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SUMMARY

Extreme risk protection orders

- Names the act the "Extreme Risk Protection Order Act."
- Provides a mechanism for the issuance by a court of an extreme risk protection order (ERPO), as follows:
  - Authorizes a family or household member of a respondent, a law enforcement officer, or a Law enforcement agency to petition a common pleas court for the issuance of an ERPO based on allegations that the subject of the petition poses a significant danger of causing personal injury to self or others with a firearm.
  - Requires the court to order an ERPO hearing not later than 14 days after the date of the order and to notify the respondent of the hearing.
  - Allows the court to schedule an ERPO hearing by telephone, pursuant to local court rule, to reasonably accommodate a disability or to protect a petitioner.
  - Generally requires personal service of process on a respondent, but allows for service by publication or mail in certain instances.
  - Allows the court to issue an ERPO that requires the subject of the order to surrender all firearms and prohibits the subject from obtaining firearms during the pendency of the order for a period of 180 days.
  - Allows the court to issue an *ex parte* ERPO that lasts from the date of the order until the ERPO hearing in cases where there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to self or others in the near future with a firearm.

- Requires the court that issues an ERPO or *ex parte* ERPO to forward a copy of the order to a local law enforcement agency so that the order may be placed in various law enforcement databases.
- Requires the sheriff that has issued a concealed handgun license to a person subject to an ERPO or an *ex parte* ERPO to revoke that license and prohibits the person subject to the ERPO or *ex parte* ERPO from obtaining a concealed handgun license during the pendency of the ERPO or *ex parte* ERPO.
- Allows the subject of an ERPO to petition in writing once every 180 days for the court to terminate the ERPO upon a showing that the person does not pose a significant danger of causing harm to self or others with a firearm.
- Allows a family or household member, a law enforcement officer, or a law enforcement agency to move to renew an ERPO no sooner than 60 days before it is set to expire.

Penalties

- Prohibits a person from having a firearm while subject to an ERPO, a third degree misdemeanor for a first offense and a fifth degree felony for subsequent offenses.
- Prohibits a person from filing an ERPO that alleges that the respondent poses a significant danger of causing personal injury to self or others by possessing a firearm if the person knows that the allegation is false, and designates the offense as a fifth degree felony.
- Prohibits a person who has been found guilty of having a firearm while under an ERPO disability from knowingly acquiring, having, carrying, or using a firearm or dangerous ordnance for a period of five years after the date the underlying ERPO expires.

Informational brochures, forms, and instructions

- Requires the Superintendent of the Bureau of Criminal Identification and Investigation to provide informational brochures, standard petitions, ERPO forms, and court staff handbooks on the ERPO process.

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DETAILED ANALYSIS

ERPOs

The bill names the act the "Extreme Risk Protection Order Act."[1]

The bill creates a process for a family or household member, law enforcement officer, or law enforcement agency to petition a court for an extreme risk protection order (ERPO) to be issued against an individual. For purposes of the bill, the person who petitions the court for the ERPO is referred to as the "petitioner" and the person identified in the petition as the subject of the ERPO is referred to as the "respondent."[2]

Who may seek an order

Under the bill, a family or household member of the respondent, a law enforcement officer, or a law enforcement agency may seek an ERPO against an individual by filing a petition

[1] Section 3.

[2] R.C. 2923.26(A)(3), (4), and (5) and (B).

for an ERPO in the court of common pleas in the county where the petitioner or respondent resides.[3] If a petitioner files a petition for an ERPO, the petitioner may also file an application for an *ex parte* ERPO.[4]

Family or household member

A family or household member under the bill refers to any of the following:[5]

- A person related by blood, marriage, or adoption to the respondent;
- A person in a dating relationship with the respondent;
- A person who has a child in common with the respondent, regardless of whether the person has been married to the respondent or has lived with the respondent at any time;
- A person who resides with the respondent or who has resided with the respondent within the past year;
- A person who has a biological or legal parent-child relationship with the respondent, including a stepparent, stepchild, grandparent, and grandchild of the respondent;
- A person who is acting or who has acted as the respondent's legal guardian.

