

Legislative Analysis



EXTREME RISK PROTECTION ORDER ACT ("RED FLAG" LAW)

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

**Senate Bill 83 as enacted
Public Act 38 of 2023
Sponsor: Sen. Mallory McMorrow**

Analysis available at
<http://www.legislature.mi.gov>

**House Bill 4146 as enacted
Public Act 37 of 2023
Sponsor: Rep. Kelly Breen**

**House Bill 4147 as enacted
Public Act 35 of 2023
Sponsor: Rep. Julie Brixie**

**House Bill 4148 as enacted
Public Act 36 of 2023
Sponsor: Rep. Stephanie A. Young**

**House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 2-9-24**

SUMMARY:

Senate Bill 83 creates a new act, the Extreme Risk Protection Order Act, which does all of the following:

- Specifies who can file an action requesting a court to issue an extreme risk protection order (ERPO), where and how it can be filed, and the information to be included. An ERPO prohibits the person subject to it from purchasing or possessing a firearm or having or applying for a concealed pistol license (CPL) while the ERPO is in effect.
- Requires a court to issue an ERPO if it makes certain specified determinations by a preponderance of the evidence, and allows a court to issue an ERPO without notifying the person subject to it if certain additional conditions are met.
- Allows a firearm not surrendered to be seized upon notification or service of an ERPO, requires a seized firearm to be stored while an ERPO is in force, and allows the respondent to reclaim the firearm when an ERPO has ended.
- Allows an ERPO to be modified or rescinded.
- Prescribes procedures for court clerks and law enforcement officers.
- Requires certain hearings.
- Prescribes penalties for violations.

House Bill 4146 includes references to the new act and ERPOs in provisions regarding a license to purchase, possess, carry, or transport a firearm and eligibility for a CPL.

House Bill 4147 amends provisions regarding service of process in civil actions to conform with the new act and prohibits a fee from being charged or collected for serving process issued in an action brought under the new act.

House Bill 4148 adds the felony violations created by the new act to the sentencing guidelines.

The bills take effect February 13, 2024.

Senate Bill 83 creates the Extreme Risk Protection Order Act, which allows certain individuals (called *petitioners*) to file an action in the family division of circuit court requesting the court to enter an ERPO. Any of the following may file such an action:

- A spouse or former spouse of the *respondent* (the individual the ERPO is requested against).
- An individual who has a child in common with the respondent.
- An individual who has, or has had, a *dating relationship* with the respondent.
- An individual who resides, or has resided, in the same household with the respondent.
- A parent, child, sibling, grandparent, grandchild, uncle or aunt, or first cousin of the respondent.
- A guardian of the respondent.
- A *law enforcement officer*.
- A *health care provider*, as long as bringing the action does not violate requirements of the Health Insurance Portability and Accountability Act (HIPAA) regulations under that act, or physician-patient confidentiality.

Dating relationship means a relationship that consists of frequent, intimate associations primarily characterized by the expectation of affectional involvement. It does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Law enforcement officer means that term as defined in section 2 of the Michigan Commission on Law Enforcement Standards (MCOLES) Act.¹

Health care provider means either of the following:

- A physician, physician's assistant, nurse practitioner, or certified nurse specialist who is licensed under the Public Health Code or in another state.
- A *mental health professional*.

Mental health professional means one of the following individuals who is trained and experienced in the area of mental illness or developmental disabilities:

- A physician.
- A psychologist.
- A registered professional nurse licensed or authorized to engage in the practice of nursing under the Public Health Code.
- A licensed master's social worker licensed or authorized to engage in the practice of social work at the master's level under the Public Health Code.
- A licensed professional counselor licensed or authorized to engage in the practice of counseling under the Public Health Code.
- A marriage and family therapist licensed or authorized to engage in the practice of marriage and family therapy under the Public Health Code.
- A mental health professional licensed in another state.

