

COLORADO MUNICIPAL LEAGUE
ANNUAL SEMINAR ON MUNICIPAL LAW

Extreme Risk Protection Orders

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Roadmap

- Legislative history of ERPOs: “Red Flag Bill”
- T/ERPO process and discussion of policy/process in Aurora and Durango
- T/ERPO data from CDPHE
- ERPO-related decision
- Q&A

Overview of Extreme Risk Protection Orders

An overview of the legislative history and applicable statutes

Legislative History

- Originally enacted in 2019 under HB19-1177 as the “Deputy Zakari Parrish III Violence Prevention Act”
- Updated in 2023 under SB23-170 to expand the list of who can petition for an ERPO to include licensed medical care providers, licensed mental health-care providers, licensed educators, and district attorneys. Also provided funding for ERPO public education campaign through the Office of Gun Violence Prevention.



Petition Requirements

C.R.S. § 13-14.5-104(3)

- Both TERPO ([JDF 573](#)) and ERPO ([JDF 574](#)) petitions must state:
 - ☐ The respondent poses a significant risk of causing personal injury to self or others by having a firearm in their custody or control, or by purchasing, possessing, or receiving a firearm
 - ☐ Affidavit must contain specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by respondent
 - ☐ The number, types, and locations of any firearms believed to be owned by respondent or in their possession, custody, or control;
 - ☐ Whether respondent is required to have a firearm for employment;
 - ☐ Whether there is an existing domestic abuse protection order or ERPO governing the petitioner or respondent;
 - ☐ Whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition; and
 - ☐ If petitioner not LE, whether the petitioner has informed the local LE agency regarding the respondent.

Additional Petition Considerations

- Consider whether to file a concurrent petition for court-ordered MH evaluation under C.R.S. § 27-65-106 ([JDF 590](#))
 - Standard: PC to believe that the respondent has a mental health disorder and, as a result of the disorder, is a danger to others or to himself or herself or is gravely disabled and that efforts have been made to secure the cooperation of the respondent, who has refused or failed to accept evaluation voluntarily
 - Court can hear 106 petition at same time as TERPO or ERPO hearing
- If LE is the petitioner, venue is the county where respondent resides
- If petitioner is LE, shall concurrently file with a TERPO petition a sworn affidavit for search warrant pursuant to C.R.S. § 16-3-301.5
- A TERPO petition is not a required initial step to get an ERPO; court can also *sua sponte* issue a TERPO pending the ERPO hearing

Hearings

TERPO

- Type: Ex parte
- Timing: Held same day as petition filed or next court day
- Standard: Preponderance of the evidence

ERPO

- Type: Full, contested hearing
 - Respondent appointed counsel
- Timing: Within 14 days of issuance of TERPO
- Standard: Clear & convincing

- Stipulations – know your judge (if possible)

Evidence

Factors for consideration:

- recent threats or acts of violence towards self or others;
- pattern of acts or threats of violence within past year;
- violation of civil and/or extreme risk protection order;
- prior DV conviction;
- ownership, access to, or intent to possess a firearm;
- history of use or attempted use of physical force, including stalking;
- prior arrest for VRA crime or animal cruelty;
- recent acquisition of firearm or ammo;
- alcohol and/or substance abuse;
- firearm required for employment.

Other Evidence

- C.R.S. § 13-14.5-105: “Any relevant evidence”
- C.R.S. § 13-14.5-105(6): Rules of evidence apply to same extent as civil protection order proceeding under Article 14, Title 13 (court shall consider “all relevant evidence”)
- C.R.S. § 13-14.5-105(4) - Court may:
 - Examine any witnesses or affidavits
 - Request CBI to run criminal history check of respondent
- C.R.S. § 13-14.5-105(7): Court shall consider any available MH eval or chemical dependency eval provided to the court

Service

TERPO: Personal service by the LE agency in the jurisdiction where respondent resides

- Includes a copy of the Petition and Affidavit, the Notice of Hearing, and a notice that includes referrals to resources (DV, behavioral health, counseling)
- Personal service pursuant to CRCP 4 or Rule 304 in county court

ERPO:

- If respondent present at hearing – served with Order in open court.
- If respondent not present – service by the LE agency in the jurisdiction where the respondent resides
 - Must be personally served on respondent (not left with family/workplace under Rule 4)
- Don't forget to file the Return of Service!

