
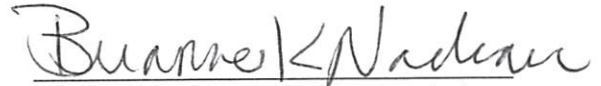


1 
2 Councilmember David Grosso


Councilmember Brianne K. Nadeau


Councilmember Anita Bonds

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11 A BILL
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15 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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20 To authorize a court to issue a temporary ex parte extreme risk civil protection order if there is a
21 finding that there is reasonable belief to find that the subject of the petition poses an
22 immediate and present danger of causing personal injury to self or others by possession
23 or control of a firearm; to establish an extreme risk civil protection order for the duration
24 of one year to remove firearms when a court finds by a preponderance of evidence that
25 the subject of the petition poses a significant threat of harm to self or others.
26

27 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
28 act may be cited as the “Extreme Risk Civil Protection Order Amendment Act of 2017”.

29 Sec. 2. The Firearms Control Regulations Act of 1975, effective September 24, 1976
30 (D.C. Law 1-85; D.C. Official Code § 7-2501.01 *et seq.*), is amended as follows:

31 (a) Section 101 (D.C. Official Code § 7-2409.01) is amended by adding new paragraphs
32 (2A), (2B), (6A), and (6B) to read as follows:

33 “(2A) “Ex parte extreme risk civil protection order” or “Ex parte ERCPO” means an
34 order issued by a court, pursuant to section 905a, prohibiting a respondent from having in his or
35 her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition
36 until the court-scheduled hearing for a ERCPO.

37 “(2B) “Extreme risk civil protection order” or “ERCPO” means an order issued by a
38 court, pursuant to section 905b, prohibiting a respondent from having in his or her custody or
39 control, owning, purchasing, possessing, or receiving any firearms or ammunition for a one-year
40 period.

41 “(6A) “Petitioner” means a person who requests an ex parte ERCPO or an ERCPO.

42 “(6B) “Respondent” means a person who is the subject of a petition for an ex parte
43 ERCPO or an ERCPO.

44 (b) New sections 905a, 905b, 905c, 905d, 905e, 905f, and 905g are added to read as
45 follows:

46 “Sec. 905a. Ex parte ERCPO.

47 “(a) A petitioner may request that an ex parte ERCPO be issued before a hearing for a
48 ERCPO, without notice to the respondent, by including in the petition detailed allegations based
49 on personal knowledge that the respondent poses an immediate and present danger of causing
50 personal injury to self or others by having in his or her custody or control, owning, purchasing,
51 possessing, or receiving a firearm or ammunition.

52 “(b) An ex parte ERCPO may be issued only if a court finds that there is reasonable cause
53 to believe that:

54 “(1) The respondent poses an immediate and present danger of causing personal
55 injury to self or another by having custody, control, owning, purchasing, possessing or receiving
56 a firearm or ammunition; and

57 “(2) An ex parte ERCPO is necessary to prevent personal injury to the respondent
58 or another because less restrictive alternatives are inadequate or inappropriate for the
59 circumstances described in the petition.

60 “(c) The court shall issue or deny an ex parte ERCPO on the same day that the petition is
61 submitted to the court, unless the petition is filed too late in the day to permit effective review, in
62 which case the order shall be issued or denied on the next day the court is open.

63 “(d)(1) The court, before issuing an ex parte ERCPO, shall examine under oath the
64 petitioner and any witnesses the petitioner may produce.

65 “(2) In lieu of examining the petitioner and any witness the petitioner may
66 produce, the court may require the petitioner and any witness to submit a written affidavit signed
67 under oath.

68 “(e) In determining whether grounds for an ex parte ERCPO exist, the court shall
69 consider all relevant evidence presented by the petitioner, including:

70 “(1) A recent threat of violence or act of violence by the respondent directed
71 toward another;

72 “(2) A recent threat of violence or act of violence by the subject of the petition
73 directed toward himself or herself;

74 “(3) A violation of an emergency protective order or an unexpired protective
75 order or similar law in another state;

76 “(4) A pattern of violent acts or violent threats within the past 12 months,
77 including threats of violence or actions of violence by the respondent directed toward himself,
78 herself, or another; and

79 “(5) Evidence of an increased risk for violence including:

80 “(A) The unlawful and reckless use, display, or brandishing of a firearm
81 by the respondent;

82 “(B) The history of use, attempted use, or threatened use of physical force
83 by the respondent against another person, whether or not this violence involves a firearm;

84 “(C) Any prior arrest of the respondent for a felony offense;

85 “(D) Any history of a violation by the respondent of a protective order;

86 “(E) Documentary evidence, including, but not limited to, police reports
87 and records of convictions, of either recent criminal offenses by the respondent that involve
88 controlled substances or alcohol or ongoing abuse of controlled substances or alcohol by the
89 respondent; and

90 “(F) Evidence of acquisition of firearms, ammunition, or other deadly
91 weapons within 6 months of the filing of the petition.

92 “(f) An ex parte ERCPO shall include:

93 “(1) A statement that the respondent may not have in his or her custody or control,
94 own, purchase, possess, or receive, or attempt to purchase or receive a firearm or ammunition
95 while the order is in effect;

96 “(2) A statement of the grounds asserted for the order;

97 “(3) A notice of the hearing under section 905a(h) to determine whether to issue a
98 ERCPO, including the address of the court and the date and time when the hearing is scheduled;

99 “(4) A statement that at the hearing, the court may extend the order for one year;

100 and

101 “(5) A statement that the respondent may seek the advice of an attorney as to any
102 matter connected with the ex parte ERCPO, and that the attorney should be consulted promptly
103 so that the attorney may assist the person in any matter connected with the order and subsequent
104 hearing.