¹ <http://legislature.mi.gov/doc.aspx?mcl-28-602>

Filing an action

To file an action requesting an ERPO, an individual must file a summons and complaint on forms approved by the State Court Administrative Office (SCAO) as directed by the Michigan Supreme Court.² The complaint must state facts that show that issuance of an ERPO is necessary because the respondent can reasonably be expected in the near future to intentionally or unintentionally seriously physically injure themselves or someone else by possessing a firearm, and has engaged in an act or acts or made significant threats that are substantially supportive of this expectation. An ERPO action can be filed regardless of whether the respondent owns or possesses a firearm. If the petitioner knows or believes that the respondent owns or possesses firearms, the petitioner must state that in the complaint and, to the extent possible, identify the firearms and provide their location and any additional information that would help a law enforcement officer find them. If the petitioner knows that the respondent is one of the following (referred to in this summary, but not in the bill, as *armed officers or employees*), they also must provide that information in the complaint:

- An individual required to carry a pistol as a condition of their employment who is issued a CPL.
- A police officer licensed or certified under the MCOLES Act.
- A sheriff or deputy sheriff.
- A member of the Department of State Police.
- A local corrections officer.
- An employee of the Department of Corrections.
- A federal law enforcement officer who carries a pistol during the normal course of their employment.
- An officer of the Federal Bureau of Prisons.

If the respondent is an adult who resides in Michigan, the petitioner can file an ERPO action in any Michigan county, regardless of where any party is located or resides. If the respondent is a minor who resides in Michigan, the action must be filed in the county of residence of either the petitioner or the respondent. If the respondent does not reside in Michigan, the action must be filed in the petitioner's county of residence. The court can enter an order to change the venue of an ERPO action for any reason allowed under the Michigan Court Rules, including the convenience of parties and witnesses. In deciding whether to change venue, the court can consider the location of firearms owned or possessed by the respondent.

ERPO hearing procedures

The court where an ERPO action is filed must expedite and give priority to a hearing on the issuance of an ERPO and any other hearings required under the act. Except for ex parte orders (described below), the respondent must receive notice of, and be given an opportunity to be heard at, a hearing on the issuance of an ERPO. The petitioner's address cannot be disclosed in any pleading or paper or otherwise, and the clerk of the court must maintain the petitioner's address as confidential in the court file. For any motion filed by the respondent or any hearing scheduled by the court, the clerk must provide notice to the petitioner using the confidential address. The court can allow ERPO proceedings to be held with video conferencing technology or communication equipment as allowed under Michigan court rules and administrative orders.

² For example: <https://www.courts.michigan.gov/4908f2/siteassets/forms/scao-approved/cc452.pdf>

Determination of whether to issue an ERPO

The court must issue an ERPO if it determines by the preponderance of the evidence that the respondent can reasonably be expected in the near future to intentionally or unintentionally seriously physically injure themselves or someone else by possessing a firearm, and has engaged in an act or acts or made significant threats that substantially support this expectation. In making its determination, the court must consider all of the following:

- Any history of use, attempted use, or threatened use of physical force by the respondent against themselves or someone else, regardless of whether it involved a firearm.
- Any evidence of the respondent's having a ***serious mental illness*** or ***serious emotional disturbance*** that makes them dangerous to themselves or someone else.
- Any of the following previous or existing orders against the respondent:
 - An ERPO.
 - A personal protection order.
 - A pretrial release order, probation order, or parole order.
 - Any other injunctive order.
- Any violation by the respondent of a previous or existing ERPO.
- Any violation by the respondent of a previous or existing personal protection order.
- Any previous conviction of, criminal charges pending against, or previous or pending juvenile delinquency petitions against the respondent for the commission or attempted commission of any of the following offenses:
 - A misdemeanor violation of section 81 of the Michigan Penal Code (assault and battery).
 - A violation of section 411h or 411i of the Michigan Penal Code or a similar offense in another jurisdiction (stalking and aggravated stalking).
 - An offense that has assault as an element.
 - An offense that has an element including a threat to person or property.
 - An offense that is a crime committed against the person or property of any of the following:
 - The spouse or a former spouse of the respondent.
 - An individual who has a child in common with the respondent.
 - An individual who has, or has had, a dating relationship with the respondent.
 - An individual who resides, or has resided, in the same household with the respondent.
 - An offense involving cruelty to or abuse of animals.
 - A ***serious misdemeanor***.
- Any evidence of recent unlawful use of controlled substances by the respondent.
- Any recent abuse of alcohol by the respondent.
- Any previous unlawful possession, use, display, or brandishing of a deadly weapon by the respondent.
- Any evidence of the respondent's acquisition or attempted acquisition of a deadly weapon or ammunition within the previous 180 days (about six months).
- Any additional information the court finds reliable, including a statement by the respondent or relevant information from family and household members concerning the respondent.
- Any other facts the court believes are relevant.

