

ORS 2017 EDITION

EXTREME RISK PROTECTION ORDERS

166.525 Definitions. As used in ORS 166.525 to 166.543:

(1) “Deadly weapon” means:

(a) Any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury; or

(b) A firearm, whether loaded or unloaded.

(2) “Family or household member” means a spouse, intimate partner, mother, father, child or sibling of the respondent, or any person living within the same household as the respondent.

(3) “Gun dealer” has the meaning given that term in ORS 166.412.

(4) “Law enforcement agency” means an agency or department of the State of Oregon or of a political subdivision of the State of Oregon whose principal function is the apprehension of criminal offenders.

(5) “Law enforcement officer” means a member of the Oregon State Police, a sheriff, a municipal police officer or an authorized tribal police officer as defined in ORS 181A.680.

(6) “Petitioner” means a person who petitions for an order under ORS 166.525 to 166.543.

(7) “Respondent” means a person against whom an order is filed under ORS 166.525 to 166.543. [2017 c.737 §1]

166.527 Petition for ex parte order; issuance and service of order; request for hearing. (1) A law enforcement officer or a family or household member of a person may file a petition requesting that the court issue an extreme risk protection order enjoining the person from having in the person’s custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, a deadly weapon.

(2) An extreme risk protection order petition shall be heard by the court and issued or denied on the same day the petition is submitted to the court or on the judicial business day immediately following the day the petition is filed.

(3) The petition for an extreme risk protection order must be supported by a written affidavit signed by the petitioner under oath, or an oral statement taken under oath by the petitioner or any other witness the petitioner may produce.

(4) In determining whether to issue an extreme risk protection order, the court shall consider the following:

(a) A history of suicide threats or attempts or acts of violence by the respondent directed against another person;

(b) A history of use, attempted use or threatened use of physical force by the respondent against another person;

(c) A previous conviction for:

(A) A misdemeanor involving violence as defined in ORS 166.470;

(B) A stalking offense under ORS 163.732 or 163.750, or a similar offense in another jurisdiction;

(C) An offense constituting domestic violence as defined in ORS 135.230;

(D) Driving under the influence of intoxicants under ORS 813.010 or 813.011; or

(E) An offense involving cruelty or abuse of animals;

(d) Evidence of recent unlawful use of controlled substances;

(e) Previous unlawful and reckless use, display or brandishing of a deadly weapon by the respondent;

(f) A previous violation by the respondent of a court order issued pursuant to ORS 107.716 or 107.718;

(g) Evidence of an acquisition or attempted acquisition within the previous 180 days by the respondent of a deadly weapon; and

(h) Any additional information the court finds to be reliable, including a statement by the respondent.

(5)(a) The petitioner has the burden of proof at the ex parte hearing.

(b) The petitioner may appear in person or by electronic video transmission.

(c) The court may continue a hearing under this section upon a showing of good cause.

(6)(a) The court shall issue an extreme risk protection order if the court finds by clear and convincing evidence, based on the petition and supporting documentation and after considering a statement by the respondent, if provided, that the respondent presents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person. The court may not include in the findings any mental health diagnosis or any connection between the risk presented by the respondent and mental illness.

(b) Upon making the findings described in paragraph (a) of this subsection, the court shall issue an extreme risk protection order prohibiting the respondent from having in the respondent's custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, a deadly weapon.

(7) An extreme risk protection order issued under this section must include:

(a) A statement of the evidence and the court's findings supporting issuance of the order;

(b) The date and time the order was issued;

(c) A description of the manner in which the respondent may request a hearing described in subsection (9) of this section;

(d) The address of the court to which a request for a hearing must be sent;

(e) A description of the requirements for surrender of deadly weapons in the respondent's possession under ORS 166.537; and

(f) A statement in substantially the following form:

To the subject of this protection order: An extreme risk protection order has been issued by the court and is now in effect. You are required to surrender all deadly weapons in your custody, control or possession. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, deadly weapons while this order is in effect. You must, within 24 hours, surrender all deadly weapons in your custody, control or possession to (insert name of local law enforcement agency), a gun dealer or a third party who may lawfully possess the deadly weapons. You must, within 24 hours, surrender to (insert name of local law enforcement agency) any concealed handgun license issued to you. You may request a hearing to contest this order. If you do not request a hearing, the extreme risk protection order against you will be in effect for one year unless terminated by the court. You have the right to request one hearing to terminate this order during the 12 months that this order is in effect starting from the date of this order. You may seek the advice of an attorney as to any matter connected with this order.

(8)(a) The respondent shall be personally served with both a copy of the extreme risk protection order and a hearing request form described in subsection (9) of this section.

(b) Whenever an extreme risk protective order is served on a respondent, the person serving the order shall immediately deliver to the county sheriff a true copy of proof of service, on which it is stated that personal service of the

order was made on the respondent, and a copy of the order. Proof of service may be made by affidavit or by declaration under penalty of perjury in the form required by ORCP 1 E.

