

EXTREME RISK PROTECTION ORDER ACT (EXCERPT)

Act 38 of 2023

691.1807 Issuance of extreme risk protection order; determination; preponderance of evidence; considerations; notice exception; hearing requirement; emergency extreme risk protection order; modification or rescission of order; surrendering of firearm.

Sec. 7. (1) In an action under section 5, the court shall issue an extreme risk protection order if the court determines by the preponderance of the evidence that the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual by possessing a firearm, and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation. In making its determination under this subsection, the court shall consider all of the following:

(a) Any history of use, attempted use, or threatened use of physical force by the respondent against another individual, or against the respondent, regardless of whether the violence or threat of violence involved a firearm.

(b) Any evidence of the respondent having a serious mental illness or a serious emotional disturbance, as those terms are defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d, that makes the respondent dangerous to other individuals or to the respondent.

(c) Any of the following orders against the respondent, whether previously entered or existing:

(i) An extreme risk protection order.

(ii) A personal protection order under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

(iii) A pretrial release order.

(iv) A probation order.

(v) A parole order.

(vi) Any other injunctive order.

(d) Any violation by the respondent of a previous or existing extreme risk protection order.

(e) Any violation by the respondent of a previous or existing personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

(f) 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:

(i) A misdemeanor violation of section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81.

(ii) A violation of section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i, or a similar offense in another jurisdiction.

(iii) An offense that has assault as an element.

(iv) An offense that has an element including a threat to person or property.

(v) An offense that is a crime committed against the person or property of a spouse or intimate partner, as that term is defined in section 2950k of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950k.

(vi) An offense involving cruelty or abuse of animals.

(vii) A serious misdemeanor, as that term is defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(g) Any evidence of recent unlawful use of controlled substances by the respondent.

(h) Any recent abuse of alcohol.

(i) Any previous unlawful possession, use, display, or brandishing of a deadly weapon by the respondent.

(j) Any evidence of an acquisition or attempted acquisition within the previous 180 days by the respondent of a deadly weapon or ammunition.

(k) Any additional information the court finds to be reliable, including a statement by the respondent, or relevant information from family and household members concerning the respondent.

(l) Any other facts that the court believes are relevant.

(2) The court in an action under section 5 may issue an extreme risk protection order without written or oral notice to the respondent if the court 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 effectuate notice or that the notice will itself precipitate adverse action before an extreme risk protection order can be issued. If the petitioner requests the court to issue an extreme risk protection order under this subsection, the court shall make its determination on the request not later than 1 business day.

(3) If a court issues an extreme risk protection order under subsection (2), including an order described in

subsection (4), the court shall, if requested by the restrained individual, conduct a hearing on the order under subsection (1) in accordance with Michigan court rules as follows:

(a) Unless subdivision (b) applies, not later than 14 days after the order is served on the restrained individual or after the restrained individual receives actual notice of the order.

(b) If the restrained individual is an individual described in section 5(5), not later than 5 days after the order is served on the restrained individual or after the restrained individual receives actual notice of the order.

(4) A petitioner who is a law enforcement officer may request an immediate emergency extreme risk protection order under subsection (2) if the officer is responding to a complaint involving the respondent and the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure the respondent or another individual by possessing a firearm. The law enforcement officer may request an extreme risk protection order under this subsection verbally over the telephone and the judge or magistrate on duty within that jurisdiction may issue the extreme risk protection order. Within 1 business day after an extreme risk protection order is entered under this subsection, the petitioner shall file with the court a sworn written petition detailing the facts and circumstances presented to the court. The issuing court, if other than the circuit court, shall provide a copy of the petition to the circuit court.

(5) An individual restrained under an extreme risk protection order may file a motion to modify or rescind the order at any time and request a hearing under supreme court rules. The restrained individual may file 1 motion to modify or rescind the order during the first 6 months and 1 motion during the second 6 months that the order is in effect under section 9(1)(k), and 1 motion to modify or rescind an extended order during the first 6 months and 1 motion during the second 6 months that the extended order is in effect under section 17 or 19. If the restrained individual files more than 1 motion during a time described in this subsection, the court shall review the motion before a hearing on the motion is held and may summarily dismiss the motion without a response from the petitioner and without a hearing.

(6) At a hearing on a motion under subsection (5), the restrained individual must prove by a preponderance of the evidence that the restrained individual no longer poses a risk to seriously physically injure another individual or the restrained individual by possessing a firearm.

(7) If a court issues or refuses to issue an extreme risk protection order under this section, the court shall immediately state in writing the specific reasons for issuing or refusing to issue the order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue the order.

(8) If a court issues an extreme risk protection order under this section, the court shall also determine whether the respondent must immediately surrender the respondent's firearms or surrender the firearms within a 24-hour period. If the court orders the firearms immediately surrendered, it shall also issue an anticipatory search warrant, subject to and contingent on the failure or refusal of the restrained individual, following the service of the order, to immediately comply with the order and immediately surrender to a law enforcement officer any firearm or concealed pistol license in the individual's possession or control, authorizing a law enforcement agency to search the location or locations where the firearm, or firearms, or concealed pistol license is believed to be and to seize any firearm or concealed pistol license discovered during the search in compliance with 1966 PA 189, MCL 780.651 to 780.659. 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 the firearms.

(9) If a court decides to issue an extreme risk protection order under this section, the court may, in its discretion, allow the restrained individual to surrender any firearms to a licensed firearm dealer on the list prepared under section 18.

History: 2023, Act 38, Eff. Feb. 13, 2024.

Popular name: Red flag law