



PATROL SERVICES DIVISION BRIEFING

Extreme Risk Protection Orders

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SB 719, now codified as Oregon Laws 2017, Chapter 737, passed into law and becomes effective January 1, 2018. An Extreme Risk Protection Order prohibits a person the court has found to be an immediate risk of harm to themselves or others from possessing a deadly weapon. Respondents are not allowed to possess deadly weapons until the order expires or is terminated by the court. The law establishes strict requirements for both the courts and law enforcement.

New Provisions created by SB 719:

- ✓ **Creates a new extreme risk protection order where the Respondent presents a “risk of suicide” or “causing physical injury to another person”**
 - A law enforcement officer or family/household member (Petitioner) may petition the court for an ERPO
 - Petition must be supported by sworn written affidavit or oral statement
 - Petition shall be heard on the same or next judicial business day
 - Court may require sworn testimony during hearing
 - Petitioner has the burden of proof in the initial ex parte process
 - The court shall issue an initial ERPO on clear and convincing evidence the Respondent presents an imminent or future risk of harm to self or others
 - Must be personally served on the Respondent
 - An ERPO is enforceable in any county in this state

- ✓ **An initial ERPO issued by the court prohibits the Respondent from possessing, purchasing, receiving, or attempting to purchase or receive any deadly weapon while the order is in effect:**
 - Requires Respondent to surrender all deadly weapons and any concealed firearms license within 24 hours of an initial order to:
 - A law enforcement agency
 - A licensed gun dealer
 - A third party who may lawfully possess deadly weapons
 - Deadly weapon is defined as: any firearm or “any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.”
 - Deadly weapons surrendered to a law enforcement agency shall remain in custody of the agency while the initial order is in effect

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✓ **The Respondent may request a hearing within 30 days of initial service:**

- Court shall hold a hearing within 21 days of request
 - Court may examine Respondent, Petitioner or witnesses under oath and consider sworn affidavits
 - Petitioner retains the burden of proof
- The Court shall either terminate the ERPO or continue the order for a full year
 - If continued, the Respondent shall immediately surrender all deadly weapons and concealed handgun license if not previously surrendered
 - If terminated, the court must determine if deadly weapons surrendered by the Respondent are returned or retained by the agency
- If the Respondent fails to request a hearing, the order is confirmed by law and is effective for one year from date of initial order or until terminated by the court
- A Petitioner may request a renewal within 90 days of expiration

✓ **Establishes strict requirements for personal service:**

- Once granted or renewed, the ERPO and a hearing request form shall be personally served on the Respondent
 - Not required if the Respondent is served in court
- The officer or person serving an order shall immediately deliver a true copy of proof of service to the county Sheriff
 - Requires the Sheriff to immediately enter the order into LEDS upon receipt
- Petitioner shall be notified if the ERPO cannot be served on Respondent within 10 days

✓ **Establishes mandatory actions by law enforcement officers:**

- A law enforcement officer serving an initial ERPO shall:
 - Request immediate surrender of deadly weapons and any concealed handgun license, and
 - Take possession of deadly weapons surrendered by the Respondent or,
 - Request the identity of the dealer or third party if the Respondent intends to surrender deadly weapons to either party
- A law enforcement officer serving a continued or renewed ERPO shall:
 - Request immediate surrender of deadly weapons and any concealed handgun license, and
 - Take possession of deadly weapons surrendered by the Respondent, located in plain sight or found during a lawful search
 - Officers may conduct “any search permitted by law for deadly weapons” in the Respondent’s custody or control
- Issue a receipt to the Respondent identifying all items surrendered
 - Provide a copy of the receipt to the court within 72 hours
- Officers may release deadly weapons to a third party owner if the third party:
 - Provides proof of ownership and right of possession
 - May lawfully possess the weapons
 - Did not consent to possession by the Respondent
 - Will prevent the Respondent from accessing or possessing the weapons in the future

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- A law enforcement agency holding deadly weapons pursuant to an ERPO shall release the weapons upon termination or expiration of the order after confirming:
 - The ERPO is no longer in effect, and
 - The Respondent may legally possess firearms if the deadly weapon held is a firearm
- ✓ **Creates two new Class A misdemeanor crimes:**
 - The Respondent knowingly possesses a deadly weapon in violation of an ERPO
 - The Petitioner knowingly files a false ERPO petition with intent to harass the Respondent

Actions required by OSP members regarding Extreme Risk Protection Orders

Events where an individual poses a threat of harm to themselves or others necessitate an immediate response due to the fact that a person's life may be in danger. Department members are expected to comply with all statutory requirements of this law.

To determine if a person is the subject of an ERPO, a persons query, such as a QW (warrant check) must be requested either through Dispatch or via the MDT LEDS access. An active ERPO will not return in LEDS if the query does not include the person's file, such as QH (criminal history). A CJIS Training Bulletin is attached for reference of an ERPO return.

When evidence indicates a petition for an Extreme Risk Protection Order is warranted, sworn members will take the following action:

- ✓ **Conduct a thorough initial investigation**
 - Obtain all information to include witness/victim/suspect information
 - Notify the on-call supervisor
 - If needed, CID detectives may be called to assist with the investigation
 - Reports related to the petition and service of an ERPO and any property seized thereafter will be completed as required by policy
 - A log entry in lieu of a complete report is not acceptable
- ✓ **If facts and circumstances dictate an ERPO is the correct course of action**
 - Provide the family or household member with the ERPO application packet or directions to obtain the packet on the Oregon Judicial Department's website (listed on page 4), or
 - Sworn members will complete and file an ERPO petition as the Petitioner should the family or household member decline or is unable to do so and law enforcement intervention is warranted
 - Consultation with the local District Attorney is recommended but not required prior to a sworn member filing an ERPO petition

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- ✓ **If a court grants an initial, confirmed or renewed ERPO, sworn members will:**
 - Complete personal service and notification to the Sheriff's Office as required by law
 - Personal service and seizure of deadly weapons shall be coordinated and completed as safely and as soon as possible
 - A receipt for all items seized pursuant to an ERPO shall be provided to the Respondent via the Form 65/Property Receipt
 - Provide a copy of the Form 65 to the court within 72 hours

- ✓ **Planning and coordination to serve an ERPO and take possession of deadly weapons shall follow protocols consistent with application and execution of search warrants**
 - Operational planning and risk assessments should include: officer safety, safety to the public, potential threats posed by the Respondent and the use of tactical teams
 - ERPO situations may involve a mental health issue; therefore a reasonable assessment of the mental health concerns of the Respondent is necessary and should be included as part of any risk assessment and operational plan when possible
 - Hasty plans in lieu of written operation plans may be used only when delay may create additional citizen or officer safety issues

- ✓ **A Respondent may arrive unannounced to surrender deadly weapons at an OSP office**
 - Professional staff are to request a sworn member respond
 - Only sworn members will accept deadly weapons surrendered by a Respondent
 - Provide a receipt via the Form 65
 - If the incident is not an OSP case, the sworn member is to identify the originating agency and transfer the firearms to that agency when feasible
 - Obtain a case number and complete a Niche report documenting the transfers

The Command Centers will develop procedures to ensure sworn members at the scene of an alleged ERPO violation will be informed of the existence and terms of the order.

The Patrol Division Evidence Program will develop procedures and protocols for the acceptance, storage and release of deadly weapons and concealed firearms licenses surrendered or seized pursuant to an ERPO.

Resources:

Oregon Judicial Department: <http://www.courts.oregon.gov/forms/Pages/erpo.aspx>

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