(c) If the person serving the order cannot complete service within 10 days, the person shall notify the petitioner, at the address provided by the petitioner, that the documents have not been served. If the petitioner does not respond within 10 days, the person shall hold the order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(d) Upon receipt of a copy of the order and notice of completion of service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police and request that the order be entered into the databases of the National Crime Information Center of the United States Department of Justice. If the order was served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System, and shall request that the information be entered into the databases of the National Crime Information Center, upon receipt of a true copy of proof of service. The sheriff shall provide the petitioner with a true copy of the proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable in any county in this state.

(9)(a) Within 30 days after an extreme risk protection order is served on the respondent under this section, the respondent may request a court hearing using a form prescribed by the State Court Administrator.

(b) If the respondent requests a hearing under paragraph (a) of this subsection, the clerk of the court shall notify the petitioner and the respondent of the date and time of the hearing and shall supply the petitioner with a copy of the respondent's request for a hearing. The petitioner and the respondent shall give to the clerk of the court information sufficient to allow such notification.

(c) The hearing shall occur within 21 days of the date of the respondent's request for a hearing.

(10) If the respondent fails to request a hearing within 30 days after an extreme risk protection order is served, the protection order is confirmed by operation of law and is effective for a period of one year from the date the original order was issued or until the order is terminated, whichever is sooner.

(11) A filing fee, service fee or hearing fee may not be charged for proceedings under this section or ORS 166.530 or 166.533.

(12) If the court declines to issue an extreme risk protection order under this section, the court shall state with particularity the reasons for the denial on the record. [2017 c.737 §2]

166.530 Hearing on order; continuation or termination of order. (1) At a hearing on an extreme risk protection order requested by the respondent under ORS 166.527 (9), the court may:

(a) Examine under oath the petitioner, the respondent and any witness either party may produce, including a mental health professional selected by the respondent, or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent or a witness of either party; and

(b) Ensure that a reasonable search has been conducted for criminal history records related to the respondent.

(2)(a) The Oregon Evidence Code shall apply in a hearing under this section.

(b) The court may continue a hearing under this section upon a showing of good cause. If the court continues a hearing under this paragraph, the extreme risk protection order shall remain in effect until the next hearing date.

(3)(a) At the hearing, the court shall determine:

(A) Whether to terminate the extreme risk protection order or continue the order for a duration of one year; and

(B) Whether any deadly weapons surrendered to a law enforcement agency pursuant to ORS 166.537 shall be returned to the respondent or retained by the law enforcement agency.

(b) The petitioner has the burden of proving, by clear and convincing evidence, that the respondent presents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person.

(c) If the court finds that the petitioner has met the burden of proof, the court shall:

(A) Order that the extreme risk protection order continue for the duration of one year from the date the original order was issued.

(B) Order that any deadly weapons surrendered to a law enforcement agency pursuant to ORS 166.537 remain in the custody of the law enforcement agency while the order is in effect.

(d) The court may not include in findings made under this subsection any mental health diagnosis or any connection between the risk presented by the respondent and mental illness.

(4) An extreme risk protection order continued under this section must include:

(a) A statement of the evidence and the court's findings supporting issuance of the order;

(b) The date and time the order was issued;

(c) The date and time of the expiration of the order;

(d) A description of the requirements for surrender of deadly weapons in the respondent's possession under ORS 166.537; and

(e) A statement in substantially the following form:

To the subject of this protection order: This order is valid until the date and time noted above. If you have not done so already, you are required to surrender all deadly weapons in your custody. You must immediately surrender all deadly weapons in your custody, control or possession to (insert name of local law enforcement agency), a gun dealer or a third party who may lawfully possess the deadly weapons. You must immediately surrender to (insert name of local law enforcement agency) any concealed handgun license issued to you. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a deadly weapon while this order is in effect. You have the right to request one hearing to terminate this order during the 12 months that this order is in effect starting from the date of this order. You may seek the advice of an attorney as to any matter connected with this order.

(5) When the court continues an extreme risk protection order under this section, the court shall inform the respondent that the respondent is entitled to request termination of the order in the manner described in ORS 166.533. The court shall provide the respondent with a form with which to request a termination hearing.

(6) The respondent need not be served if an order of the court indicates that the respondent appeared in person before the court.

(7) If the court terminates an extreme risk protection order after a hearing under this section:

(a) The court shall state with particularity the reasons for the termination on the record.

(b) The clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and shall request that the order be removed from the databases of the National Crime Information Center of the United States Department of Justice. [2017 c.737 §3]

166.533 Hearing to terminate order. (1) The petitioner or the respondent of an extreme risk protection order issued or continued under ORS 166.527 or 166.530 may each submit a written request once during the 12-month effective period of the order, and once during any 12-month effective period of an order renewed under ORS 166.535, for a hearing to terminate the order. A hearing under this section is in addition to any hearing requested under ORS 166.527.