Law enforcement officer or law enforcement agency

A law enforcement officer under the bill refers to a sheriff, deputy sheriff, constable, police officer of a township or joint police district, municipal police officer, or state highway patrol trooper. A law enforcement agency is a municipal or township police department, county sheriff's office, or the state highway patrol.[6]

Contents of petition for an ERPO

A petition for an ERPO must contain all of the following:[7]

- An allegation that the respondent poses a significant danger of causing personal injury to self or others by having in the respondent's custody or control, purchasing, possessing, or receiving a firearm, with an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent;
- An inventory list including the number, types, and locations of every firearm the petitioner believes to be in the respondent's ownership, possession, custody, or control;

[3] R.C. 2923.26(B)(1).

[4] R.C. 2923.26(B)(2).

[5] R.C. 2923.26(A)(3).

[6] R.C. 2923.26(A)(6) and (7).

[7] R.C. 2923.26(C) and (E).

- A list of any protection order issued under Ohio law to which the respondent is subject and of which the petitioner is aware;
- A list of any pending lawsuit, complaint, petition, or other legal action between the parties;
- If the petitioner is a law enforcement officer or agency, an attestation that the officer or agency has provided the notice outlined in "**Notice to those who may be at risk of violence**," below, or an attestation of the steps that will be taken to provide the notice.

The court must verify the terms of any existing order governing the parties, but must not delay a grant of relief because an action is pending between the parties. A petition for an ERPO may be granted whether or not an action between the parties is pending.[8]

Notice to those who may be at risk of violence

The bill requires a law enforcement officer or agency who files a petition for an ERPO to make a good faith effort to provide notice to a family or household member or third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for an ERPO or has already filed the petition, and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided this notice, or attest to the steps that will be taken to provide the notice.[9]

Access to an ERPO process

Under the bill, the petitioner's address may be omitted from documents filed with the court if the petition for an ERPO states that disclosure of the address would risk harm to the petitioner or any member of the petitioner's family or household. If the petitioner's address is not disclosed, the petitioner must designate an alternate address at which the respondent may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the address of record must be the address of the law enforcement agency.[10]

The court must not charge a fee to an ERPO petitioner for filing an ERPO petition or for filing an *ex parte* ERPO and cannot charge the petitioner for service of process. Additionally, the court must provide the necessary certified copies and forms and provide materials free of charge to explain the process of filing a petition for an ERPO. No petitioner may be required to post a bond to obtain relief under the bill.[11]

[8] R.C. 2923.26(D).

[9] R.C. 2923.26(E).

[10] R.C. 2923.26(F).

[11] R.C. 2923.26(G) and (H).

Service of process

When the court receives a petition for an ERPO, the court must order a hearing to be held no later than 14 days after the date the petition is filed. The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances, to protect a petitioner from potential harm so long as the court has reasonable assurances of the petitioner's identity. Additionally, the court may issue an *ex parte* ERPO if issuance of that order is consistent with the requirements in "***Ex parte* ERPO**," below.[12]

In any event, the court must issue a notice of the date, time, and location of the hearing to the respondent, and must cause a copy of the notice and hearing to be forwarded, on or before the next judicial day, to a local law enforcement agency for service on the respondent. As in "**Who may seek an order**," above, a law enforcement agency is a municipal or township police department, county sheriff's office, or the state highway patrol.[13]

The local law enforcement agency must personally serve the petition and notice of the hearing on the respondent not less than five judicial days prior to the hearing. If the petitioner who filed the petition for an ERPO also filed an application for an *ex parte* ERPO with respect to the same respondent, the agency must service the notice and petition as specified under "***Ex parte* ERPO**," below. Service of ERPO notices, petitions, and *ex parte* orders takes precedence over other service of documents by the local law enforcement agency unless those documents are also of an emergency nature. If the local law enforcement agency cannot serve the documents on the respondent within the time period specified, the court must set a new hearing date and either require the local law enforcement agency to attempt personal service again, or permit service by mail or publication as specified in "**Service by publication or mail permitted**," below. The court cannot require more than two attempts at personal service and must permit service by publication or mail after two attempts unless the petitioner requests additional time for personal service. If the court issues an order that permits service by publication or mail, the court must set the hearing date not later than 24 days after the date the order is issued.[14]

Issuing an order

In a hearing on a petition for an ERPO, if the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing personal injury to self or others by having custody or control of a firearm or the *ability to* purchase, possess, or receive a firearm, the court must issue an ERPO for a period of 180 days.[15] The bill also specifies that this provision does not apply to a determination of whether an *ex parte* ERPO should be issued.[16]

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[12] R.C. 2923.26(I)(1)(a), (J), and (K).

