

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30442-MLa-195B

Short Title: Extreme Risk Protection Orders. (Public)

Sponsors: Representatives Morey, Harrison, G. Martin, and Willingham (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE ISSUANCE OF AN EXTREME RISK PROTECTION
3 ORDER TO RESTRICT TEMPORARILY A PERSON'S ACCESS TO FIREARMS IF
4 THERE IS EVIDENCE THAT THE PERSON POSES A DANGER OF PHYSICAL HARM
5 TO SELF OR OTHERS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

8 **"Chapter 50E.**

9 **"Extreme Risk Protection Orders.**

10 **"§ 50E-1. Title of Chapter.**

11 This Chapter may be cited as the "Extreme Risk Protection Orders Act."

12 **"§ 50E-2. Legislative findings and purpose.**

13 (a) Legislative Findings. – The General Assembly finds all of the following:

14 (1) Every year, over 100,000 people are victims of gunshot wounds and more than
15 30,000 of those victims lose their lives.

16 (2) Individuals who pose a danger to themselves or others often exhibit signs that
17 alert family, household members, or law enforcement to the threat. Many mass
18 shooters displayed warning signs prior to the killings, but federal and State
19 laws provided no clear legal process to suspend the shooters' access to guns,
20 even temporarily.

21 (b) Purpose. – The purpose of this Chapter is to reduce gun deaths and injuries, while
22 respecting constitutional rights, by providing a court procedure for concerned citizens and law
23 enforcement to obtain an order temporarily restricting a person's access to firearms. The court
24 orders authorized under this Chapter are intended to be limited to situations in which the person
25 poses a significant danger of harming themselves or others by possessing a firearm and include
26 standards and safeguards to protect the rights of respondents and due process of law.

27 **"§ 50E-3. Definitions.**

28 The following definitions apply in this Chapter:

29 (1) Extreme Risk Protection Order or ERPO. – An order granted under this
30 Chapter, which includes a remedy authorized under G.S. 50E-6.

31 (2) Family or household member. – Any of the following:

32 a. A person related by blood, marriage, or adoption to the respondent.

33 b. A dating partner of the respondent.

34 c. A person who has a child in common with the respondent, regardless
35 of whether the person has been married to the respondent or has lived
36 together with the respondent at any time.



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1 d. A domestic partner of the respondent.

2 e. A person who has a biological or legal parent-child relationship with
3 the respondent, including stepparents, stepchildren, grandparents, and
4 grandchildren.

5 f. A person who is acting or has acted as the respondent's legal guardian.

6 (3) Firearm. – Any weapon, including a starter gun, which will or is designed to
7 or may readily be converted to expel a projectile by the action of an explosive,
8 or its frame or receiver.

9 (4) Petitioner. – The person who petitions for an ERPO under this Chapter.

10 (5) Respondent. – The person who is identified as the respondent in a petition
11 filed under this Chapter.

12 **"§ 50E-4. Commencement of action.**

13 (a) Petition. – Either of the following may file a verified petition in district court for an
14 Extreme Risk Protection Order:

15 (1) A family or household member.

16 (2) A law enforcement officer or agency.

17 (b) Filing Location. – A petition for an ERPO under this Chapter may be filed in any
18 county permitted under G.S. 1-82.

19 (c) Required Information in Petition. – A petition for an ERPO under this Chapter shall
20 include all of the following:

21 (1) An allegation that the respondent poses a danger of physical harm to self or
22 others by having in his or her care, custody, possession, ownership, or control
23 a firearm. If the petitioner is seeking an ex parte ERPO, the petition shall
24 include an allegation that the respondent poses an imminent danger of physical
25 harm to self or others by having in his or her care, custody, possession,
26 ownership, or control a firearm. The allegation required under this subdivision
27 shall include facts to support the allegation.

28 (2) An identification, to the best of the petitioner's knowledge, of the number,
29 types, and locations of firearms under the respondent's custody or control.