Serious mental illness means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed in the past year for long enough to meet diagnostic criteria in the most recent Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association and approved by the Department of Health and Human Services (DHHS) and that has resulted in functional impairment that limits or substantially interferes with one or more major life activities. The term includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance, but does not include any other dementia unless it occurs in conjunction with another diagnosable serious mental illness. The term includes a substance use disorder or a developmental disorder only if those disorders occur in conjunction with another diagnosable serious mental illness.

Serious emotional disturbance means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed in the past year for long enough to meet diagnostic criteria in the most recent DSM and that has resulted in functional impairment that limits or substantially interferes with the minor's role or functioning in family, school, or community activities. The term includes a substance use disorder or a developmental disorder only if those disorders occur in conjunction with another diagnosable serious emotional disturbance.

Serious misdemeanor means a violation of one or more of the following:

- Section 81 of the Michigan Penal Code (assault and battery).
- Section 81a of the Michigan Penal Code (aggravated assault).
- Section 81c(1) of the Michigan Penal Code (threatening DHHS employee).
- Section 115 of the Michigan Penal Code (breaking and entering).
- Section 136b(7) of the Michigan Penal Code (fourth degree child abuse).
- Section 145 of the Michigan Penal Code (contributing to delinquency).
- Section 145d of the Michigan Penal Code (using computer to make prohibited communication).
- Section 174a(2) or (3)(b) of the Michigan Penal Code (embezzlement from a vulnerable adult of less than \$200).
- Section 174a(3)(a) of the Michigan Penal Code (embezzlement from a vulnerable adult of \$200 to \$1,000).
- Section 233 of the Michigan Penal Code (aiming a firearm without malice).
- Section 234 of the Michigan Penal Code (discharge of aimed firearm).
- Section 235 of the Michigan Penal Code (discharge of aimed firearm resulting in injury).
- Section 335a of the Michigan Penal Code (indecent exposure).
- Section 411h of the Michigan Penal Code (stalking).
- Section 601b(2) of the Michigan Vehicle Code (injuring worker in work zone).
- Section 601d(1) or (2) of the Michigan Vehicle Code (moving violation causing death or serious impairment of a body function).
- Section 617a of the Michigan Vehicle Code (leaving scene of personal injury accident).
- Section 625 of the Michigan Vehicle Code (operating vehicle while under the influence or impaired)—if the violation involves an accident resulting in damage to another's property or physical injury or death to another.

- Section 701 of the Michigan Liquor Control Code—if the violation involves selling or furnishing alcoholic liquor to an individual under 21 and results in physical injury or death.
- Section 80176(1) or (3) of the Natural Resources and Environmental Protection Act (operating vessel while under the influence or impaired)—if the violation involves an accident resulting in damage to another’s property or physical injury or death.
- A local ordinance substantially corresponding to the above.
- Any provision of law if the violation was charged as a *crime* or as a *serious misdemeanor* listed above but then reduced to or pleaded to as a misdemeanor.

Crime means an offense expressly designated as a felony, or a violation of a Michigan penal law that is punishable by imprisonment for more than one year.

If a court issues an ERPO, or refuses to issue one, the court must immediately state in writing the specific reasons for doing so. If a hearing is held, the court also must immediately state on the record the specific reasons for issuing or refusing to issue the order.

A court that issues an ERPO must determine whether the respondent must surrender their firearms immediately or within a 24-hour period. Unless the petitioner is a law enforcement officer or health care provider, there is a presumption that the respondent will have 24 hours to surrender them. If the court orders the firearms immediately surrendered, it must also issue an anticipatory search warrant authorizing a *law enforcement agency* to search locations where the firearms or CPL is believed to be and to seize any firearm or CPL discovered in the search. The search warrant is subject to and contingent on the restrained individual’s failure or refusal to comply with the order when served and immediately surrender to a law enforcement officer any firearm or CPL in their *possession or control*.