[13] R.C. 2923.26(I)(1)(b) and (c).

[14] R.C. 2923.26(L).

[15] R.C. 2923.26(M)(1).

[16] R.C. 2923.26(M)(2).

In determining whether grounds for an ERPO or an *ex parte* ERPO exist, the court may consider relevant evidence; may examine under oath the petitioner, respondent, and any witness called by the petitioner or respondent; and may ensure that a reasonable search has been conducted for criminal history records related to the respondent.[17] Any of the following may be considered as relevant evidence:[18]

- A recent act or threat of violence by the respondent against the respondent or against another, whether or not the violence or threat involves a firearm;
- A pattern of acts or threats of violence by the respondent within the past 12 months, including acts or threats of violence by the respondent against the respondent or against others;
- Any dangerous mental health issues of the respondent;
- A violation by the respondent of a protection order issued or a consent agreement approved under Ohio law or issued by a court of another state;
- A previous or existing ERPO issued against the respondent;
- A violation of a previous or existing ERPO issued against the respondent;
- A conviction of the respondent for domestic violence;
- The respondent's ownership, access to, or intent to possess firearms;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The history of use, attempted use, or threatened use of physical force by the respondent against another person, or the respondent's history of stalking another person;
- Any prior arrest of the respondent for a felony offense or violent crime;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent.

During an ERPO hearing, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and may order such an evaluation if appropriate. If the court issues an ERPO, the court must inform the respondent that the respondent is entitled to request termination of the order in the manner prescribed in "**Termination of an ERPO**," below. If the court does not issue an ERPO, the court must state the particular reasons for denial in its order.[19]

[17] R.C. 2923.26(N).

[18] R.C. 2923.26(N)(1)(a) to (m).

[19] R.C. 2923.26(O), (Q), and (R).

Contents of ERPO

An ERPO under the bill must include a statement of the grounds supporting the order, the date and time the order was issued, the date and time the order expires, whether a mental health evaluation or chemical dependency evaluation of the respondent is required, the address of the court in which any responsive pleading should be filed, a description of the requirements for relinquishment of firearms under "**Surrender of firearms**," below, and the following statement:[20]

> To the subject of the protection order:
>
> This order will last until the date and time noted above. If you have not done so already, you must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any license to carry a concealed handgun issued to you under section 2923.125 or 2923.1213 of the Revised Code. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this order is in effect. You have the right to request one hearing to terminate this order every 180 day period that this order is in effect, starting from the date of this order and continuing through any renewals. You may seek the advice of an attorney as to any matter connected with this order.

Ex parte ERPO

A petitioner may request an *ex parte* ERPO under the bill, without notice to the respondent, by filing an application for an *ex parte* ERPO in a court of common pleas, a county court, or a municipal court. An *ex parte* ERPO application must include detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to self or others in the near future by having custody or control of a firearm or the ability to purchase, possess, or receive a firearm. In considering whether to issue an *ex parte* ERPO, the court must consider all relevant evidence, including any evidence that would be relevant in a standard ERPO hearing. An *ex parte* ERPO application must be filed in addition to the petition for an ERPO.[21]

The court must hold an *ex parte* ERPO hearing in person or by telephone on the day the petition is filed or on the judicial day immediately following the date the petition is filed. If the court finds that there is reasonable cause to believe that the respondent poses a significant danger to self or others in the near future by having custody or control of a firearm or the ability to purchase, possess, or receive a firearm, the court must issue an *ex parte* ERPO.[22]

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[20] R.C. 2923.26(P).

[21] R.C. 2923.27(A) and (B).

[22] R.C. 2923.27(C) and (D).

