

EXTREME RISK PROTECTION ORDER ACT (EXCERPT)
Act 38 of 2023

691.1815 Duties of law enforcement agency; seizure of firearm; use of law enforcement information network; notification of Federal Bureau of Investigation; failure to reclaim firearm.

Sec. 15.

(1) A law enforcement agency designated in an extreme risk protection order under section 9(1)(g) that receives a true copy of the order shall immediately and without requiring proof of service do both of the following:

(a) Unless a local entering authority is designated under section 9(1)(h), enter the order into the law enforcement information network as provided by the C.J.I.S. policy council act.

(b) Report the entry of the order to the Criminal Justice Information Services Division of the Federal Bureau of Investigation for purposes of the national crime information center.

(2) A law enforcement agency that receives information under section 11(2) shall enter the information into the law enforcement information network as provided by the C.J.I.S. policy council act and report the information to the Federal Bureau of Investigation as described in subsection (1)(b).

(3) If an extreme risk protection order has not been served on the restrained individual, a law enforcement agency or officer responding to a call alleging a violation of the order shall serve the restrained individual with a true copy of the order or advise the restrained individual of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the restrained individual may obtain a copy of the order. Subject to subsection (4), the law enforcement officer shall enforce the order and immediately enter or cause to be entered into the law enforcement information network and reported to the Federal Bureau of Investigation that the restrained individual has actual notice of the order. The law enforcement officer also shall comply with section 13(3).

(4) In the circumstances described in subsection (3), the law enforcement officer shall give the restrained individual an opportunity to comply with the extreme risk protection order before the law enforcement officer makes a custodial arrest for violation of the order. The failure by the restrained individual to comply with the order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a.

(5) The law enforcement agency ordered to seize a firearm under this act shall do all of the following:

(a) Seize a firearm identified in an order issued under this act from any place or from any individual who has possession or control of the firearm.

(b) Seize any other firearms discovered that are owned by or in the possession or control of the restrained individual or if allowed under other applicable law.

(6) A law enforcement officer who seizes a firearm under this act shall give a tabulation of firearms seized as is required under section 5 of 1966 PA 189, MCL 780.655, to the individual from whom the firearms were taken. If no individual is present at the time of seizure, the officer shall leave the tabulation in the place where the officer found the firearms that were seized.

(7) The law enforcement agency that seizes a firearm under this act shall retain and store the firearm subject to order of the court that issued the extreme risk protection order under which the firearm was seized. In addition to any other order that the court determines is appropriate, the court shall order that the restrained individual may reclaim the firearm when the extreme risk protection order expires or is terminated, unless the restrained individual is prohibited for another reason from owning or possessing a firearm, or order that the firearm be transferred to a licensed firearm dealer if the restrained individual sells or transfers ownership of the firearm to the dealer. Before allowing the restrained individual to reclaim a firearm under this subsection, and to determine whether the restrained individual is prohibited from owning or possessing a firearm for another reason, the law enforcement agency shall conduct a verification under the law enforcement information network and the national instant criminal background check system in the same manner as required under section 5b(6) of 1927 PA 372, MCL 28.425b.

(8) A law enforcement agency from whom a restrained individual reclaims a firearm under subsection (7) shall enter into the law enforcement information network and notify the Federal Bureau of Investigation that the court has ordered the firearm returned on expiration of the extreme risk protection order.

(9) A law enforcement agency that seizes and stores a firearm under this act is not liable for damage to or a change in 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.

(10) If a restrained individual fails to reclaim a firearm under subsection (7) within 90 days after the extreme risk protection order expires or is ordered terminated, the law enforcement agency storing the firearm shall do 1 of the following:

(a) 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.

(b) Follow the procedures for property under 1987 PA 273, MCL 434.21 to 434.29.

(11) Subject to subsection (7) or (8), if any individual other than the restrained individual claims title to a firearm seized under this act, the firearm must be returned to the claimant if the court determines that the claimant is the lawful owner.

History: 2023, Act 38, Eff. Feb. 13, 2024

Popular Name: Red flag law