Law enforcement agency means any of the following:

- A sheriff’s department.
- The Department of State Police.
- A police department of a township, village, or incorporated city.
- The public safety department or office of a public university, community or junior college, or private college.

Possession or control includes actual possession or constructive possession by which the individual has the right to control the firearm even though the firearm is in a different location. The term does not require the individual to own the firearm.

A court that issues an ERPO may, in its discretion, allow the restrained individual to surrender any firearms to a licensed firearm dealer on the list prepared as described below.

An ERPO is effective and enforceable immediately after it is issued by the court. The order may be enforced anywhere in Michigan by a law enforcement agency that receives a true copy of the order, is shown a copy, or has verified its existence on the Law Enforcement Information Network (LEIN)³ or an information network maintained by the Federal Bureau of Investigation

³ <https://www.michigan.gov/msp/le/lein>

(FBI). The order is effective for one year. As described below, a court can issue one or more extended orders that are each effective for one year after the expiration of the previous order.

Ex parte ERPOs⁴

A court can issue an ERPO without written or oral notice to the respondent if it determines by clear and convincing evidence from specific facts shown by a verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to provide notice or that the notice will itself bring about adverse action before an ERPO can be issued.⁵ If the petitioner requests the court to issue an ex parte ERPO, the court must make its determination on the request within one business day (generally understood to mean a day that is not a Saturday, Sunday, or legal holiday).

In addition, a petitioner who is a law enforcement officer may request an immediate emergency ex parte ERPO if the officer is responding to a complaint involving the respondent and the respondent can reasonably be expected in the near future to intentionally or unintentionally seriously physically injure themselves or someone else by possessing a firearm. The officer may request an immediate emergency ex parte ERPO verbally over the telephone, and the judge or magistrate on duty in that jurisdiction may issue the ERPO. Within one business day after an immediate emergency ex parte ERPO is entered, the officer must file with the court a sworn written petition detailing the facts and circumstances presented to the court. The issuing court must forward a copy of the petition to the circuit court, if applicable.

If requested by the restrained individual, a court that issues an ex parte ERPO as described above (including an immediate emergency ex parte ERPO) must hold a hearing on the order in accordance with Michigan Court Rules no later than 14 days after the order is served on the restrained individual or they receive actual notice of it—or no later than five days after that if the restrained individual is an *armed officer or employee* as described above.

Motion to modify or rescind

An individual restrained under an ERPO may file a motion to modify or rescind the order at any time and request a hearing under rules of the Michigan Supreme Court. The restrained individual may file one motion to modify or rescind an order during its first six months of effectiveness and one motion during its second six months. If an extended order is issued as described below, the restrained individual may file one motion to modify or rescind the order during its first six months and one motion during its second six months. If the restrained individual files more than one motion during those time periods, the court must review the motion before a hearing is held and may summarily dismiss it without a response from the petitioner or a hearing. At a hearing on a motion to modify or rescind an ERPO, the restrained individual must prove by a preponderance of the evidence that they no longer pose a risk to seriously physically injure themselves or someone else by possessing a firearm.

⁴ Generally speaking, a legal proceeding brought by one party in the absence of the other party, and without the other party's representation or notification, is described as being an *ex parte* proceeding, a Latin phrase that means *from (or out of) the party* (i.e., the side that is represented). The ERPOs described in this section are known as ex parte ERPOs, as they are issued on behalf of the petitioner without initial notice to the respondent.

⁵ Before issuing an ex parte ERPO, the court must also still make the determination as to whether to issue an ERPO, based on the preponderance of evidence, as described above.