A court of common pleas that issues an *ex parte* ERPO must schedule a full hearing to be held within three days of the issuance of the order to determine whether a standard ERPO should be issued and must hold the hearing on the date, and at the time and place, scheduled. A county court or municipal court that issues an *ex parte* ERPO must transfer the case to the court of common pleas and that court must schedule a hearing to be held within three days of issuance of the order to determine if a standard ERPO should be issued, and must hold the hearing on the date, and at the time and place, scheduled.[23]

If a court of common pleas, county court, or municipal court issues an *ex parte* ERPO, the appropriate court must issue a notice of the date, time, and location of the hearing to the respondent, and forward a copy of the notice of the hearing and petition to a local law enforcement agency on or before the next judicial day for service on the respondent. The local law enforcement agency must personally serve the notice of the hearing and petition on the day that it is received and must serve the *ex parte* order concurrently with the notice.[24]

If a court denies a petition for an *ex parte* ERPO, then the standard procedure for an ERPO applies in regards to notice and the timing of the ERPO hearing.[25]

Contents of *ex parte* ERPO

An *ex parte* ERPO must include a statement of the grounds asserted for the order, the date and time the order was issued, the date and time the order expires, the address of the court in which any responsive pleadings should be filed, the date, time, and location of the scheduled hearing, a description of the requirements specified in "**Surrender of firearms**," below, and the following statement:[26]

> To the subject of this protection order:
>
> This order is valid until the date and time noted above. You are required to surrender all firearms in your custody, control, or possession. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this order is in effect. You must immediately surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any license to carry a concealed handgun issued to you under section 2923.125 or 2923.1213 of the Revised Code immediately. A hearing will be held on the date and at the time and location noted above to determine if an extreme risk protection order should be issued. Failure to appear at that hearing may result in a court making an order against you that is

[23] R.C. 2923.27(E)(1) and (2).

[24] R.C. 2923.27(E)(3).

[25] R.C. 2923.27(E)(4).

[26] R.C. 2923.27(F).

> valid for 180 days. You may seek the advice of an attorney as to any matter connected with this order.

An *ex parte* ERPO expires upon the hearing on petition for the standard ERPO. If the court of common pleas, county court, or municipal court declines to issue an *ex parte* ERPO, the court must state the particular reasons for the denial.[27]

Personal service and service by publication or mail

An ERPO issued under the bill must be personally served on the respondent, unless an exception under the bill applies. The law enforcement agency with jurisdiction over the area in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party. If service by the local law enforcement agency is to be used, the clerk of court must cause a copy of the ERPO to be forwarded on or before the next judicial day to the local law enforcement agency specified in the order for service upon the respondent. If the law enforcement agency is unable to serve the respondent within ten days, the agency must notify the petitioner. The petitioner must provide any information necessary to allow the law enforcement agency to complete service on the respondent.[28]

Service by publication or mail permitted

If an order entered by the court specifies that the respondent appeared in person before the court, further service is waived and proof of service is not necessary. Personal service is likewise unnecessary if the court previously entered an order allowing service of the notice and petition or an *ex parte* ERPO by publication or mail or if the court finds there are now grounds to allow for that method of service. In those cases, the court may permit service by publication or mail of the ERPO as provided in the Rules of Civil Procedure.[29] The court may order service of a summons by publication or mail as provided by the Rules of Civil Procedure but any such summons must contain the name of the respondent and petitioner, the date and time of the hearing, and any *ex parte* ERPO that has been issued against the respondent, and the following notice:[30]

> If you fail to respond, an extreme risk protection order may be issued against you pursuant to sections 2923.26 to 2923.30 of the Revised Code for 180 days from the date you are required to appear.

If the court orders service by publication or mail for notice of an ERPO hearing, it must also reissue any *ex parte* ERPO that was issued so that it expires on the date of the ERPO hearing.

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[27] R.C. 2923.27(G) and (H).

[28] R.C. 2923.28(A) to (D).

[29] R.C. 2923.28(E) to (G).

[30] R.C. 2923.28(H).