30 (3) An identification of any existing protection order under State law governing
31 the respondent.

32 (4) An identification of any pending lawsuits, complaints, petitions, or other
33 actions between the petitioner and the respondent.

34 (d) Verification of Terms of Existing Orders. – The clerk of court shall verify the terms
35 of any existing protection orders governing the petitioner and respondent. The court shall not
36 delay granting relief because of the existence of a pending action between the petitioner and
37 respondent or the necessity of verifying the terms of an existing protection order. A petition for
38 an ERPO under this Chapter may be granted whether or not there is a pending action between
39 the petitioner and respondent.

40 (e) Nondisclosure of Address. – A petitioner with a current and valid Address
41 Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of
42 the General Statutes may use the substitute address designated by the Address Confidentiality
43 Program when filing with the court any document required under this Chapter.

44 (f) Court Costs and Attorneys' Fees. – No court costs or attorneys' fees shall be assessed
45 for the filing or service of the petition, or the service of any ERPOs, except as provided in
46 G.S. 1A-1, Rule 11.

47 (g) Electronic Filing. – All documents filed, issued, registered, or served in an action
48 under this Chapter relating to an ERPO may be filed electronically.

49 **"§ 50E-5. Process.**

50 (a) Summons Required. – Except as otherwise provided in G.S. 50E-7, a petition for an
51 ERPO requires that a summons be issued and served not later than five days prior to the date set

1 for the full ERPO hearing. Attachments to the summons shall include the petition for any ERPO,
2 any ex parte ERPO that has been issued and the notice of hearing on the ex parte ERPO, and a
3 description of what an ERPO is.

4 (b) Service of the Summons and Attachments. – The clerk of court shall effect service of
5 the summons and any attachments through the appropriate law enforcement agency where the
6 respondent is to be served.

7 **"§ 50E-6. ERPO requirements; remedy; mental health or chemical dependency evaluation.**

8 (a) Required Information in ERPO. – An ERPO issued under this Chapter shall include
9 all of the following:

10 (1) A statement of the grounds supporting issuance of the ERPO.

11 (2) The date and time the ERPO was issued.

12 (3) The date and time the ERPO expires.

13 (4) Whether a mental health evaluation or chemical dependency evaluation of the
14 respondent is required.

15 (5) The address of the court in which any responsive pleading may be filed.

16 (6) A description of the requirements for relinquishment and retrieval of any
17 firearms, ammunition, permits to purchase firearms, and permits to carry
18 concealed firearms that are in the care, custody, ownership, or control of the
19 respondent.

20 (7) A description of the process for seeking termination of the ERPO.

21 (8) A statement that a violation of the ERPO is punishable as a Class A1
22 misdemeanor.

23 (b) Remedy Granted. – Upon issuance of an ERPO, including an ex parte ERPO, the
24 court shall order the respondent to surrender to the sheriff all firearms, ammunition, permits to
25 purchase firearms, and permits to carry concealed firearms that are in the care, custody,
26 possession, ownership, or control of the respondent.

27 (c) Mental Health or Chemical Dependency Evaluation. – During a hearing for issuance
28 of an ERPO, the court shall consider whether a mental health evaluation or chemical dependency
29 evaluation of the respondent is appropriate and may order the respondent to undergo evaluation
30 if appropriate.

31 **"§ 50E-7. Hearing and issuance of an ex parte Extreme Risk Protection Order.**

32 (a) Hearing. – Upon receipt of a petition for an ex parte ERPO, the court shall hold a
33 hearing in person on the day the petition is filed or the judicial day immediately following the
34 day the petition is filed.

35 (b) Order. – If the court finds by clear, cogent, and convincing evidence that the
36 respondent poses an imminent danger of causing physical injury to self or others by having in his
37 or her custody a firearm, a judge or magistrate of district court may issue an ex parte ERPO
38 before a hearing for a full ERPO and without evidence of service of process or notice.