ERPO contents

If the court determines that an ERPO should be issued, the court must include in the order all of the following provisions:

- That the restrained individual cannot purchase or possess a firearm, and any unused, valid firearm license issued to them under section 2 of 1927 PA 372⁶ cannot be used and must be surrendered to the **designated** law enforcement agency.
- That the restrained individual cannot apply for a CPL, and if they have a CPL it will be suspended or revoked once the ERPO is entered into LEIN and must be surrendered as provided in section 8 of 1927 PA 372.⁷
- That the restrained individual must surrender any firearms in their possession or control to the **designated** law enforcement agency or, if allowed as ordered by the court, to a licensed firearm dealer, and that this surrender must be made, at the court's discretion, either within 24 hours or immediately after being served with the order.
- If the court has ordered the restrained individual to surrender the individual's firearms immediately, a statement that the **designated** law enforcement agency must proceed to seize the restrained individual's firearms after the restrained individual is served with or receives actual notice of the ERPO, after giving the restrained individual an opportunity to surrender their firearms.
- If the petitioner has identified any firearms in the complaint, a specific description of the firearms to be surrendered or seized.
- For an ex parte ERPO, a statement that, if requested by the restrained individual, a hearing will be held within five days or 14 days (as applicable) after the restrained individual is served with or receives actual notice of the order, and that the individual may appear at the hearing and request the court to modify or rescind the order.
- A statement that the restrained individual may file a motion to modify or rescind the order (as described above) and that motion forms and filing instructions are available from the clerk of the court.
- A **designation of the law enforcement agency** (in whose jurisdiction the restrained individual must reside) that is responsible for forwarding the order to the FBI.
- Directions to a local entering authority or the **designated** law enforcement agency to enter the order into LEIN.
- A statement that violation of the order will subject the restrained individual to immediate arrest, the contempt powers of the court, an automatic extension of the order, and criminal penalties, including imprisonment for up to one year for an initial violation and up to five years for a subsequent violation.
- A statement that the restrained individual has a right to seek the advice of an attorney.
- An expiration date that is one year after the date of issuance.

Verification and compliance

No later than one business day after the restrained individual has received a copy of the ERPO or has actual notice of it, the restrained individual must do either of the following:

- File with the issuing court one or more documents or other evidence verifying that all firearms previously in the individual's possession or control were surrendered to or seized by the **designated** local law enforcement agency, that any CPL was surrendered

⁶ <http://legislature.mi.gov/doc.aspx?mcl-28-422>

⁷ <http://legislature.mi.gov/doc.aspx?mcl-28-428>

as required, and that at the time of the verification the individual does not have a firearm or CPL in their possession or control.

- File with the issuing court one or more documents or other evidence verifying that the individual did not have a firearm or CPL in their possession or control at the time the order was issued and that they do not have a firearm or CPL in their possession or control at the time of the verification.

If a restrained individual does not satisfy the above requirements in the required time, the clerk of the issuing court must inform the **designated** local law enforcement agency. That agency must then make a good-faith effort to determine whether there is evidence that the restrained individual has failed to surrender a firearm or CPL as required.

The court must schedule a compliance hearing to be held no later than five days after an ERPO is served or the restrained individual receives actual notice of it. The court can cancel the hearing if the restrained individual has satisfied the above requirements. If the restrained individual has failed to do so, or if they fail to appear at the compliance hearing, the court must issue a bench warrant and a search warrant to seize any firearms and can hold the restrained individual in contempt.

At any time while an ERPO is in effect, the prosecuting attorney for the county where it was issued or a law enforcement officer may file an affidavit with the issuing court alleging that the restrained individual has a firearm or a CPL in their possession or control. If the court determines that probable cause exists to believe the allegation, it may issue an arrest warrant or order a hearing. The court must also issue a search warrant that describes the firearms or CPL believed to be in the restrained individual's possession or control and designates a law enforcement agency to search the locations where they are believed to be and seize any firearm or CPL discovered by the search.

Court clerk responsibilities

The clerk of an issuing court must do all of the following immediately after issuance and without requiring a proof of service on the restrained individual:

- Provide a true copy of the order to the **designated** law enforcement agency.
- Provide the petitioner with at least two true copies of the order.
- If the restrained individual is identified as an *armed officer or employee* as described above, notify the individual's employer, if known, of the existence of the order.⁸
- Notify the Department of State Police and the clerk of the restrained individual's county of residence of the existence of the order.
- Inform the petitioner that they may take a true copy of the order to the **designated** law enforcement agency to be immediately provided to the FBI and (unless the order designates a local entering authority that must do so) entered into LEIN.

