



Law Enforcement Action Forum Newsletter



Risk Reduction Strategies and Best Practices

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MICHIGAN’S NEW “RED FLAG” LAW

The Extreme Risk Protection Order Act — PA 38 of 2023

Michigan’s *Extreme Risk Protection Order Act* is scheduled to go into effect on February 13, 2024. The legislation will impact law enforcement operations in many ways so we are devoting extra space to this review. (*Recent Court Decisions* and *Lessons Learned* will return next quarter.)

Some important points will be discussed here but we strongly recommend a thorough review of the entire act to determine responsibilities and develop proper and safe procedures:

<https://www.legislature.mi.gov/documents/2023-2024/publicact/pdf/2023-PA-0038.pdf>

This act, among other things, will do the following:

- Require a court to issue an Extreme Risk Protection Order (ERPO) if a preponderance of the evidence indicates the individual can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm and has engaged in an act or made significant threats that are substantially supportive of the expectation.
- Prohibit a restrained individual from possessing a firearm or a license to carry a concealed pistol (CPL) while an ERPO is in effect.
- Allow a firearm or CPL not surrendered to be seized upon notification or service of an ERPO, require a receipt to be given for any firearm seized, require a seized firearm to be stored while the ERPO is in force, and require the firearm to be returned when the ERPO expires or is terminated as long as the individual is not otherwise prohibited from owning or possessing a firearm.

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Additional noteworthy provisions in the ERPO are:

- A requirement that the individual surrender all firearms in their possession or control to a law enforcement agency designated in the order within 24 hours or, at the court's discretion, immediately after being served the order.
- A designation of the law enforcement agency responsible for forwarding the order to the Federal Bureau of Investigation.
- If the court has ordered the restrained individual to surrender the individual's firearms immediately, the law enforcement agency designated must proceed to seize the restrained individual's firearms after the restrained individual is served with or receives actual notice of the extreme risk protection order, after giving the restrained individual an opportunity to surrender the individual's firearms.
- Directions to a local entering authority or the designated law enforcement agency to enter the order into the LEIN.
- An expiration date that is one year after the date of issuance.

Possession or control would include, but not be limited to, actual possession or constructive possession by which the individual has the right to control the firearm, even though it is in a different location than the individual. Possession or control does not require the individual to own a firearm.

An officer may request an immediate emergency extreme risk protection order if the officer is responding to a complaint involving an individual that can reasonably be expected within the near future to intentionally or unintentionally seriously injure themselves or another individual by possessing a firearm. The officer may verbally request an extreme risk protection order over the telephone, and the judge or magistrate may issue the extreme risk protection order. Within one business day after an order is entered, the officer shall file a sworn written petition detailing the facts and circumstances presented to the court.

If a court issues an extreme risk protection order, it shall also determine whether the individual must immediately surrender their firearms or surrender them within 24 hours. Suppose the court orders the firearms immediately surrendered. In that case, it shall also issue an anticipatory search warrant, subject to and contingent on the failure or refusal of the individual, following the service of the order, to immediately comply with the order and immediately surrender any firearm or concealed pistol license in the individual's possession or control, authorizing a law enforcement agency to search the location where the firearm(s) or concealed pistol license is believed to be and to seize any firearm or concealed pistol license discovered during the search. Unless the petitioner is a law enforcement officer or health care provider, there is a presumption that the respondent will have 24 hours to surrender the firearms.

If a court issues an extreme risk protection order, it may, in its discretion, allow the restrained individual to surrender any firearms to a licensed firearm dealer. Each circuit court shall prepare a list of trusted licensed firearm dealers located in the circuit court's jurisdiction.

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An extreme risk protection order is effective and enforceable immediately after the court issues it. The order may be enforced anywhere in this state by a law enforcement agency that receives a true copy, is shown a copy, or has verified its existence on the law enforcement information network.

If the court has ordered the immediate surrender of the individual's firearms, a law enforcement officer must serve the order personally. If the restrained individual has not been served, an officer who knows that the order exists may, at any time, serve the restrained individual with a true copy of the order or advise the individual of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the individual may obtain a copy of the order.

The officer who gives oral notice of the order shall file proof of service with the clerk of the court that issued the order and the petitioner. They shall immediately enter proof of service in the Law Enforcement Information Network and report to the Federal Bureau of Investigation that the restrained individual has actual notice of the order.

