



Tip of the Month February 2024

Minnesota's New Extreme Risk Protection Order Law

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During the 2023 legislative session, Minnesota enacted an Extreme Risk Protection Order law (also commonly referred to as a Red Flag law), which went into effect on January 1, 2024.¹ Extreme Risk Protection Order laws have been enacted in 21 states and Washington DC and empower loved ones, law enforcement, and other designated community members to intervene and temporarily prevent someone in crisis from accessing firearms. While these laws are relatively new, there is a growing body of research demonstrating that they are effective at preventing gun-related tragedies before they occur, particularly when it comes to suicide.²

What does Minnesota's Extreme Risk Protection Order law do?

Minnesota's Extreme Risk Protection Order law creates a civil legal process through which law enforcement officers, city or county attorneys, and concerned family or household members³ may request that a court issue an order temporarily restricting a person's access to firearms when there is evidence that the person poses a risk of harm to self or others if they continue to have such access. This law creates a pathway to remove firearms from dangerous situations, empowering those who recognize warning signs to intervene when someone is in crisis before a tragedy occurs. If the court issues an extreme risk protection order, the individual will be required to temporarily surrender any guns already in their possession and will be prohibited from purchasing guns.

What is the process for obtaining an extreme risk protection order?

¹ Minnesota's new Extreme Risk Protection Order law is codified at Minn Stat §§ 624.7171 to 624.7178.

² For more information about extreme risk laws and the impact of these laws in preventing gun violence, see <https://everytownresearch.org/report/extreme-risk-laws-save-lives/#introduction>.

³ Family and household members are defined in the statute as "(1) spouses and former spouses of the respondent; (2) parents and children of the respondent; (3) persons who are presently residing with the respondent; or (4) a person involved in a significant romantic or sexual relationship with the respondent. In determining whether persons are in a significant romantic or sexual relationship under clause (4), the court shall consider the length of time of the relationship; type of relationship; and frequency of interaction between the parties."

To start the process for requesting an extreme risk protection order, an eligible petitioner must file a petition in the district court in the respondent's county of residence. The petition must allege that the respondent "poses a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm" and must include "specific facts and circumstances forming a basis to allege that an extreme risk protection order should be granted." The court will schedule a hearing within 14 days of the petition being filed and the respondent must be served with notice of the hearing within 48 hours of the hearing date.

When a petition is filed, the petitioner may also request that a short-term emergency extreme risk protection order be issued immediately without prior notice to the respondent. The court shall issue such an order if it finds there is probable cause that "(1) the respondent poses a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm, and (2) the respondent presents an immediate and present danger of either bodily harm to others or of taking their life." An emergency extreme risk protection order shall be for a duration of 14 days or until the hearing on the initial petition, whichever is shorter.

What is the standard for issuing an extreme risk protection order?

The court shall issue an extreme risk protection order if it determines by clear and convincing evidence that the respondent "poses a significant danger to other persons or is at significant risk of suicide by possessing a firearm."

The court shall consider the following in making this determination:

- a history of threats or acts of violence by the respondent directed toward another person;
- the history of use, attempted use, or threatened use of physical force by the respondent against another person;
- a violation of any court order, including but not limited to extreme risk protection orders and orders related to juvenile protection proceedings or domestic abuse;
- a prior arrest for a violent felony offense;
- a conviction or prior arrest for a violent misdemeanor offense, a stalking offense or domestic assault;
- a conviction for an offense of cruelty to animals;
- the unlawful and reckless use, display, or brandishing of a firearm by the respondent
- suicide attempts by the respondent or a serious mental illness; and
- whether the respondent is named in an existing order in effect under the extreme risk protection order statute or an order related to juvenile protection proceedings or domestic abuse, or party to a pending lawsuit, complaint, petition, or other extreme risk protection order action or an action related to domestic abuse.

The court may also consider any other evidence that bears on whether the respondent poses a danger to self or others. It is not required that a respondent currently own firearms in order for an extreme risk protection order to be issued.

What is the process for surrendering firearms after an extreme risk protection order is granted?

If the court issues an emergency order or makes a finding that there is clear and convincing evidence that the respondent presents an immediate and present danger of bodily harm and there is probable cause to believe the respondent possesses firearms, the court shall issue a search warrant to the local law enforcement agency to take possession of all firearms in the respondent's possession as soon as practicable. The law enforcement agency must notify the respondent of the option to voluntarily comply with the order by surrendering their firearms prior to execution of the warrant and may only execute the warrant if the respondent refuses to voluntarily comply.

In the remaining cases, the court shall direct the respondent to transfer any firearms in their possession within 24 hours to a federally licensed gun dealer or a law enforcement agency.⁴ If the respondent does not currently own firearms, they must file a declaration of nonpossession with the law enforcement agency.

Does an extreme risk protection order prevent a respondent from buying guns?

Yes. When the order is issued, within three business days the court will electronically transmit the order to the National Instant Criminal Background Check System to ensure that the respondent will not be able to purchase any firearms while the order is in effect.

How long does an extreme risk protection order last?

An extreme risk protection order may be issued for a period of six months to one year. The court may extend the order for an additional period of six months to one year after a hearing and making a new finding using the same standard as required for the initial order.

A respondent can file an application to terminate an extreme risk protection order once during the duration of the order. The court may terminate the order if the respondent proves by clear and convincing evidence that they do not pose a significant danger to other persons or are not at significant risk of suicide by possessing a firearm.

How does a respondent get their guns back after an extreme risk order expires or is terminated?

If firearms surrendered pursuant to an extreme risk protection order are being stored with a law enforcement agency, that agency must return the firearms to the respondent when the order expires as long as the respondent is not prohibited from gun possession for other reasons. If a licensed gun dealer is storing firearms surrendered pursuant to an extreme risk protection order, the respondent must request their return upon the expiration of the order and the dealer must conduct a background check prior to returning the firearms.

Are there criminal penalties associated with extreme risk protection order proceedings?

Yes, a person who possesses a firearm in violation of an extreme risk protection order issued in Minnesota or under a substantially similar law in another state may be guilty of a misdemeanor and

⁴ If firearms are surrendered to a law enforcement agency, the respondent may subsequently request that they be transferred to a licensed gun dealer for storage.

prohibited from possessing a firearm for five years. In addition, a person who files a petition for an extreme risk protection order with the intent to harass, abuse, or threaten a respondent or who knowingly includes materially false information in the petition may be guilty of a gross misdemeanor.

For More Information:

- Minnesota Department of Public Safety – [Extreme Risk Protection Orders](#)
- Minnesota Judicial Branch – [Extreme Risk Protection Order Forms](#)
- Minnesota Judicial Branch – [Fast Facts - Extreme Risk Protection Order](#)