The clerk of the issuing court must immediately notify the **designated** law enforcement agency if the clerk receives proof that the restrained individual has been served; if the order is rescinded, modified, or extended; or if the order expires without being extended.

⁸ The bill says that it is legislative intent (i.e., not binding) that the restrained individual's employer work with the restrained individual's union or bargaining representative to avoid the restrained individual's losing their employment or compensation and benefits while the ERPO is in effect.

Service of an ERPO

An ERPO must be served on the restrained individual in person; by registered or certified mail, return receipt requested; by delivery to the last known address of the restrained individual; or by any other means allowed under Michigan court rules as decided by the court. However, if the court has ordered the immediate surrender of the individual's firearms, the order must be served personally by a law enforcement officer. If the restrained individual has not been served, a law enforcement officer who knows that the order exists may, at any time, serve the restrained individual with a true copy of the order or advise them of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where they may obtain a copy. The individual who serves an ERPO or the officer who gives oral notice of the order must file proof of service or proof of oral notice with the clerk of the issuing court and the petitioner.

Law enforcement responsibilities

A **designated** law enforcement agency that receives a true copy of the order must do both of the following immediately and without requiring proof of service:

- Enter the order into LEIN (unless the order designates a local entering authority that must do so).
- Report the entry of the order to the Criminal Justice Information Services Division of the FBI for purposes of the National Crime Information Center.

A law enforcement agency that receives information from a court clerk as described above (i.e., that the individual has been served or that the order is rescinded, modified, extended, or expired) must enter the information into LEIN and report it to the FBI as described above.

If an ERPO has not been served on the restrained individual, a law enforcement agency or officer responding to a call alleging a violation of the order must either serve the restrained individual with a true copy of the order or advise them of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where they may obtain a copy. The law enforcement officer must enforce the order and immediately enter or cause to be entered into LEIN and reported to the FBI that the restrained individual has actual notice of the order. The law enforcement officer also must file proof of oral notice with the clerk of the issuing court and the petitioner. The law enforcement officer must give the restrained individual an opportunity to comply with the order, and the individual's failure to do so is grounds for an immediate custodial arrest. These provisions do not preclude an arrest under section 15 or 15a of Chapter IV of the Code of Criminal Procedure.⁹

A law enforcement agency ordered to seize a firearm under the act must seize a firearm identified in an ERPO from any place or from any individual with possession or control of it, as well as any other firearms discovered that are owned by or in the possession or control of the restrained individual or whose seizure is allowed under other law.

A law enforcement officer who seizes a firearm under the act must give a tabulation of firearms seized to the individual they were taken from. If no individual is present at the time of seizure, the officer must leave the tabulation where the seized firearms were found.

⁹ <http://legislature.mi.gov/doc.aspx?mcl-764-15> and <http://legislature.mi.gov/doc.aspx?mcl-764-15a>

A law enforcement agency that seizes a firearm must retain and store it subject to order of the issuing court. In addition to any other order that the court determines is appropriate, the court must order that the restrained individual can reclaim the firearm when the ERPO expires or is terminated (unless prohibited for another reason from owning or possessing a firearm) or order that the firearm be transferred to a licensed firearm dealer if the restrained individual sells or transfers ownership of it to the dealer. Before allowing the restrained individual to reclaim a firearm, and to determine whether they are prohibited from owning or possessing a firearm for another reason, the law enforcement agency must conduct a verification under LEIN and the National Instant Criminal Background Check System in the same manner as required under section 5b(6) of 1927 PA 372.¹⁰ When a restrained individual reclaims a firearm from a law enforcement agency, the agency must enter into LEIN, and notify the FBI, that the court has ordered the firearm returned upon expiration of the ERPO.

A law enforcement agency that seizes and stores a firearm is not liable for damage to or a change in condition of the firearm unless the damage or change in condition resulted from a failure to exercise reasonable care in the firearm's seizure, transportation, or storage.

If a restrained individual fails to reclaim a firearm within 90 days after the ERPO expires or is terminated, the law enforcement agency storing the firearm must do either of the following:

- Proceed as for a firearm subject to disposal under sections 239 and 239a of the Michigan Penal Code.¹¹
- Follow the procedures for lost property under 1987 PA 273.¹²

Subject to the above, if an individual other than the restrained individual claims title to a firearm seized under the act, the firearm must be returned to the claimant if the court determines that the claimant is the lawful owner.