The officer shall allow the restrained individual to comply with the extreme risk protection order before the officer makes a custodial arrest for violation of the order. The failure of the individual to adhere to the order is grounds for an immediate custodial arrest.

A law enforcement agency that seizes and stores a firearm under this Act is not liable for damage to or a change in the condition of the firearm unless the damage or change in condition resulted from a failure to exercise reasonable care in the seizure, transportation, or storage of the firearm.

If a restrained individual fails to reclaim a firearm within 90 days after the extreme risk protection order expires or is ordered terminated the law enforcement agency storing the firearm shall do one of the following:

- Proceed as for a firearm subject to disposal under sections 239 and 239a of the Michigan penal code, 1931 PA 328, MCL 750.239 and 750.239a.
- Follow the procedures for property under 1987 PA 273, MCL 434.21 to 434.29.
- If any individual other than the restrained individual claims title to a firearm seized, the firearm must be returned to the claimant if the court determines that the claimant is the lawful owner.

Procedures should be developed to provide clear guidance on approaching a potentially volatile situation without exacerbating the risk of escalation. Your local courts, clerk's office, and neighboring police agencies should work together to develop the procedures, as they all play a role in the process. A single, mutually-accepted method should be adopted county-wide so that if assistance is needed in enforcing an ERPO, all personnel and agencies involved will be able to work in unison to resolve the situation peacefully.

Supervisors should be informed when an ERPO is received and develop a plan on how best to seize weapons.

Policies and procedures should also cover storage of firearms during the term of an ERPO and the return of firearms when an order expires.

LEGAL INSIGHTS

Entering Onto Private Property

When entering onto private property or into a personal residence, it is always good for officers to think first and ask a few simple questions, beginning with:

- Why Am I Here?

To be followed up by:

- Do I have consent?
- Do I have a search order?
- Do I have an arrest warrant?
- Do I have exigent circumstances?

What are exigent circumstances?

- Hot pursuit of a fleeing felon
- Imminent destruction of evidence
- The need to prevent a subject's escape
- Risk of danger to police or others

Pursuant to the exigent circumstances exception, a police officer may enter a dwelling without a warrant if the officer possesses probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime.

**By Audrey Forbush
Plunkett Cooney**



MIOSHA MOMENT

Part 554: Bloodborne Pathogens

- ◆ Bloodborne infectious diseases are illnesses caused by microorganisms transmitted to humans through blood and other potentially infectious materials (OPIM).
- ◆ An employer must establish a written exposure control plan to eliminate or minimize employee exposure. A model plan can be located at this link: https://www.osha.gov/sites/default/files/CPL_2-2_69_APPD.pdf
- ◆ Personal protective equipment must be provided at no cost to the employee. PPE must be properly cleaned, repaired, or replaced as needed.
- ◆ Within ten days of hire, a hepatitis B vaccination and HBV antibody testing must be made available to the employee. If an employee declines to accept the hepatitis B vaccination, they must sign a waiver.
- ◆ An employee who has an "exposure incident" must be provided, at no cost, with a confidential medical evaluation and follow-up.
- ◆ Information and training must be provided by a knowledgeable trainer to employees at the time of their initial assignment and at least annually.
- ◆ Recordkeeping is required for medical records, training records, and a sharps injury log.

MIOSHA Consultation, Education & Training Division

The Consultation Education and Training (CET) Division offers free, statewide safety and health assistance to employers and employees. Call: 517-284-7720.

LEAF MEMBER SPOTLIGHT

Mark Herald

Director of Public Safety
City of East Grand Rapids



Do you have questions about
any material in this newsletter?

Do you have a suggestion for topics
to be covered in future editions?

Call or email Matt Heins at
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THE LAW ENFORCEMENT ACTION FORUM (LEAF)

LEAF includes police chiefs, sheriffs, and public safety directors from
law enforcement agencies of all sizes and all over Michigan.

LEAF members meet regularly to discuss relevant public policy matters and
assist in developing model policies for the MML *Law Enforcement Risk Control Manual*.

The *Manual* is available free of charge to law enforcement executives of
MML Liability & Property Pool and Workers' Compensation Fund member communities.

To access to the manual of model policies, complete the request form at:

<http://www.mml-leaf.org/request-access.php>

(Note: If you move to a different law enforcement agency, you must reapply.)

**A service of the Michigan Municipal League
Liability & Property Pool and Workers' Compensation Fund
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