If the respondent fails to appear at an ERPO hearing after service by publication or mail, the court may issue an ERPO as provided in "**Issuing an order**," above.[31]

Transmission of ERPO or *ex parte* ERPO to law enforcement databases

The clerk of the court must enter any ERPO order or *ex parte* ERPO order into a statewide judicial information system on the same day the order is issued. The clerk also must forward a copy of any order issued under the bill on the same day the order is issued to the appropriate law enforcement agency specified in the order. Upon receipt of the copy, the law enforcement agency must enter the order into the National Instant Criminal Background Check System (NICS), any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in Ohio and used by law enforcement agencies to list outstanding warrants. The order must remain in each of these systems for the period stated in the order, and the law enforcement agency is to remove orders from the systems only when the orders have expired or terminated. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order and the order is fully enforceable in any county in Ohio.[32] If an ERPO is terminated before its expiration date, the clerk of the court must forward the same day a copy of the termination order to the appropriate law enforcement agency specified in the termination order. When the law enforcement agency receives the termination order, the agency must promptly remove the order from any computer-based system in which it was entered.[33]

Effect on issuance and revocation of concealed handgun license

Similar to treatment of civil protection orders and temporary protection orders under continuing law, the bill prohibits a person subject to an ERPO or an *ex parte* ERPO from being issued a concealed handgun license or temporary emergency concealed handgun license and requires a sheriff with knowledge of the ERPO or *ex parte* ERPO to revoke any current concealed handgun license issued to the person.[34] A court that issues an ERPO or *ex parte* ERPO must, within three judicial days of issuing the order, forward a copy of the respondent's driver's license or state identification card, or comparable information, along with the date of the order's issuance, to the sheriff that has issued a concealed handgun license to the respondent. When the sheriff receives this information, the sheriff must immediately revoke the respondent's license. If necessary, the court may apply for access to the Law Enforcement Automated Data System (LEADS) to identify a sheriff that has issued a concealed handgun license to a respondent. For purposes of such an inquiry, the court is a criminal justice agency.[35]

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[31] R.C. 2923.28(I) and (J).

[32] R.C. 2923.28(K) and (L).

[33] R.C. 2923.28(N).

[34] R.C. 2923.125(D)(1)(j), 2923.128(B)(1)(d), and 2923.1213(B)(1)(b).

[35] R.C. 2923.28(M).

Termination or expiration of an ERPO

Termination of an ERPO

The respondent may submit one written request for a hearing to terminate an ERPO every 180-day period that the order is in effect, starting from the date of the order and continuing through any renewals. When the court receives a request for a hearing to terminate an ERPO, the court must set a date for a hearing. Notice of the request must be served on the petitioner in accordance with the Rules of Civil Procedure. The hearing must occur not sooner than 14 days and not later than 30 days after the date the petitioner is served with the request.[36]

In a termination hearing, the respondent has the burden of proving, by a preponderance of the evidence, that the respondent does not pose a significant danger of causing personal injury to self or others by having custody or control of a firearm or the ability to purchase, possess, or receive a firearm. The court may consider any relevant evidence, including evidence that is relevant in an ERPO hearing. If the court finds after the hearing that the respondent has met the burden, the court must terminate the order.[37]

Expiration and renewal of an ERPO

The court must notify the petitioner of the impending expiration of an ERPO. Notice must be received by the petitioner 60 calendar days before the order is set to expire. A family or household member of a respondent or a law enforcement officer or agency may request a renewal of an ERPO not sooner than 60 calendar days before the order is set to expire.[38]

After receiving a motion to renew an ERPO, the court must order a hearing to be held not later than 14 days after the request for renewal. The court may schedule the hearing by telephone in the same manner as the court may schedule a hearing by telephone for an ERPO petition as specified in "**Service of process**," above and the respondent must be personally served in the same manner as described in that same section above. In determining whether to renew an ERPO, the court must consider all relevant evidence presented by the petitioner and must follow the same procedures that the court must follow for the issuance of an ERPO. If the court finds by a preponderance of the evidence that the requirements for issuance of an ERPO continue to be met, the court must renew the order. If, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the court may renew the order on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal. The renewal of an ERPO lasts for 180 days, subject to termination under "**Termination of an ERPO**," above.[39]

[36] R.C. 2923.29(A)(1).

[37] R.C. 2923.29(A)(2) and (3).

[38] R.C. 2923.29(B) and (C).

[39] R.C. 2923.29(D), (E), and (F).