Extended ERPOs

The petitioner may move the court to issue, or the court on its own motion may issue, one or more extended ERPOs, each effective for one year after the expiration of the preceding order. The court can issue an extended order only if the preponderance of the evidence shows that the restrained individual can reasonably be expected in the near future to intentionally or unintentionally seriously physically injure themselves or someone else by possessing a firearm, and has engaged in an act or acts or made significant threats that substantially support this expectation. The petitioner or the court, as applicable, must give the restrained individual written notice of a hearing on a motion to extend the order.

Trusted licensed firearm dealers

Each circuit court must prepare a list of trusted¹³ licensed firearm dealers located in its jurisdiction. In doing so, the court may obtain a list of currently licensed firearm dealers in its jurisdiction from the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives.

¹⁰ <http://legislature.mi.gov/doc.aspx?mcl-28-425b>

¹¹ <http://legislature.mi.gov/doc.aspx?mcl-750-239> and <http://legislature.mi.gov/doc.aspx?mcl-750-239a>

¹² <http://legislature.mi.gov/doc.aspx?mcl-Act-273-of-1987>

¹³ As noted by SCAO, the act “does not define ‘trusted’ or explain how such a determination should be made.” <https://www.courts.michigan.gov/49089d/siteassets/publications/manuals/erpo/manual-extreme-risk-protection-order.pdf>

Penalties

An individual who refuses or fails to comply with an ERPO is guilty as follows and subject to the following penalties, which can be imposed in addition to a penalty imposed for another criminal offense arising from the same conduct:

- For a first offense, the individual is guilty of a felony punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.
- For a second offense, the individual is guilty of a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.
- For a third or subsequent offense, the individual is guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$20,000, or both.

If a court or jury finds that the restrained individual has refused or failed to comply with an ERPO, the court that issued the order must issue an extended ERPO effective for one year after the expiration of the preceding order.

The court may also enforce an ERPO by charging the restrained individual with contempt of court under the Revised Judicature Act.

A petitioner who knowingly and intentionally makes a false statement to the court in an ERPO complaint or in support of it is guilty as follows and subject to the following penalties:

- For a first offense, the individual is guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.
- For a second offense, the individual is guilty of a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.
- For a third or subsequent offense, the individual is guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$20,000, or both.

An individual who knowingly places a firearm in the possession of an individual who is restrained under an ERPO is guilty of a felony punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

Annual report

SCAO, acting under the direction of the Michigan Supreme Court, must prepare and publish an annual report on how the act has been applied by the courts and provide the report to the legislature and the legislative committees with jurisdiction over judicial matters. The report must contain all of the following:

- The number of actions filed for ERPOs.
- The number of requests made for ex parte ERPOs.
- The number of ERPOs issued and the number denied.
- The number of ex parte ERPOs issued and the number denied.
- The number of ERPOs that are rescinded.
- The number of ex parte ERPOs that are rescinded.
- The number of ERPOs that are renewed.¹⁴
- To the extent ascertainable, the number of individuals restrained under an ERPO who, within 30 days after entry of the order, are charged with a criminal offense; the nature

¹⁴ As the act does not provide for renewal, presumably this means the number of extended ERPOs.

of the offense; whether it was an offense for violation of the EPO; and the disposition or status of the offense.

- To the extent ascertainable, the number of petitioners prosecuted for knowingly and intentionally making a false statement to the court in an ERPO complaint or in support of a complaint.
- To the extent ascertainable, the number of individuals prosecuted for knowingly placing a firearm or ammunition in the possession of a restrained individual.
- Demographic data regarding the individuals who are petitioners and respondents in ERPO actions.

SCAO must make the data used for the report available annually to individuals (including the Institute for Firearm Injury and other researchers affiliated with institutions of higher education) who are conducting academic or policy research, including any disproportionate or discriminatory impact of the act on members of protected classes.

