

Minnesota Extreme Risk Protection Orders and Family Law



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Trigger Warning: This article references themes related to domestic violence, sexual violence, stalking, and suicide.

Engaging in the family court process can be stressful and emotional for all involved. Any changing family dynamic that also includes a pattern of abuse – whether physical, emotional, verbal, financial, spiritual, coercive in nature, etc. – requires an extra level of care while navigating the legal process. Doing so keeps safety at the helm and supports victim’s autonomy in the process with a goal of fair and equitable outcomes. Family law attorneys should be screening every potential client for signs of a pattern of abusive and controlling behaviors, along with taking inventory of a household’s access to firearms.

According to the *Star Tribune*, Violence Free Minnesota (VFMN) tracked at least thirty-nine homicides related to intimate partner violence and relationship violence in Minnesota in 2023.¹ Twenty-nine were killed by a current or former intimate partner, and ten were bystanders or intervenors killed in domestic violence related events.² The majority of the deaths were gun-related homicides.

To reduce high-risk behaviors escalating to homicides and suicides, Minnesota enacted a law to allow family/household members, law enforcement, or city/county attorneys to intervene before tragedy strikes.

On January 1, 2024, Minnesota’s new law, Extreme Risk Protective Orders (ERPO), went into effect. This law was modeled after the State’s two other civil protective orders – Orders for Protection (OFP) and Harassment Restraining Orders (HRO).

Evaluating options to maintain one’s safety and a loved one’s safety is imperative, especially when a spouse or co-parent with a history of violence, threats of self-harm, or harm to others has escalated in divorce or custody disputes.

Extreme Risk Protective Orders

Oftentimes laws are reactionary solutions – harm is committed and *then* the law reacts to “correct” the harm. However, preventing tragedy is the primary goal in Minnesota’s “Red Flag” law. It is a tool to address high-risk behavior. ERPOs are temporary in nature and allow intervention when a person poses a risk of **significant danger** to themselves or others. When granted, the Court may order the removal of firearms and prevent temporary possession of firearms.

Things to Keep in Mind before Applying for an ERPO

A person seeking relief (also known as “Petitioner”) must allege in their petition that the Respondent presents an **immediate and present danger** of either bodily harm to others or taking their own life. To the best of Petitioner’s knowledge, Petitioner must allege the types and location of any firearms believed to be in the possession of Respondent. If a Petitioner wishes to appear remotely (by video conference) for all Court hearings, Petitioner should make that request when filing the petition. If Petitioner’s virtual participation is denied, Petitioner may refile the petition in the county where the Petitioner resides or offices.

Along with the petition, Petitioner must include a sworn statement made under oath (“Affidavit”) stating facts and circumstances that justify the Court granting the ERPO. Filing for an ERPO does not prevent a Petitioner from also filing for other civil protective orders to mitigate safety concerns. Once the ERPO is filed with the Court, either Petitioner or Respondent may request a hearing. At the hearing, Petitioner must prove by **clear and convincing evidence** that Respondent poses a **significant danger** to the others or **significant risk of suicide** by possessing firearms. If the Court determines that Respondent poses a significant danger or risk of suicide, the Court must minimally maintain the ERPO effective for at least six months but not more than a year, subject to extension request.



Different Types of Civil Protective Orders in Minnesota

In Minnesota, eligible persons may seek a civil protective order to keep a current or former intimate partner from abuse, threats of abuse, nonconsensual sexual contact, harassment, and stalking. The chart below is an adaptation developed by Standpoint (www.standpointmn.org) that identifies the types of protective orders.

Eligibility	Order for Protection (OPF) (Minn. Stat. 518B.01)	Harassment Restraining Order (HRO) (Minn. Stat. 609.748)	Extreme Risk Protection Order (ERPO) (Minn. Stat. 624.7171-7178)
Who Can Seek Order	Victim/Guardian of Minor Victim	Victim/Guardian of Minor Victim	Family/Household Member; Guardian of Respondent; Chief Law Enforcement Officer; or City/County Attorney
Relationship to Respondent	Family/Household Member	No special relationship required	No special relationship required
Where to File Petition for Order	County where either party resides, abuse occurred, or county of adjacent family court proceeding	County where either party resides, or harassment occurred	County where Respondent resides unless request to appear virtually is denied
Allegations in Petition Must Include	<ul style="list-style-type: none"> • Physical harm, bodily injury or assault; • Infliction of fear of imminent harm, injury or assault; • Terroristic threats; • Criminal sexual conduct; • Sexual extortion; or • Interference with an emergency call 	<ul style="list-style-type: none"> • Single incident of physical or sexual assault; • Repeated incidents of intrusive or unwanted acts, words, gestures intended to have substantial adverse effect on the safety, security, privacy of another; • Single incident of nonconsensual dissemination of private sexual images; • Single incident of using another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person; • Targeted residential picketing; or • Pattern of attending public events after being notified their presence is harassing 	<ul style="list-style-type: none"> • Respondent poses a significant danger of bodily harm to other persons; or • Respondent is at significant risk of suicide by possessing a firearm
Possible Relief	Temporary possession of property, custody, parenting time, child support, spousal maintenance, exclusions from house, work, daycare, school, no possession of firearms	No contact and no harassment	No possession of firearms

Conclusion

The purpose of the Extreme Risk Protection Order is preventative and temporary in nature to reduce the likelihood of Respondent's significant danger of bodily harm to others or self. Recognizing and understanding the overlap between civil protection orders as discussed and family law matters may be a matter of life and death.

For help or services, call 800-799-7233 or text START to 88788 to connect with someone from the National Domestic Violence Hotline or visit www.thehotline.org/get-help/ for additional resources.

¹ Hughes, Elliot (2024, July 9). *Man dead in homicide at St. Paul Home that has seen Frequent Police Contacts*. StarTribune.

www.startribune.com/police-on-scene-of-homicide-in-st-paul/600378668/

² Minnesota Women's Press, (2024, February 20). *Highest Known Number of Minnesotans Killed From Domestic Violence in 2023*. Minnesota Women's Press (womenspress.com).

www.womenspress.com/highest-known-number-of-minnesotans-killed-from-domestic-violence-in-2023/