39 (c) Requirements. – An ex parte ERPO granted without notice shall meet all of the
40 following requirements:

41 (1) The ERPO shall be endorsed with the date and hour of issuance.

42 (2) The ERPO shall be filed immediately in the clerk's office and entered of
43 record.

44 (3) The ERPO shall include a statement detailing why the ERPO was granted
45 without notice.

46 (4) The ERPO shall include the applicable information required under
47 G.S. 50E-6(a).

48 (5) The ERPO shall expire by its terms within a specified amount of time after
49 entry, not to exceed the limits set forth in G.S. 50E-10(a).

50 (6) The ERPO shall give notice of the date of hearing on the ex parte ERPO.

1 (d) Appearance by Respondent. – If the respondent appears in court for a hearing on an
2 ex parte ERPO, the respondent may elect to file a general appearance and testify. Any resulting
3 ERPO may be an ex parte ERPO governed by this section. Notwithstanding the requirements of
4 this section, if all requirements of G.S. 50E-8 have been met, the court may issue a full ERPO.

5 (e) Court Out of Session. – When the court is not in session, the petitioner may file for
6 an ex parte ERPO before any judge or magistrate designated to grant relief under this Article. If
7 the judge or magistrate finds that the requirements of subsection (a) of this section have been
8 met, the judge or magistrate may issue an ex parte ERPO. The chief district court judge may
9 designate for each county at least one judge or magistrate to be reasonably available to issue ex
10 parte ERPOs when the court is not in session.

11 (f) Video Conference. – Hearings held to consider ex parte relief pursuant to subsection
12 (a) of this section may be held via video conference.

13 **"§ 50E-8. Hearing and issuance of a full Extreme Risk Protection Order.**

14 (a) Hearing. – A court shall hold a hearing on a petition for a full ERPO no later than 10
15 days from either of the following dates:

16 (1) If an ex parte ERPO has been issued, the date the ex parte ERPO was issued.

17 (2) If subdivision (1) of this subsection does not apply, the date the petition for a
18 full ERPO was filed with the court.

19 A continuance shall be limited to one extension of no more than 10 days unless all parties
20 consent or good cause is shown.

21 (b) Order. – A court may issue a full ERPO if all of the following requirements are met:

22 (1) The court finds by a preponderance of the evidence that the respondent poses
23 a danger of causing physical injury to self or others by having in his or her
24 custody a firearm.

25 (2) Process was served on the respondent in accordance with the requirements of
26 this Article.

27 (3) Notice of hearing was given to the respondent in accordance with the
28 requirements of this Article.

29 **"§ 50E-9. Surrender, retrieval, and disposal of firearms.**

30 (a) Surrender of Firearms. – Upon service of an ERPO, the respondent shall immediately
31 surrender to the sheriff possession of all firearms, ammunition, permits to purchase firearms, and
32 permits to carry concealed firearms that are in the care, custody, possession, ownership, or control
33 of the respondent. In the event that weapons cannot be surrendered at the time the ERPO is
34 served, the respondent shall surrender the firearms, ammunitions, and permits to the sheriff
35 within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the
36 firearms or contract with a licensed firearms dealer to provide storage.

37 (b) Failure to Surrender. – Upon the sworn statement of the petitioner or the sheriff
38 alleging that the respondent has failed to comply with the surrender of firearms required under
39 subsection (a) of this section, the court shall determine whether probable cause exists to believe
40 that the respondent has failed to surrender all firearms in his or her care, custody, possession,
41 ownership, or control. If probable cause exists, the court shall issue a warrant describing the
42 firearms and authorizing (i) a search of the locations where the firearms are reasonably believed
43 and (ii) seizure of any firearms discovered pursuant to the search.

44 (c) Receipt. – At the time of surrender or seizure, the sheriff taking possession of a
45 firearm shall issue a receipt identifying all firearms that have been surrendered or seized and shall
46 provide a copy of the receipt to the respondent. Within 48 hours after issuing the receipt, the
47 officer shall file the original receipt with the court and shall also retain a copy for the sheriff's
48 records.

