

Emergency Risk Protection Orders (ERPOs)

What is the NRA's position on emergency risk protection orders (ERPOs)?

The NRA's position on emergency risk protection orders (ERPOs) has recently been mischaracterized by some who haven't taken the time to understand our position, including the anti-gun mainstream media and organizations that purport to support the Second Amendment. Many of the individuals mischaracterizing our position are using misinformation to simply attack the NRA.

The NRA fights for the constitutional freedoms, including the due process rights, of all law-abiding Americans, every day in Congress, the statehouses and the courts. Our record on this is clear. Due process of law is a bedrock of our constitutional freedoms. Without it, we would cease to exist as a free country.

All fifty states currently have civil commitment procedures and many lack basic due process protections. This is unacceptable. The NRA believes that no one should be deprived of a fundamental right without due process of law.

Some have raised the issue of current ERPO laws in California, Oregon, Vermont and other states, suggesting that the NRA supports those laws. This is false. The NRA strongly opposed these laws because they do not protect due process rights. We will continue to oppose confiscation schemes such as these.

In addition, the NRA opposes any effort to create a federal ERPO law, in which federal agents would be tasked with seizing firearms after a hearing in federal court. As states consider ERPO laws, the NRA will continue to push for the inclusion of strong due process protections.

The NRA believes that any effort should be structured to fully protect the Second Amendment rights of law-abiding citizens while preventing truly dangerous individuals from accessing firearms.

The requirements of an ERPO process that the NRA could support should include the following:

- The process should include criminal penalties for those who bring false or frivolous charges.
- An order should only be granted when a judge makes the determination, by clear and convincing evidence, that the person poses a significant risk of danger to themselves or others.
- The process should require the judge to make a determination of whether the person meets the state standard for involuntary commitment. Where the standard for involuntary commitment is met, this should be the course of action taken.
- If an ERPO is granted, the person should receive community-based mental health treatment as a condition of the ERPO.
- Any ex parte proceeding should include admitting the individual for treatment.
- A person's Second Amendment rights should only be temporarily deprived after a hearing before a judge, in which the person has notice of the hearing and is given an opportunity to offer evidence on his or her behalf.
- There should be a mechanism in place for the return of firearms upon termination of an ERPO, when a person is ordered to relinquish their firearms as a condition of the order.
- The ERPO process should allow an individual to challenge or terminate the order, with full due process protections in place.
- The process should allow firearms to be retained by law-abiding third parties, local law enforcement, or a federally licensed firearms dealer when an individual is ordered to relinquish such firearms as a condition of the ERPO. The individual must also have the ability to sell his or her firearms in a reasonable time without violating the order.

Again, the NRA will continue to oppose any proposal that does not fully protect due process rights. We will only support an ERPO process that strongly protects both Second Amendment rights and due process rights at the same time.