Termination/Renewal

C.R.S. § 13-14.5-107

Termination

- One written request; must be served in accordance with Rule 4/304
- Hearing set 14 days after filing of request
- Court shall terminate if respondent establishes by **clear and convincing** evidence that no longer significant risk of harm to self or others by having firearm
- Any relevant evidence

Renewal

- Court shall notify petitioner **63 days** prior to expiration of order
- Petitioner can file motion to renew any time within 63 days prior to expiration
- Hearing set within 14 days
 - Can be telephonic hearing
- Notice served in accordance with Rule 4/304
 - If uncontested, can be renewed on basis of motion/affidavit when no material change in circumstances
- Clear & convincing
- All relevant evidence
- Renewal period NTE 1 year
- Return date no later than 35 days prior to expiration

Reporting of ERPOs

C.R.S. § 13-14.5-110

- CBI enters into NCIC – entry serves as notice to all LEs
- Order fully enforceable in any county
- Sheriff shall immediately revoke any CCW permit
- If expired/terminated, must immediately remove from any system

ORDER TYPE	HEARING	MAX DURATION	BURDEN OF PROOF	VENUE	FACTORS TO CONSIDER	WHO CAN PETITION?
TERPO <small>C.R.S. § 13-14.5-103</small>	Ex Parte	14 days	Preponderance of the evidence	<p>If family or household member petitioner: where the acts occur, where one party resides, or where any party is employed.</p> <p>For any other petitioner: where respondent resides.</p>	<ul style="list-style-type: none"> recent threats or acts of violence towards self or others; pattern of acts or threats of violence within past year; violation of civil and/or extreme risk protection order; prior DV conviction; ownership, access to, or intent to possess a firearm; history of use or attempted use of physical force, including stalking; prior arrest for VRA crime or animal cruelty recent acquisition of firearm or ammo; alcohol and/or substance abuse; firearm required for employment. <p>LIST NOT EXCLUSIVE – COURT MAY CONSIDER <u>ANY RELEVANT EVIDENCE</u> C.R.S. § 13-14.5-105(3)</p>	<ul style="list-style-type: none"> law enforcement; family members; household members (people with a child in common; people who regularly reside or regularly resided with the respondent in the last six months; domestic partners); certain licensed medical and mental health professionals; certain educators; District Attorneys
ERPO <small>C.R.S. § 13-14.5-104</small>	Respondent appointed counsel; respondent may appear	364 days (subject to termination or renewal)	Clear & convincing			

ERPO Policy & Process

Policy & Processes in Aurora & Durango

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Aurora's ERPO Policy & Process

- Policy: APD will only petition for an ERPO in the most crucial and imperative situations and will strongly encourage family or household members to petition for an ERPO through the appropriate court whenever possible.
- ERPO Team: includes members of APD's Crisis Response Team (CRT) and Targeted Violence Prevention (TVP) Program; shared email inbox & on-call phone number
- ERPO Officer Reporting Form
- General T/ERPO process where APD is petitioner:
 - Meeting with ERPO Team, including legal advisor
 - APD drafts TERPO petition, affidavit, and SW (review by CAO); files with court
 - APD testifies at TERPO hearing – CAO does not appear
 - If TERPO granted, APD serves order and notice of hearing; executes SW
 - CAO works with APD to prepare for ERPO hearing; appears at hearing on behalf of APD