49 (d) Fee. – The sheriff may charge the respondent a reasonable fee for the storage of any
50 firearms and ammunition taken pursuant to an ERPO. The fees are payable to the sheriff. The
51 sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be

1 used by the sheriff to pay the costs of administering this section and for other law enforcement
2 purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall
3 not release firearms, ammunition, or permits without a court order granting the release. The
4 respondent shall remit all fees owed prior to the authorized return of any firearms, ammunition,
5 or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or
6 deterioration due to storage or transportation of any firearms or ammunition held pursuant to this
7 section.

8 (e) Retrieval. – If the court does not enter a full ERPO when the ex parte ERPO expires,
9 the respondent may retrieve any weapons surrendered to the sheriff unless the court finds that the
10 respondent is otherwise precluded from owning or possessing a firearm pursuant to State or
11 federal law.

12 (f) Motion for Return. – The respondent may request the return of any firearms,
13 ammunition, or permits surrendered by filing a motion with the court no later than 90 days after
14 the expiration of the ERPO. Unless the court finds that the respondent is otherwise precluded
15 from owning or possessing a firearm pursuant to State or federal law, all firearms, ammunition,
16 and permits surrendered by the respondent shall be returned within 30 days of the date the motion
17 was received by the court.

18 (g) Motion for Return by Third Party. – A third-party owner of firearms or ammunition
19 who is otherwise eligible to possess the items may file a motion requesting the return to the third
20 party of any of the items in the possession of the sheriff surrendered or seized as a result of the
21 entry of an ERPO. The motion must be filed not later than 30 days after the surrender or seizure
22 of the items by the sheriff. The third-party owner shall also (i) provide proof of ownership of the
23 firearms or ammunition and (ii) certify that the third-party owner shall not allow the respondent
24 to have access to the firearms or ammunition. Upon receipt of the third party's motion, the court
25 shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall
26 order return of the items to the third party unless the third-party owner fails to provide proof of
27 ownership or certification as required under this subsection, or the court determines that the third
28 party is disqualified from owning or possessing the items pursuant to State or federal law. If the
29 court orders the return of the items to the third party, the third party is not required to pay any
30 fees imposed under subsection (d) of this section. If the court denies the return of the items to the
31 third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this
32 section.

33 (h) Disposal of Firearms. – If the respondent or a third-party owner does not file a motion
34 within the applicable time period prescribed by this section requesting the return of any
35 surrendered firearms, ammunition, or permits, if the court determines that the respondent or
36 third-party owner is precluded from regaining possession of any surrendered firearms,
37 ammunition, or permits, or if the respondent fails to remit all fees owed for the storage of the
38 firearms or ammunition within 30 days of the entry of the order granting the return of the
39 firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or
40 permits shall give notice to the respondent and the sheriff shall apply to the court for an order of
41 disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the
42 sheriff in possession, or the sheriff's duly authorized agent, to destroy the firearms, ammunition,
43 and permits, or to dispose of the firearms, ammunition, and permits in one or more of the ways
44 authorized by law, including subdivision (4b), (5), or (6) of G.S. 14-269.1. The sheriff shall
45 maintain a record of any firearms, ammunition, and permits destroyed in accordance with this
46 subsection. If a sale by the sheriff does occur, any proceeds from the sale after deducting any
47 costs associated with the storage and sale, and, in accordance with all applicable State and federal
48 law, shall be provided to the respondent if requested by the respondent by motion made before
49 the hearing or at the hearing and if ordered by the judge.

50 **"§ 50E-10. Duration; renewal of ERPOs.**

1 (a) Duration of Ex Parte ERPO. – Except as otherwise provided in this subsection, an ex
2 parte ERPO shall be effective until the date a hearing is held under G.S. 50E-8. If a hearing is
3 not held or a continuance was not granted, an ex parte ERPO shall be effective for not more than
4 10 days from the date the ex parte ERPO was issued.

