the receipt/voucher to the last known address of the owner of the prohibited weapon.
 - (1) Retain proof of mailing.
 - (2) File a copy of the receipt/voucher with the court.

F. Proof of service

1. The individual who served the ERPO papers must indicate the ERPO has been served in the eJusticeNY Integrated Justice Portal Order of Protection Serviced applications. Individuals must also complete a proof of service in the form of a certificate specifying:⁴⁸
 - a) papers served,
 - b) person who was served,
 - c) date and time,
 - d) address or place and manner of service if no address, and

⁴⁶ NY CPL Article 690

⁴⁷ NY CVP § 6344(1)

⁴⁸ NY CVP §§306(a) and 306(d)

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- e) any facts showing the service was made by an authorized person and in an authorized manner.
2. Immediately transmit via email, hand delivery, etc. proof of service to the clerk of the court after service is complete.⁴⁹

VI. FERPO Hearing⁵⁰

- A. Counsel representation for the petitioner should be strongly considered prior to the final hearing to ensure the petitioner is not placed at a significant disadvantage. The proceeding may require in-person testimony, cross examination, and the presentation of legal arguments which law enforcement is not trained to handle.
- B. When preparing for the hearing, consider the following actions to ensure clear and convincing evidence is presented to the court by the petitioner and any witnesses.
 1. Review all factors that could be considered during a TERPO application delineated in section IV.B. and any relevant factors when serving an order delineated in section V.A.
 2. Written statements from any witnesses with personal knowledge of the facts and circumstances leading up to the application have been obtained.
 3. All relevant documentation and reports have been gathered for presentation, including any documentation that supported factors during the TERPO application process.
 4. All witnesses are prepared to provide testimony, if necessary, and are present for the hearing.

VII. Storage, Release, and Disposition of Prohibited Weapons

- A. Prohibited weapons shall be handled and stored in accordance with an agency's property evidence room procedures for the duration of the ERPO unless:
 1. The court directs that such weapons be returned to the respondent;⁵¹
 2. A determination is made by the court that the prohibited weapons removed is owned by a person other than the respondent and there is no legal impediment to the owner possessing the prohibited weapon(s) provided the lawful owner safely stores the firearm(s);⁵² or

⁴⁹ Proof of service notification to the court will ensure the National Instant Criminal Background Check System is updated to prevent the respondent from purchasing a prohibited weapon.

⁵⁰ NY CVP § 6343(2)

⁵¹ NY CVP §§ 6343 5(a) and 6346(2)

⁵² NY CVP § 6344(2)

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3. Ownership is legally transferred by the respondent to an individual permitted by law to own and possess a firearm, rifle, or shotgun.⁵³
- B. Release of prohibited weapons shall be done in accordance with the agency's property and evidence room procedures.
- C. Disposition of prohibited firearms, rifles, and shotguns obtained by ERPO
 1. Unclaimed firearms, rifles, or shotguns safeguarded pursuant to an ERPO shall be retained and not disposed of for at least two years unless otherwise directed by the court to return firearms, rifles, and shotguns to the respondent or lawful owner.⁵⁴
 2. Destruction of firearms, rifles, and shotguns shall be done in accordance with the agency procedures.

VIII. Renewal of ERPO

- A. Request the court to provide an extension of a TERPO in cases where the TERPO will expire because the respondent was issued additional time to prepare for the FERPO hearing date (e.g., call witnesses or retain legal representation) and make record of the request.⁵⁵
- B. An extension of a FERPO may be requested at any time within 60 days before the expiration of the FERPO⁵⁶ by completing a NYS Courts Application for Renewal of an Extreme Risk Protection Order (UCS-6345/A) and filing it with the Supreme Court that originally issued the FERPO.⁵⁷
 1. Tracking and monitoring of expiring FERPOs by the ERPO Coordinator will ensure that a review can be completed within 60 days of expiration to determine if a renewal is necessary.
 2. The petitioner should evaluate whether there is probable cause to believe that the respondent is still likely to engage in conduct that could result in serious harm to themselves or others that necessitates the need to request for a renewal.
 3. After a notice is received by the courts that the respondent may apply for the return of prohibited weapons⁵⁸, the petitioner should verify that there is no new information that would justify the renewal of an ERPO.
- C. A copy of the renewal application must be personally served upon the respondent.⁵⁹

⁵³ NY CVP § 6344(1)

⁵⁴ NY CVP § 6344(1)

⁵⁵ NY CVP § 6343(1)

⁵⁶ NY CVP § 6345(1)

⁵⁷ Upon receipt of the request, the court will schedule a hearing, allowing reasonable time for the respondent to be served and fully participate in the renewal hearing.

⁵⁸ NY CVP § 6346(2)

⁵⁹ NY CVP § 6345(2)

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- D. Any scheduled ERPO extension hearing will be conducted in the same manner as a FERPO. As such, the ERPO coordinator should ensure similar steps are taken to prepare for the hearing.

IX. Training

- A. An ERPO coordinator shall ensure all officers receive training on all local and statutory procedures required for the application and service of extreme risk protection orders, including procedures to prepare for hearings.
- B. This document is not intended to be a substitute for proper training on extreme risk protection orders.⁶⁰

⁶⁰ An overview of New York State's Extreme Risk Protection Order may be viewed here:
<https://www.youtube.com/watch?v=oMMkeLHTE9c>