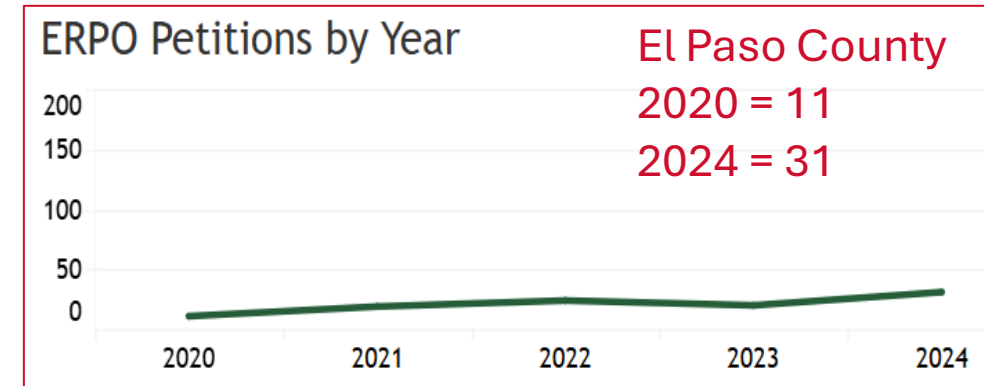
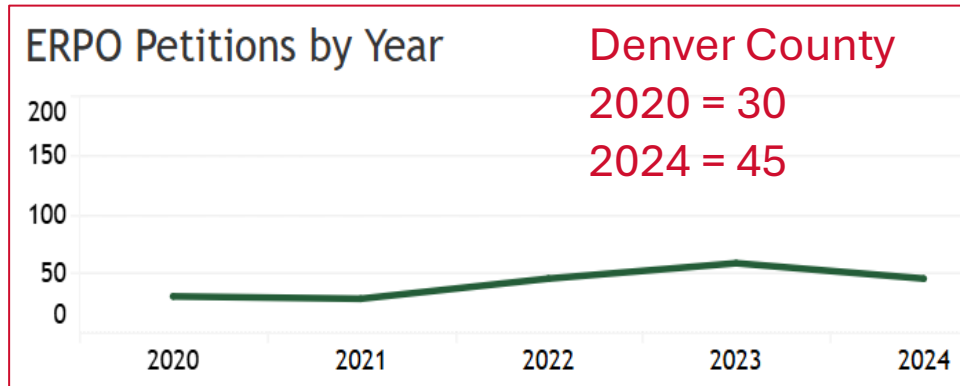
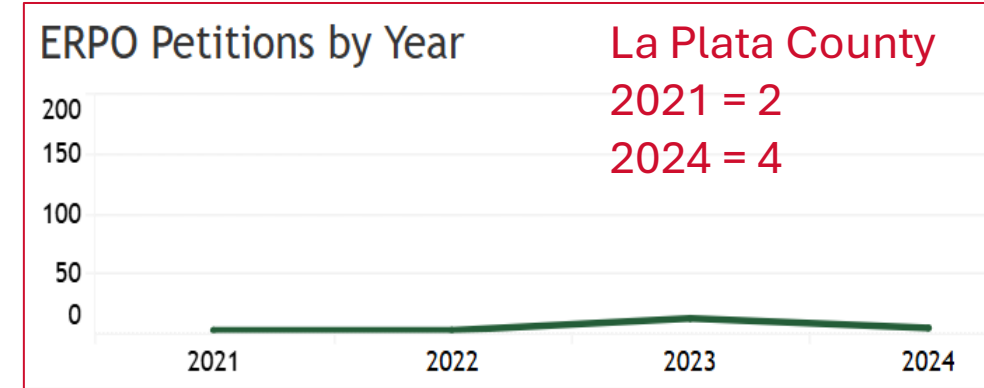
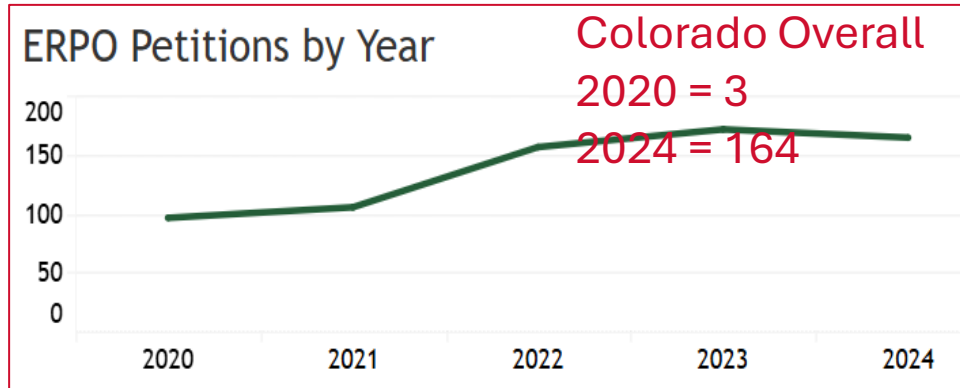
Durango's ERPO Process

- DPD Team: includes members of DPD and CORE Team
- Work with Family/Community Members
- General T/ERPO process where DPD is petitioner:
 - Meeting with ERPO Team and CAO
 - DPD drafts TERPO petition and SW; files with court
 - DPD testifies at TERPO hearing – CAO is alongside for assistance when available
 - If TERPO granted, DPD serves order and notice of hearing; executes SW**
 - CAO works with DPD to prepare for ERPO hearing; appears at hearing on behalf of DPD

ERPOs: By the Numbers

Data source: <https://cdphe.colorado.gov/colorado-gun-violence-prevention-resource-bank/colorado-firearm-data-dashboard>

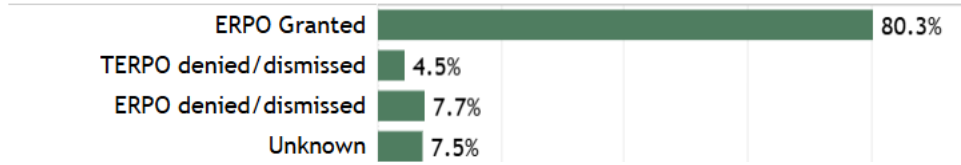
Petitions Filed (2020-2024)