Surrender of firearms

Upon issuance of any ERPO, including an *ex parte* ERPO, the court must order the respondent to surrender to the local law enforcement agency all firearms in the respondent's custody, control, or possession and any license to carry a concealed handgun issued to the respondent under Ohio law.[40]

The law enforcement officer serving an ERPO or *ex parte* ERPO must request that the respondent immediately surrender all firearms in the respondent's custody, control, or possession and any license to carry a concealed handgun issued to the respondent under Ohio law, and must conduct any search permitted by law for those firearms. The law enforcement officer must take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.[41]

Alternatively, if personal service by a law enforcement officer is not possible, or not required because the respondent was present at the ERPO hearing, the respondent must surrender the firearms in a safe manner to the control of the local law enforcement agency within 48 hours of being served with the order by alternate service or within 48 hours of the hearing at which the respondent was present.[42]

At the time of surrender, a law enforcement officer taking possession of a firearm or concealed handgun license must issue a receipt identifying all firearms that have been surrendered and provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the officer serving the order must file the original receipt with the court and must ensure that the officer's law enforcement agency retains a copy of the receipt.[43]

If a sworn statement or testimony of the petitioner or of any law enforcement officer alleges that the respondent has failed to comply with the surrender of firearms as required by an ERPO or *ex parte* ERPO, the court must determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in the respondent's possession, custody, or control. If probable cause exists, the court must issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to the search.[44]

If a person other than the respondent claims title to any firearm surrendered pursuant to the bill, and the other person is determined by the law enforcement agency to be the lawful owner of the firearm, the firearm must be returned to the other person, provided that both of the following apply:[45]

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[40] R.C. 2923.30(A).

[41] R.C. 2923.30(B) and (C).

[42] R.C. 2923.30(C).

[43] R.C. 2923.30(D).

[44] R.C. 2923.30(E).

[45] R.C. 2923.30(F).

- The firearm is removed from the respondent's custody, control, or possession and the lawful owner agrees to store the firearm in a manner so that the respondent does not have access to or control of the firearm;
- The lawful owner is not prohibited from possessing the firearm under state or federal law.

Upon the issuance of an ERPO, the court must order a new hearing date and require the respondent to appear not later than three judicial days from the issuance of the order. The court must require a showing that the respondent has surrendered any firearms in the respondent's custody, control, or possession. The court may dismiss the hearing upon a satisfactory showing that the respondent is in compliance with the order.[46]

All law enforcement agencies must develop policies and procedures not later than six months after the effective date of the bill regarding the acceptance, storage, and return of firearms required to be surrendered under the bill. If an ERPO is terminated or expires without renewal or an *ex parte* ERPO expires and a standard ERPO is not issued regarding the respondent, a law enforcement agency holding any firearm that has been surrendered pursuant to the bill must return any surrendered firearm requested by a respondent only after confirming, through a background check, that the respondent is currently eligible to own or possess firearms under federal and state law and after confirming with the court that the ERPO has terminated or has expired without renewal.[47]

If requested by a family or household member of a respondent, a law enforcement agency must provide prior notice to that family or household member of the respondent of the return of a firearm to a respondent. Any firearm surrendered by a respondent under the bill that remains unclaimed by the lawful owner must be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.[48]

Penalties

Having a firearm while under extreme risk protection order disability

A person who acquires, has, carries, or uses a firearm with knowledge that the person is prohibited from doing so by an ERPO or *ex parte* ERPO is guilty of "having a firearm while under extreme risk protection order disability." For a first or second offense, having a firearm while under extreme risk protection order disability is a third degree misdemeanor. For a third or subsequent offense, having a firearm while under extreme risk protection order disability is a fifth degree felony.[49]

In addition to these penalties, a person found guilty of having a firearm while under extreme risk protection order disability is prohibited from knowingly acquiring, having, carrying,

[46] R.C. 2923.30(G).

[47] R.C. 2923.30(H) and (I).

[48] R.C. 2923.30(J) and (K).

[49] R.C. 2923.99(C).

or using a firearm or dangerous ordnance for a period of five years after the date the underlying ERPO expires.[50]

Filing an ERPO with false allegations

The bill also prohibits a person from filing either of the following:[51]

- A petition for an ERPO alleging that the respondent poses a significant danger of causing personal injury to self or others by having in the respondent's custody or control, purchasing, possessing, or receiving a firearm if the person knows the allegation is false;
- An application for an *ex parte* ERPO alleging that the respondent poses a significant danger of causing personal injury to self or others in the near future by having custody or control of a firearm or the ability to purchase, possess, or receive a firearm if the person knows the allegation is false.