(2) Upon receipt of a request described in subsection (1) of this section, the court shall schedule a termination hearing and provide notice of the hearing to both parties at least five days before the hearing.

(3)(a) The person filing the termination request has the burden of proving, by clear and convincing evidence, that the respondent no longer presents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person.

(b) The Oregon Evidence Code shall apply in a hearing under this section.

(c) The court may continue a hearing under this section upon a showing of good cause. If the court continues a hearing under this paragraph, the extreme risk protection order shall remain in effect until the next hearing date.

(4)(a) If the court finds that the petitioner has met the burden of proof as described in subsection (3) of this section, the court shall terminate the extreme risk protection order.

(b) The court may not include in findings made under this subsection any mental health diagnosis or any connection between the risk presented by the respondent and mental illness.

(5) When an extreme risk protection order is terminated by order of the court, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and shall request that the order be removed from the databases of the National Crime Information Center of the United States Department of Justice. [2017 c.737 §4]

166.535 Renewal of order. (1) A law enforcement officer or a family or household member of a respondent, including but not limited to the law enforcement officer or family or household member who petitioned the court for the original extreme risk protection order issued under ORS 166.527, may request a renewal of the order within 90 days before the expiration date of the order by filing a written request with the court.

(2) Upon receipt of the request for renewal described in subsection (1) of this section, the court shall schedule a hearing and provide notice of the hearing to both parties at least 14 days before the hearing.

(3) At a hearing to determine whether to renew an extreme risk protection order under this section, the court may:

(a) Examine under oath the petitioner, the respondent and any witness either party may produce or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent or a witness of either party; and

(b) Ensure that a reasonable search has been conducted for criminal history records related to the respondent.

(4) The person requesting the renewal of the extreme risk protection order has the burden of proving, by clear and convincing evidence, that the respondent continues to present a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person.

(5)(a) The Oregon Evidence Code shall apply in a hearing under this section.

(b) The court may continue a hearing under this section upon a showing of good cause. If the court continues a hearing under this paragraph, the original extreme risk protection order shall remain in effect until the next hearing date.

(c) The petitioner may appear in person or by electronic video transmission.

(6)(a) If the court finds that the petitioner has met the burden of proof, the court may renew the extreme risk protection order for a duration of up to one year.

(b) The court may not include in findings made under this subsection any mental health diagnosis or any connection between the risk presented by the respondent and mental illness.

(7) An extreme risk protection order renewed under this section must include:

(a) A statement of the evidence and the court's findings supporting issuance of the order;

(b) The date and time the order was issued;

(c) The date and time of the expiration of the order;

(d) A description of the requirements for surrender of deadly weapons in the respondent's possession under ORS 166.537; and

(e) A statement in substantially the following form:

To the subject of this protection order: This renewed order is valid until the date and time noted above. If you have not done so already, you are required to surrender all deadly weapons in your custody. You must immediately surrender all deadly weapons in your custody, control or possession to (insert name of local law enforcement agency), a gun dealer or a third party who may lawfully possess the deadly weapons. You must immediately surrender to (insert name of local law enforcement agency) any concealed handgun license issued to you. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a deadly weapon while this order is in effect. You have the right to request one hearing to terminate this renewed order every 12 months that this order is in effect, starting from the date of this order. You may seek the advice of an attorney as to any matter connected with this order.

(8) When the court renews an extreme risk protection order, the court shall inform the respondent that the respondent is entitled to request termination of the renewed order in the manner described in ORS 166.533. The court shall provide the respondent with a form with which to request a termination hearing.

(9)(a) Service of a renewed extreme risk protective order shall be made by personal delivery of a copy of the order to the respondent. The respondent need not be served if an order of the court indicates that the respondent appeared in person before the court.

(b) Whenever a renewed extreme risk protective order is served on a respondent, the person serving the order shall immediately deliver to the county sheriff a true copy of proof of service, on which it is stated that personal service of the order was made on the respondent, and a copy of the order. Proof of service may be made by affidavit or by declaration under penalty of perjury in the form required by ORCP 1 E.

(c) If service of the order is not required under paragraph (a) of this subsection, a copy of the order must be delivered to the sheriff by the court.

(d) Upon receipt of a copy of the order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police and request that the order be entered into the databases of the National Crime Information Center of the United States Department of Justice. If the order was served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System and request that the order be entered into the databases of the National Crime Information Center upon receipt of a true copy of proof of service. The sheriff shall provide the petitioner with a true copy of any required proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable in any county in this state.

(10) If the court declines to renew an extreme risk protection order, the court shall state with particularity the reasons for the denial on the record.