Effect of act

The act states that it does not do either of the following:

- Limit the ability of the petitioner to request relief under section 2950 or 2950a of the Revised Judicature Act.¹⁵
- Limit the ability of an individual to file a petition under section 434 of the Mental Health Code.¹⁶

MCL 691.1801 to 691.1821

House Bill 4146 amends 1972 PA 372, the firearm licensure act, to include references in different provisions to either ERPOs or the Extreme Risk Protection Order Act as follows:

- An applicant for a purchase license to purchase, carry, possess, or transport a firearm is disqualified if the applicant is subject to an order or disposition under the Extreme Risk Protection Order Act for which the individual received a notice and an opportunity for a hearing and that was entered into LEIN under the act.
- An individual described above can request the Department of State Police to expunge the individual's name and other information entered into LEIN if the individual is *not* subject to an ERPO issued under the Extreme Risk Protection Order Act.
- The Department of State Police is prohibited from sending written notice of an entry of an ERPO into LEIN until it has received notice that the individual who is the subject of the order has been served with or received notice of the ERPO.
- A CPL cannot be issued to an applicant who is the subject of an order or disposition issued under the Extreme Risk Protection Order Act.
- A CPL that was surrendered and suspended under an ERPO must be automatically reinstated by a county clerk upon expiration of the ERPO and notification to the clerk. This applies if the CPL is not expired and after the Department of State Police has completed the required verification of eligibility required before a CPL can be issued under the act.

MCL 28.422 et seq.

¹⁵ <http://legislature.mi.gov/doc.aspx?mcl-600-2950> and <http://legislature.mi.gov/doc.aspx?mcl-600-2950a>

¹⁶ <http://legislature.mi.gov/doc.aspx?mcl-330-1434>

House Bill 4147 amends provisions in the Revised Judicature Act that address the service of process in civil actions to conform to provisions in the Extreme Risk Protection Order Act.

Generally under the act, process in a civil action may be served by any person of suitable age and discretion who is not a party or an officer of a corporate party. The act also requires that, if service of process is to be made by leaving a summons and a copy of the complaint with a defendant personally who is in a governmental institution, hospital, or home, it must be made by the person in charge of that institution or by a staff member.

The bill provides that the above provisions do not apply to service under the Extreme Risk Protection Order Act.

In addition, before filing a civil action, a fee of \$150 must be paid to the clerk of the court by the party filing the action.

The bill provides that this fee does not apply to an action under the Extreme Risk Protection Order Act. The bill also prohibits a person from charging or collecting a fee for serving process issued in an action brought under the Extreme Risk Protection Order Act or for serving any order issued in the action.

MCL 600.1908, 600.2529, and 600.2559

House Bill 4148 adds a new section to the sentencing guidelines in the Code of Criminal Procedure to include the felony penalties for a violation of an ERPO under the Extreme Risk Protection Order Act, for making a false statement in an ERPO complaint, and for knowingly providing a firearm to a restrained individual under an ERPO, as shown in the table below.

Description	Category	Class	Statutory maximum term of imprisonment
Violation of an ERPO—first offense	Public safety	G	1 year
Violation of an ERPO—second offense	Public safety	F	4 years
Violation of an ERPO—third or subsequent offense	Public safety	E	5 years
False statement in complaint for an ERPO—second offense	Public trust	F	4 years
False statement in complaint for an ERPO—third or subsequent offense	Public trust	E	5 years
Knowingly providing a firearm to an individual restrained under an ERPO	Public safety	G	1 year

MCL 777.15e

FISCAL IMPACT:

Senate Bill 83 would require an expenditure for updating the Law Enforcement Information Network to input information regarding ERPOs. Initial estimates were that the cost of the update would be in the vicinity of \$200,000.

The bill also would have an indeterminate fiscal impact on the state and on local units of government that would depend on the number of individuals convicted of misdemeanors and/or felonies under provisions of the bill. New misdemeanor convictions would result in increased costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$49,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact on the state and local court systems would depend on how provisions of the bill affected administrative costs for implementing provisions required under the bill and court caseloads and caseload related administrative costs.

House Bill 4146 would not have a direct fiscal impact on any units of state or local government.

House Bill 4147 would have no fiscal impact on the state or on local units of government.

House Bill 4148 is a companion bill to SB 83 and amends sentencing guidelines to include felonies created under that bill. The bill would not have a direct fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.