

# **Colorado's Newest Red Flag ERPO Bill Is Worse Than You Think – And Gun Owners Should Be Worried**

Democrat state lawmakers have introduced a Red Flag Emergency Risk Protection Order (ERPO) bill into the 2019 Colorado legislative session. This bill, HB19-1177, which was introduced Thursday, February 14th, is far worse than a previously introduced bill which died in 2018. Question everything you hear the media say about this legislation. The devil is in the details.

## **Here's the claim of what this bill does:**

*A family member or law enforcement officer would petition a court to request the ability to immediately seize a person's guns. If a judge signs the order, the weapons can be taken away and the court must hold a hearing within 14 days to determine whether to extend the seizure and bar the person from purchasing more firearms. The longest a judge could order the seizure of firearms is 364 days. The entire process is a civil, not criminal, proceeding.*

## **Now let's break down the bill language:**

### ***Who can petition the courts?***

According to the bill summary and media reports, **only family or household members, and law enforcement can petition the courts.** But what is the definition of "family member" and "household member"?

According to the bill language, "family or household member" means:

- Person related by blood, marriage, or adoption;
- Person who has a child in common with the respondent, regardless of whether such person has been married to the respondent or has lived together with the respondent at any time;
- Person who regularly resides or regularly resided with the respondent within the last six months;
- Domestic partner of the respondent;
- Person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren;
- Person who is acting or has acted as the respondent's legal guardian;

- A person in any other relationship described in section 18-6-800.3 (2) with the respondent. *[So, what does 18-6-800.3 (2) say? “Intimate relationship” means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.]*

**Say what?! This is who they define as a “family member” or “household member”?** This person doesn’t need to be either a family member or a household member. We’re talking scorned ex’s, those pretending to be scorned ex’s, angry former roommates, those in custody disputes, and so on. And that’s not even touching on law enforcement’s ability to petition for an ERPO. Co-worker mad? All they have to do is make a report to the police that you’re a danger to yourself or another, and they can have your firearms confiscated.

### ***What is needed to file the ERPO petition?***

The filing of the ERPO petition can be done either in person or **over the phone**. The petition must be filed in the county court of where the accused lives – but since the petitioner can do it over the phone, they don’t even need to be in the same state. There is NO filing fee. **The petitioner even has the option to not provide their address** – for safety, of course – never mind the address could simply be left off any actual order as they do with temporary restraining orders.

Questions that will be asked on the petition include how many firearms the accused has, what types, and where they are located. This doesn’t only include ownership – it also includes possession, custody, or control. Petitioners are also asked to disclose if there are any other legal actions pending between parties, such as: current restraining orders, lawsuits, civil suits, custody cases, etc, but the existence of such cases shall not delay or prevent an ERPO from being granted.

And finally, **no one is required to tell the accused** that a petition is being filed or has been filed.

### ***What happens after the ERPO petition is filed?***

Once an ERPO is filed, a hearing will be set either the same day or the next day. **Once again, the petitioner does not need to be present.** They can attend this hearing over the phone, while never being required to show proof of any relationship to the accused, and not even provide their address! At this hearing, the petitioner will be asked to provide a “preponderance” of evidence with the goal being to convince the fact finder judge that there is a greater than 50% chance that the claim is true. Now, remember, this is over the telephone.

What kind of evidence are they looking for? A recent act or credible threat of violence, even if such act does not involve use of a firearm. Self harm or threats of self harm within the past year. A prior violation of a protection order. A previous ERPO. Prior

domestic violence convictions. Prior ARREST, not even conviction, of a whole host of other crimes. Ownership, access to, or intent to purchase a firearm. Drug or alcohol abuse. Recent acquisition of a firearm or ammunition. **How do you provide this evidence during a telephone hearing?**

At this hearing the court will either approve or deny the ERPO. If it is denied, they must document reasoning for denial. Judges will err on the side of caution. **Once the ERPO is approved, a warrant to search the home for weapons is also issued.** All while the only person who has no idea this is happening, is the person being accused of no crime.

### ***How will the ERPO be enacted?***

Once the ERPO and warrant are in hand, it's time for the police to take action. Considering we see SWAT teams show up to homes where someone is reported to possibly be suicidal, it won't be pretty. The county sheriff is required to work with city police. They will show up at the door without so much as a warning, manually deliver the order, ask the accused to surrender their firearms, and if they refuse or claim to have none, they will search the home. Honestly, even if firearms are surrendered, they will likely STILL search the home. Did the petitioner make claim you have firearms at a place of business? Expect that location to be included on the search warrant. During this interaction, law enforcement is required to determine if the accused should be put into a 72 hour involuntary commitment hold.

It is not unlikely children, spouses, even co-workers will be present during these raids.

Once the firearms have been confiscated, the accused will be asked if they'd like to sell them, store them with law enforcement, or store them with a FFL. The accused's information will also be added to the CBI and NICS database prohibiting them from purchasing guns.

Along with the order that will be delivered upon the accused, a court date for 14 days later is given. This will be the first opportunity the accused will have to speak on their own behalf.

### ***What happens at the 14 day ERPO hearing?***

Prior to the hearing, the court will appoint an attorney or the accused can obtain their own or they can proceed self represented. Because no one has been charged with a crime, these are civil cases, not criminal. This means public defenders are not used, but instead the state would appoint one from a pool of attorneys who have agreed to work these cases. These are not provided at no cost – unless you qualify as indigent according to the court. It is unclear what the cost will be.

During this hearing the petitioner and the accused will have the ability to provide evidence, call witnesses, cross examine witnesses, etc. The petitioner does not need to be present, and can provide sworn affidavits.

At the end of the hearing, the judge will either dismiss the ERPO, and the firearm rights of the accused will be restored and their guns returned. Or the temporary ERPO will become a permanent ERPO. This would mean it will remain in effect for 364 days. The judge has the discretion to schedule hearings sooner than the 364 days if he or she believes the order should be lifted sooner. The accused also has ONE opportunity during that 364 day period to request a hearing. If they do request a hearing, the petitioner is alerted and that person can request it be denied.

### ***What happens when the 364 days is up?***

Whew, it's been a long year by this point. So what happens now? The petitioner will be alerted that the ERPO is going to expire, and they can request it be extended. If this happens, another hearing similar to the one at 14 days will take place. And it begins again...

### ***What are the penalties?***

Any person who has in his or her custody or control a firearm or purchases, possesses, or receives a firearm with knowledge that he or she is prohibited from doing so by an ERPO or temporary ERPO is guilty of a class 2 misdemeanor.

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in support of the right to  
Keep and Bear Arms.*

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