(11) A renewed extreme risk protection order may be further renewed as described in this section. [2017 c.737 §5]

166.537 Surrender of deadly weapons pursuant to order. (1) Upon issuance of an extreme risk protection order under ORS 166.527, the court shall further order that the respondent:

(a) Within 24 hours surrender all deadly weapons in the respondent's custody, control or possession to a law enforcement agency, a gun dealer or a third party who may lawfully possess the deadly weapons; and

(b) Within 24 hours surrender to a law enforcement agency any concealed handgun license issued to the respondent under ORS 166.291 and 166.292.

(2) Upon continuance of an extreme risk protection order after a hearing under ORS 166.530, or renewal of an extreme risk protection order under ORS 166.535, the court shall further order that the respondent:

(a) Immediately surrender all deadly weapons in the respondent's custody, control or possession to a law enforcement agency, a gun dealer or a third party who may lawfully possess the deadly weapons; and

(b) Immediately surrender to a law enforcement agency any concealed handgun license issued to the respondent under ORS 166.291 and 166.292.

(3)(a) A law enforcement officer serving an extreme risk protection order issued under ORS 166.527 shall request that the respondent immediately surrender to the officer all deadly weapons in the respondent's custody, control or possession and any concealed handgun license issued to the respondent under ORS 166.291 and 166.292. The law enforcement officer shall take possession of all deadly weapons appearing to be in the custody, control or possession of the respondent that are surrendered by the respondent. If the respondent indicates an intention to surrender the deadly weapons to a gun dealer or a third party, the law enforcement officer shall request that the respondent identify the gun dealer or third party.

(b) A law enforcement officer serving an extreme risk protection order continued after a hearing under ORS 166.530, or renewed under ORS 166.535, shall request that the respondent immediately surrender to the officer all deadly weapons in the respondent's custody, control or possession and any concealed handgun license issued to the respondent under ORS 166.291 and 166.292. The officer may conduct any search permitted by law for deadly weapons in the custody, control or possession of the respondent and shall take possession of all deadly weapons appearing to be in the custody, control or possession of the respondent that are surrendered, in plain sight or discovered pursuant to a lawful search.

(4) At the time of the surrender of any deadly weapons or concealed handgun licenses under subsection (3) of this section, the law enforcement officer taking possession shall issue a receipt identifying all surrendered items and provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that the law enforcement agency employing the law enforcement officer retains a copy of the receipt.

(5) If a third party claims lawful ownership or right of possession of a deadly weapon surrendered pursuant to this section, the law enforcement agency may return the deadly weapon to the third party if the third party provides proof of lawful ownership or right of possession of the deadly weapon, in a sworn affidavit, affirms that:

(a) The third party may lawfully possess the deadly weapon;

(b) The third party did not consent to the prior possession of the deadly weapon by the respondent; and

(c) The third party will prevent the respondent from accessing or possessing the deadly weapon in the future. [2017 c.737 §6]

166.540 Return of surrendered deadly weapons. (1) If an extreme risk protection order is terminated or expires without renewal, a law enforcement agency holding any deadly weapon or concealed handgun license that has been surrendered pursuant to the order shall return the surrendered items as requested by the respondent of the order only after:

(a) Confirming through a criminal background check, if the deadly weapon is a firearm, that the respondent is legally eligible to own or possess firearms under state and federal law; and

(b) Confirming that the extreme risk protection order is no longer in effect.

(2) The owner of a deadly weapon, if the deadly weapon is a firearm, in the custody of a law enforcement agency pursuant to ORS 166.537 who does not wish to have the firearm returned is entitled to sell or transfer title of any firearm to a licensed gun dealer as defined in ORS 166.412, provided that the firearm is lawful to own or possess and the person has a legal right to transfer title of the firearm.

(3) A deadly weapon surrendered by a person pursuant to ORS 166.537 that remains unclaimed by the owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of deadly weapons in the agency's custody. [2017 c.737 §7]

166.543 Criminal penalties. (1) A person commits a Class A misdemeanor if:

(a) The person knowingly possesses a deadly weapon; and

(b) The person is prohibited from possessing deadly weapons pursuant to an extreme risk protection order:

(A) Issued after notice and a hearing under ORS 166.530;

(B) Confirmed by operation of law after the person failed to request a hearing under ORS 166.527 (9); or

(C) Renewed under ORS 166.535.

(2) A person convicted under subsection (1) of this section shall be prohibited from having in the person's custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, any firearms for a five-year period beginning when the extreme risk protection order expires or is terminated, or the judgment of conviction is entered, whichever occurs later.

(3) A person who files a petition for any extreme risk protection order under ORS 166.525 to 166.543 with the intent to harass the respondent, or knowing that the information in the petition is false, is guilty of a Class A misdemeanor. [2017 c.737 §8]