A violation of the prohibition is a fifth degree felony.[52]

An individual injured in person or property by the filing of either of the above may recover full damages in a civil action. The civil action is in addition to, and does not preclude, any possible criminal prosecution.[53]

The bill does not impose any other criminal or civil liability on any person or entity for acts or omissions related to obtaining an ERPO or *ex parte* ERPO including for reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition under the bill.[54]

Having weapons while under disability

The bill expands the existing offense of "having weapons while under disability" to include a new category of persons who are prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance: any person who has been found guilty of having a firearm while under extreme risk protection order disability. A violation of "having weapons while under disability" is a third degree felony.[55]

Informational brochures, forms, and instructions

The bill requires the Superintendent of the Bureau of Criminal Identification and Investigation to develop and prepare instructions and informational brochures, standard petitions and ERPO forms, and court staff handbooks on the ERPO process. The standard petitions and order forms must be prepared and available for use not later than six months after the bill's effective date for all ERPOs issued and petitions filed. All of the materials developed and

[50] R.C. 2923.99(D).

[51] R.C. 2923.99(B)(1).

[52] R.C. 2923.99(B)(3).

[53] R.C. 2923.99(B)(2).

[54] R.C. 2923.99(A).

[55] R.C. 2923.13(A)(6) and (B).

prepared by the Superintendent for the bill must be prepared in consultation with interested parties, including representatives from gun violence prevention groups, judges, and law enforcement personnel. The materials must be based on best practices and be made available online to the public. The petitions and petition forms are for both requesting an ERPO and requesting an application for an *ex parte* ERPO.[56]

The Superintendent must distribute a master copy of the petition and order forms, instructions, and informational brochures to every clerk of court and must distribute a master copy of the petition and order forms to all county courts, municipal courts, and courts of common pleas. The Superintendent must distribute all documents in an electronic format or formats accessible to all courts and clerks of court in the state and may distribute the documents in other formats. The Superintendent must determine the significant non-English-speaking or limited English-speaking populations in Ohio and must arrange for translation of the instructions and informational brochures into the languages spoken by those populations. The translated instructions and informational brochures must contain a sample of the standard petition and order for protection forms, and the Superintendent must distribute a master copy of the translated instructions and informational brochures to every clerk of court not later than one year after the effective date of the bill. The Superintendent must update the instructions, brochures, standard petitions and order forms, and court staff handbook as necessary, including when changes in law make an update necessary.[57]

Instructions and standard petition

The instructions must be designed to assist petitioners in completing the petition, and must include a sample of a standard petition and ERPO form. Additionally, the instructions and standard petition must include a means for the petitioner to identify, without special knowledge, the firearms the respondent may own, possess, receive, or have in their custody or control. The instructions must provide pictures of types of firearms that the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow petitioners to identify firearms without requiring specific or technical knowledge of the firearms.[58]

Informational brochure

The informational brochure must describe the use of and the process for obtaining, modifying, and terminating an ERPO under the bill and must provide the relevant forms.[59]

ERPO form

The ERPO form must include, in a conspicuous location, notice of criminal penalties for violation of the order and must include the following statement: "You have the sole responsibility

[56] R.C. 109.57(J)(1).

[57] R.C. 109.57(J)(7), (8), (9), and (10).

[58] R.C. 109.57(J)(2) and (3).

[59] R.C. 109.57(J)(4).

to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written application."[60]

Court staff handbook

The court staff handbook must allow for a clerk of court to add to the handbook a community resource list. Each clerk of court is permitted under the bill to create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located.[61] Under the bill, any assistance or information provided by a clerk by way of an informational brochure, instructions and standard petition, ERPO form, or court staff handbook does not constitute the practice of law.[62]

Bill does not affect lawful search or seizure

The bill specifies that its provisions do not affect the ability of a law enforcement officer to remove a firearm or concealed handgun license from any person or conduct any search and seizure for firearms pursuant to any other lawful authority.[63]

HISTORY

Action	Date
Introduced	02-03-25

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[60] R.C. 109.57(J)(5).

[61] R.C. 109.57(J)(6) and (K).

[62] R.C. 109.57(J)(11).

[63] R.C. 2923.26(S).