



# Red Flag Law Changes

ISSUE BRIEF | Senate Bill 23-170

## Background

This session saw multiple bills relating to gun violence prevention, including amending Colorado's extreme risk protection orders (ERPOs), or "red flag laws." ERPOs allow families and law enforcement to prevent gun violence by temporarily restricting access to guns for individuals at an elevated risk of harming themselves or others.

## SB 23-170: Extreme Risk Protection Order Petitions

[Senate Bill \(SB\) 23-170](#) replaces current state law regarding ERPOs. Under current law, those that can petition for an ERPO include a family or household member, law enforcement officers, and law enforcement agencies. As of April 28, 2023, this bill expands the individuals who can petition for an ERPO to community members, including educators, licensed health care professionals, and mental health professionals.

### New Types of Professionals that Can Initiate an ERPO Petition:

#### **Community Member:**

- Licensed health care professional or mental health professional who, through a direct professional relationship, provided care to the respondent or the respondent's child;
  - **Licensed Health-Care Professional:**
    - School nurse
    - Physician, physician assistant, or advanced practice registered nurse who is a primary provider to a respondent
    - Psychiatrist
    - Licensed emergency room medical care provider
  - **Mental Health Professional:**
    - Psychologist, licensed professional social worker, marriage and family therapist, licensed professional counselor, addiction counselor
    - Psychologist candidate, clinical social worker candidate, marriage and family therapist candidate, licensed professional counselor candidate, or addiction counselor candidate
    - School counselor, school psychologist, school social worker, or a registered unlicensed psychotherapist
  - Educator who, through a direct professional relationship, interacted with the respondent or the respondent's child;
  - Interaction must have taken place within six months prior to requesting an ERPO.

Conditions Under Which an ERPO Can be Initiated:

An ERPO can be initiated through the filing of a petition if an eligible professional believes that an individual poses a significant risk of causing personal injury to self or others if they were to have possession of a firearm.

ERPO Process:

1. An eligible individual files a petition in the county where the respondent resides (additional counties allowed for family and household members). The petition must:
  - a. Include an affidavit stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent.
  - b. Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's possession.
  - c. Identify whether the respondent must possess, carry, or use a firearm as a condition of employment.
  - d. Identify whether there is a known existing domestic abuse protection order or emergency protection order governing the petitioner or respondent.
  - e. Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition.
  - f. If the petitioner is not a law enforcement agency, identify whether the petitioner informed a local law enforcement agency regarding the respondent.
2. Upon the filing of a petition, the court will appoint an attorney to represent the respondent, order a hearing to be held, and provide notice of the hearing to the respondent. The notice of the hearing must be sent out no later than one court date after the ERPO petition is filed.
  - a. The court may issue a temporary ERPO pending the hearing.
3. Upon receipt of a petition by a licensed health care professional or mental health professional, the court may issue orders to obtain any records or documents relating to diagnosis, prognosis, or treatment; and clinical records, of the respondent as necessary for the full investigation and disposition of the ERPO petition.
  - a. A licensed health care professional or mental health professional who has filed an ERPO is authorized to disclose the minimum necessary protected health information required for the full investigation and disposition of the request As long as the provider believes that the individual poses a significant risk of causing harm to self or others if in possession of a firearm or there is a court order requiring the production of the health information. Only the minimum necessary should be disclosed to avoid the risk of harm or to comply with the court order.
4. Upon hearing the matter, if the court finds by clear and convincing evidence that the respondent poses a significant risk of personal injury to self or others by having a firearm, the court will issue an ERPO for 364 days.

## Additional Resources

- [Final Bill Text](#)
- [Fiscal Note](#)