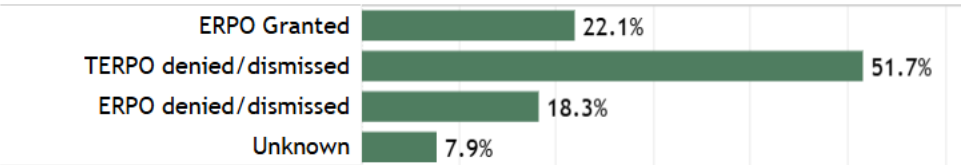
ERPO Outcomes (2020-2024)

Colorado
Overall

ERPO Outcomes for Law Enforcement Petitioners



ERPO Outcomes for Non-Law Enforcement Petitioners



La Plata
County

ERPO Outcomes for Law Enforcement Petitioners

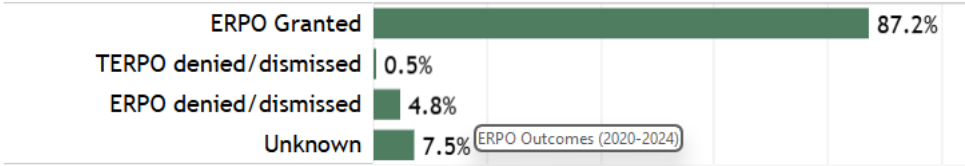


ERPO Outcomes for Non-Law Enforcement Petitioners



Denver
County

ERPO Outcomes for Law Enforcement Petitioners

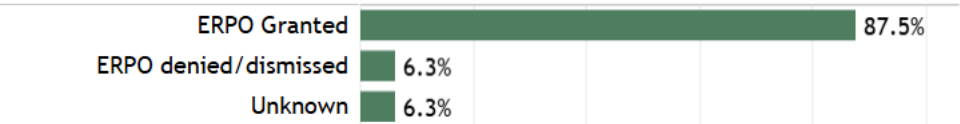


ERPO Outcomes for Non-Law Enforcement Petitioners

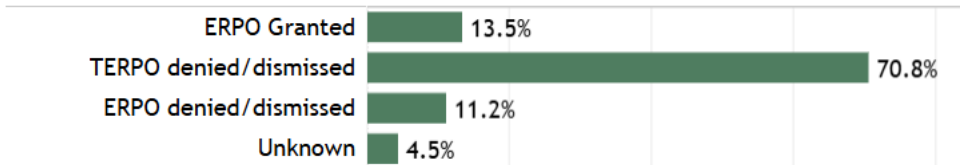


El Paso
County

ERPO Outcomes for Law Enforcement Petitioners

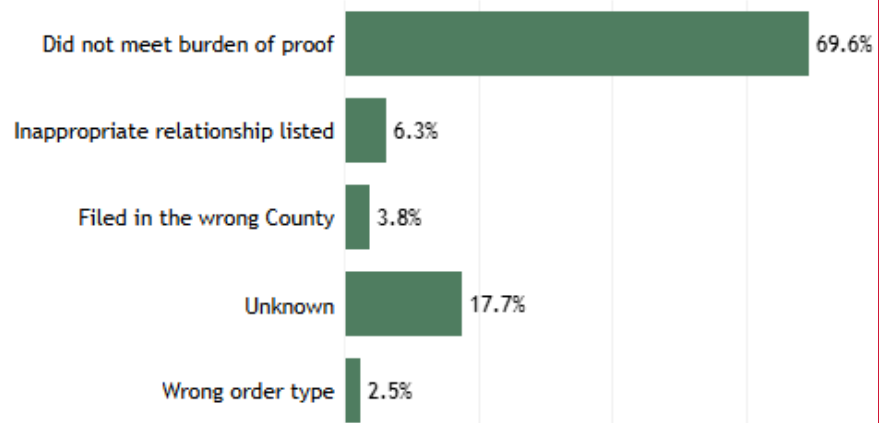


ERPO Outcomes for Non-Law Enforcement Petitioners



Colorado Overall (2020-2024)