5 (b) Duration of Full ERPO. – A full ERPO shall be effective for a fixed period of time
6 not to exceed one year.

7 (c) Renewal. – Any ERPO may be renewed one or more times, as required, provided that
8 the requirements of G.S. 50E-7 or G.S. 50E-8, as appropriate, are satisfied. The court may renew
9 an ERPO, including an ERPO that previously has been renewed, upon a motion by the petitioner
10 filed before the expiration of the current ERPO. Upon a motion for a renewal, the court shall hold
11 a hearing no later than 10 days after the date the motion is filed in court. The court may renew
12 an ex parte ERPO if the court finds by clear, cogent, and convincing evidence that there has been
13 no material change in relevant circumstances since entry of the ex parte ERPO. The court may
14 renew a full ERPO if the court finds by a preponderance of the evidence that there has been no
15 material change in relevant circumstances since entry of the full ERPO. The commission of an
16 act of unlawful conduct by the respondent after entry of the current ERPO is not required for an
17 ERPO to be renewed. If the motion for renewal is uncontested and the petitioner seeks no
18 modification of the ERPO, the ERPO may be renewed if the petitioner's motion or affidavit states
19 that there has been no material change in relevant circumstances since entry of the ERPO and
20 states the reason for the requested renewal. Renewals may be granted only in open court.

21 (d) Expiration Date. – An ERPO expiring on a day the court is not open for business shall
22 expire in accordance with the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1.
23 "**§ 50E-11. Termination of an Extreme Risk Protection Order.**

24 (a) Motion. – The respondent may request the termination of a full ERPO by filing a
25 motion with the court. The respondent may submit no more than one motion for termination for
26 every 12-month period the full ERPO is in effect, starting from the date of the full ERPO and
27 continuing through any renewals.

28 (b) Hearing. – Upon receipt of a request for a hearing to terminate a full ERPO, the court
29 shall set a date for a hearing. Notice of the request for a hearing shall be served on the petitioner
30 in accordance with Rule 4 of the Rules of Civil Procedure. The court shall set the date for the
31 hearing no sooner than 14 days and no later than 30 days from the date of service of the request
32 upon the petitioner.

33 (c) Burden of Proof; Termination. – The respondent shall have the burden of proving by
34 a preponderance of the evidence that the respondent does not pose a danger of causing physical
35 injury to self or others by having in his or her care, custody, possession, ownership, or control a
36 firearm. If the court finds after the hearing that the respondent has met his or her burden, the
37 court shall terminate the full ERPO.

38 "**§ 50E-12. Notice.**

39 (a) Notice Law Enforcement; Entry into National Database. – The clerk of court shall
40 deliver on the same day that an ERPO is issued, a certified copy of that ERPO to the sheriff of
41 the county in which the ERPO is issued. Any order extending, modifying, or revoking an ERPO
42 shall be promptly delivered to the sheriff by the clerk and served in a manner provided for service
43 of process in accordance with the provisions of this section. The sheriff shall provide for prompt
44 entry of the ERPO into the National Crime Information Center registry and shall provide for
45 access of such orders to the courts on a 24-hour-a-day basis. Modifications, terminations,
46 renewals, and dismissals of the ERPO shall also be promptly entered. A copy of the ERPO shall
47 be issued promptly to and retained by the police department of the municipality of the petitioner's
48 residence. If the petitioner's residence is not located in a municipality or in a municipality with
49 no police department, copies shall be issued promptly to and retained by the sheriff of the county
50 in which the petitioner's residence is located.

1 stalking to prevent the petitioner's or victim's assailants or potential assailants
2 from finding the petitioner or victim through public records.

3 ...

4 (5a) ERPO petitioner. – The person who petitions for an Extreme Risk Protection
5 Order under Chapter 50E of the General Statutes.

6 ...

