



MICHIGAN'S EXTREME RISK LAW

Information for Medical Providers

WHAT IS MICHIGAN'S EXTREME RISK LAW?

Michigan's extreme risk law – which was passed in 2023 and will go into effect in February 2024 – creates a civil legal process through which law enforcement officers, family members, and certain healthcare providers can petition a court to temporarily restrict a person's access to firearms if there is evidence that they pose a risk of harm to self or others. When a person is in crisis and considering harming themselves or others, they often exhibit clear warning signs – this law provides a mechanism to act rather than waiting for a tragedy to occur.

Extreme risk protection orders (ERPOs) are a life saving tool tailored to address high-risk behavior. An ERPO may be an appropriate intervention in the following circumstances:

- Threats of self harm
- Threats of harm to others, including domestic/family violence
- Threats of mass harm, including school shootings

ERPOs are temporary and are part of a civil (not criminal) process distinct from arrests and prosecutions, mental health commitments, and other law enforcement interventions. An ERPO will not go on a person's criminal record.

WHAT IS A MEDICAL PROVIDER'S ROLE IN MICHIGAN'S ERPO LAW?

Healthcare providers are often in the best position to recognize the warning signs that an individual may be experiencing a crisis and poses a risk of harm to self or others, particularly if they have access to firearms.

Recognizing this unique position of healthcare providers, the Michigan ERPO law (similar to laws in CO, CT, HI, MD, and NY) provides that certain designated healthcare providers (in addition to law enforcement officers and family members) may file ERPO petitions with the court.¹ The law does not require that a healthcare provider have any particular relationship with an individual in order to file an ERPO petition, nor does it require that the individual in crisis have been under the care of the provider before a petition may be filed. The law does specify that a healthcare provider may only file an ERPO petition if doing so does not violate the requirements of HIPAA or physician-patient confidentiality. The HIPAA Privacy Rule includes an exception that would allow healthcare providers to disclose protected health information for purposes of an ERPO legal proceeding, providing that protected health information may be disclosed if the provider has a good faith belief that this disclosure is necessary to "prevent or lessen a serious and imminent threat to the health or safety of a person or the public."²

Providers may also choose to engage an individual's broader support system in a conversation about whether an ERPO may be an appropriate intervention for the family to pursue.

HOW DOES THE ERPO PROCESS WORK?

Under Michigan law, a law enforcement officer, a family member, or a qualified healthcare provider may file a petition for an ERPO with the family division of the circuit court. The petitioner must provide specific facts demonstrating that an ERPO is necessary because the individual "can reasonably be expected within the near future to intentionally or unintentionally seriously 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 that expectation." The court will then schedule a hearing on an expedited basis and the individual will be served with a copy of the petition and notice of the hearing date. The petitioner must attend this hearing.

¹ The following health care providers may file ERPO petitions: "(i) A physician, physician's assistant, nurse practitioner, or certified nurse specialist licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, or a physician, physician's assistant, nurse practitioner, or certified nurse specialist licensed in another state. (ii) A mental health professional as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b, or a mental health professional licensed in another state."

² 45 CFR § 164.512(j)(1).

When an ERPO petition is filed, if there is an immediate risk of harm, the petitioner may also request that a short-term emergency extreme risk protection order be issued immediately without prior notice to the individual.

If, after considering all of the evidence presented, the court determines that the individual “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” the judge will issue a court order that directs the individual to surrender any firearms in their possession to law enforcement or a licensed gun dealer. The court will also advise the individual that they are not permitted to possess or purchase any firearms while the order is in effect.

An ERPO will last for one year and may be renewed upon request and after a hearing. The individual may request to modify or rescind the ERPO once every six months.

ERPOs ARE A CRUCIAL PART OF A CONTINUUM OF GUN ACCESS INTERVENTIONS TO PREVENT SUICIDE

Suicidal crises are often very brief, and ensuring that someone experiencing a crisis does not have easy access to lethal means – such as firearms – can prevent a moment of despair from becoming an irreversible tragedy. There are many options for limiting access to guns during a period of suicidal crisis, including seeking an ERPO. These gun access interventions exist on a continuum: a chain of actions that can be taken depending on the severity of the crisis and other factors, including whether the person in crisis owns firearms, how many firearms are in the home, how those firearms are stored, and how willing the person is to voluntarily reduce their own access to firearms.

Continuum of Gun Access Interventions for Suicide Prevention

In-Home Secure Storage	Give the Keys	Out-of-Home Storage	Extreme Risk Protection Order
Storing firearms securely – ideally locked, unloaded, and separate from ammunition – is the foundation of responsible gun ownership and can prevent unintentional shootings and gun suicide.	A gun owner in crisis can securely store firearms in a locked storage device and give the keys or code to a friend or family member until the crisis has passed – disrupting access but not possession.	Firearms can sometimes be voluntarily and temporarily stored out of the home with a family member or gun dealer/range during a period of crisis. <i>Michigan law requires an individual to obtain a purchase/possession license or a concealed carry permit before they can accept the temporary transfer of a handgun from a loved one in crisis.</i>	When a person poses a serious threat of self harm, family members, law enforcement and/or other designated community members can petition a court for an extreme risk protection order which, if granted, temporarily restricts access to guns.

EXTREME RISK PROTECTION ORDER RESOURCES



One Thing You Can Do

If you or someone you know is in crisis, the 988 Suicide and Crisis Lifeline provides 24/7 connection to free, confidential support in the US: Call or text 988 or chat at 988lifeline.org.