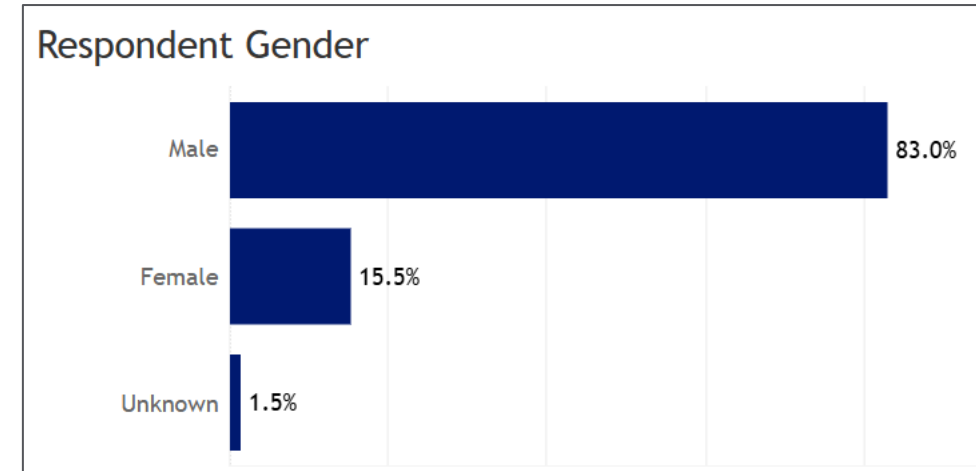
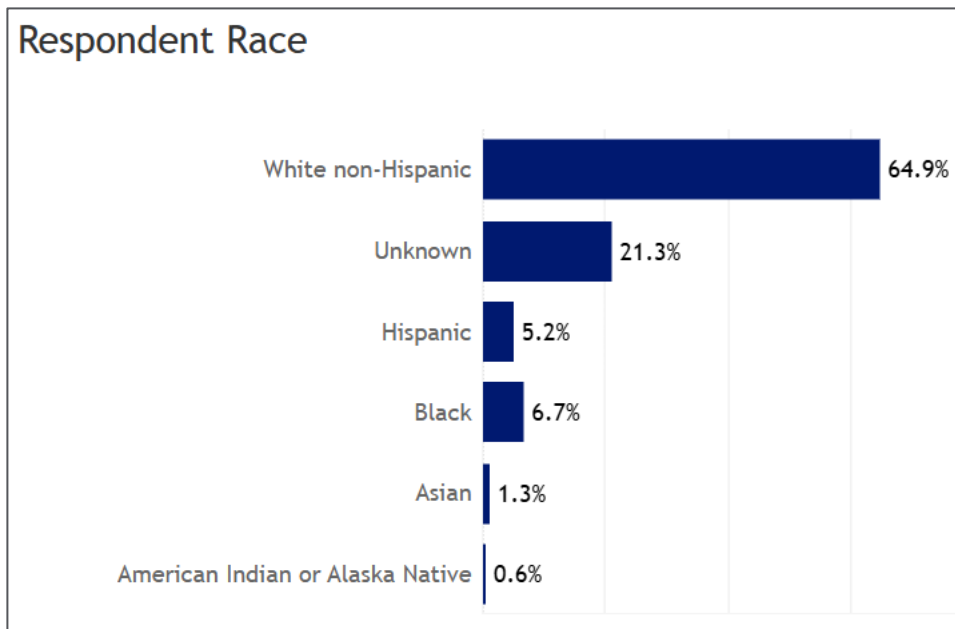
Why ERPO Petitions Are Denied



Why Petitions Are Filed



Respondent Characteristics: Colorado Overall (2020-2023)



Recent ERPO-Related Decisions

Denver Police Dept. v. Shelby

- Civil ERPO hearings allow broader evidence.
- Police reports/testimony admissible with corroboration.
- Takeaway: prepare officers, add reliable evidence.

Vance v. El Paso County

- County refused to enforce ERPO; victims sued after Club Q.
- Court: refusal = inaction, not affirmative conduct.
- Takeaway: ERPO enforcement is discretionary but critical.

District of Columbia v. Heller (2008)

- Recognized individual right to keep arms for self-defense in the home.
- Struck down D.C. handgun ban.
- Right is not unlimited—restrictions on felons, mentally ill, sensitive places allowed.

New York State Rifle & Pistol Ass'n v. Bruen (2022)

- Struck down New York's 'proper cause' requirement for public carry.
- Expanded right to carry firearms outside the home.
- Replaced scrutiny tests with 'history and tradition' framework.

Resources & References

- CDPHE ERPO Dashboard: <https://cdphe.colorado.gov/colorado-gun-violence-prevention-resource-bank/colorado-firearm-data-dashboard>
- CO Judicial Branch ERPO Forms: <https://www.coloradojudicial.gov/self-help/extreme-risk-protection-order-forms>
- APD ERPO Policy: <https://public.powerdms.com/AURORAPD/documents/3978301>

Thank You!

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