7 **"§ 15C-3. Address Confidentiality Program.**

8 The General Assembly establishes the Address Confidentiality Program in the Office of the
9 Attorney General to protect the confidentiality of the address of an ERPO petitioner or a relocated
10 victim of domestic violence, sexual offense, stalking, or human trafficking to prevent the
11 petitioner's or victim's assailants or potential assailants from finding the petitioner or victim
12 through public records. Under this Program, the Attorney General shall designate a substitute
13 address for a program participant and act as the agent of the program participant for purposes of
14 service of process and receiving and forwarding first-class mail or certified or registered mail.
15 The Attorney General shall not be required to forward any mail other than first-class mail or
16 certified or registered mail to the program participant. The Attorney General shall not be required
17 to track or otherwise maintain records of any mail received on behalf of a program participant
18 unless the mail is certified or registered mail.

19 **"§ 15C-4. Filing and certification of applications; authorization card.**

20 (a) An individual who wants to participate in the Address Confidentiality Program shall
21 file an application with the Attorney General with the assistance of an application assistant. Any
22 of the following individuals may apply to the Attorney General to have an address designated by
23 the Attorney General to serve as the substitute address of the individual:

24 (1) An adult individual.

25 (2) A parent or guardian acting on behalf of a minor when the minor resides with
26 the individual.

27 (3) A guardian acting on behalf of an incapacitated individual.

28 (b) The application shall be dated, signed, and verified by the applicant and shall be
29 signed by the application assistant who assisted in the preparation of the application.

30 (c) The application shall contain all of the following:

31 (1) A statement by the applicant that the applicant is an ERPO petitioner or a
32 victim of domestic violence, sexual offense, stalking, or human trafficking
33 and that the applicant fears for the applicant's safety or the safety of the
34 applicant's child.

35 (2) ~~Evidence~~ Except for an applicant that is an ERPO petitioner, evidence that the
36 applicant is a victim of domestic violence, sexual offense, stalking, or human
37 trafficking. For an applicant that is an ERPO petitioner, evidence that the
38 applicant is at risk from violence or other unlawful conduct from the
39 respondent in a petition filed under Chapter 50E of the General Statutes. This
40 evidence may include any of the following:

41 a. Law enforcement, court, or other federal or state agency records or
42 files.

43 b. Documentation from a domestic violence program if the applicant is
44 alleged to be a victim of domestic violence.

45 c. Documentation from a religious, medical, or other professional from
46 whom the applicant has sought assistance in dealing with the alleged
47 domestic violence, sexual offense, or stalking.

48 d. Documentation submitted to support a victim of human trafficking's
49 application for federal assistance or benefits under federal human
50 trafficking laws.

51 ...

1 (4) ~~A~~Except for an applicant that is an ERPO petitioner, a statement by the
2 applicant that the applicant has or will confidentially relocate in North
3 Carolina.

4 ...
5 (7) The address that the applicant requests not to be disclosed by the Attorney
6 General that directly relates to the increased risk of domestic violence, sexual
7 offense, ~~or stalking-stalking~~, or other unlawful conduct.

8"
9 **SECTION 3.** Development of Forms. – The Administrative Office of the Courts
10 shall develop the appropriate forms to implement the processes provided under Chapter 50E of
11 the General Statutes, as enacted by Section 1 of this act.

12 **SECTION 4.** Appropriation. – There is appropriated from the General Fund to the
13 Administrative Office of the Courts the sum of twenty thousand dollars (\$20,000) in nonrecurring
14 funds for the 2018-2019 fiscal year to be used for the training of magistrates and judges of the
15 district courts, clerks of the superior courts, and law enforcement officers in how to implement
16 and enforce the provisions of Chapter 50E of the General Statutes, as enacted by Section 1 of
17 this act.

18 **SECTION 5.** Effective Date. – Section 4 of this act becomes effective July 1, 2018.
19 The remainder of this act becomes effective December 1, 2018.