105 “(g) An ex parte ERCPO shall be personally served on the respondent by a law
106 enforcement officer.

107 “(h) The court shall schedule a hearing within 14 days of the issuance of an ex parte
108 ERCPO to determine if an ERCPO should be issued. A respondent may seek an extension of
109 time before the hearing. The court shall dissolve any ex parte ERCPO in effect against the
110 respondent after the court determines whether or not to issue an ERCPO at the hearing.

111 “(j)(1) A petitioner may seek an ex parte ERCPO by filing a verified petition on a form
112 approved by the court.

113 “(2) The petition shall set forth the grounds for issuance of the order and shall
114 describe the number, types, and locations of any firearms or ammunition presently believed by
115 the petitioner to be possessed or controlled by the respondent.

116 “(3) Upon receipt of the petition, the court shall set a date for a hearing within 14
117 days, regardless of whether the court issues an ex parte ERCPO pursuant to this section. If the
118 court does issue an ex parte ERCPO, notice of the hearing shall be served on the respondent with
119 the ex parte ERCPO. Notice of the hearing shall be personally served on the respondent by a law
120 enforcement officer.

121 “Sec. 905b. ERCPO.

122 “(a) A person requesting an ERCPO shall include in the petition detailed allegations
123 based on personal knowledge that the respondent poses a significant danger of causing personal
124 injury to self or others by having in his or her custody or control, owning, purchasing,
125 possessing, or receiving a firearm or ammunition.

126 “(b) Before a hearing for an ERCPO, the court shall:

127 “(1) Ensure that a reasonable search has been conducted of all available records to
128 determine whether the respondent owns any firearms or ammunition; and

129 “(2) Ensure that a reasonable search has been conducted for criminal history
130 records related to the respondent.

131 “(c) In determining whether to issue an ERCPO under this section, the court shall
132 consider all relevant evidence, including:

133 “(1) A recent threat of violence or act of violence by the respondent directed
134 toward another.

135 “(2) A recent threat of violence or act of violence by the respondent directed
136 toward himself or herself.

137 “(3) A violation of an emergency protective order or an unexpired protective
138 order.

139 “(4) A pattern of violent acts or violent threats within the past 12 months,
140 including, but not limited to, threats of violence or actions of violence by the respondent directed
141 toward himself, herself, or another.

142 “(5) Evidence of an increased risk for violence, including:

143 “(A) The unlawful and reckless use, display, or brandishing of a firearm
144 by the respondent;

145 “(B) The history of use, attempted use, or threatened use of physical force
146 by the respondent against another person;

147 “(C) Any prior arrest of the respondent for a felony offense;

148 “(D) Any history of a violation by the respondent of a protective order;

149 “(E) Documentary evidence, including, but not limited to, police reports
150 and records of convictions, of either recent criminal offenses by the respondent that involve
151 controlled substances or alcohol or ongoing abuse of controlled substances or alcohol by the
152 respondent; and

153 “(F) Evidence of acquisition of firearms, ammunition, or other deadly
154 weapons within six months of the filing of the petition.

155 “(d) If the court finds by a preponderance of the evidence at the hearing that the
156 respondent poses a significant danger of personal injury to self or others by having in his or her
157 custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition, the
158 court shall issue an ERCPO for a period of one year from the date of the order.

159 “(e) An ERCPO issued pursuant to this section shall include all of the following:

160 “(1) A statement that the respondent may not have in his or her custody or control,
161 own, possess, purchase, or receive, or attempt to purchase or receive a firearm or ammunition
162 while the order is in effect;

163 “(2) A description of the requirements for relinquishment of firearms and
164 ammunition under section 905d;

165 “(3) A statement of the grounds supporting the issuance of the order;

166 “(4) The date and time the order expires;

167 “(5) The address of the court that issued the order;

168 “(6) A statement that the respondent shall have the right to request one hearing to
169 terminate the order at any time during its effective period; and

170 “(7) A statement that the respondent may seek the advice of an attorney as to any
171 matter connected with the order.

172 “(f) If the respondent fails to appear at the hearing, an ERCPO issued pursuant to this
173 section shall be personally served on the respondent by a law enforcement officer.

174 “Sec. 905c. Termination and renewal.

175 “(a)(1) A respondent to an ERCPO issued under section 905b may submit one written
176 request at any time during the effective period of the order for a hearing to terminate the order.

177 “(2) Upon receipt of the request for termination, the court shall set a date for a
178 hearing. Notice of the request shall be served on the petitioner in accordance with District’s
179 service of process. The hearing shall occur no sooner than 14 days from the date of service of the
180 request upon the petitioner.

181 “(3) The respondent seeking termination of the order shall have the burden of
182 proving by a preponderance of the evidence that the respondent does not pose a significant
183 danger of causing personal injury to self or others by having in his or her custody or control,
184 owning, purchasing, possessing, or receiving a firearm or ammunition.

185 “(4) If the court finds after the hearing that the respondent has met his or her
186 burden, the court shall terminate the order.

187 “(b) A petitioner may request a renewal of an ERCPO at any time within the 3 months
188 before the expiration of the order.

189 “(c) A court may, after notice and a hearing, renew an ERCPO issued under section 905b
190 if the court finds, by a preponderance of the evidence, that the respondent continues to pose a
191 significant danger of causing personal injury to self or another by having in his or her custody or
192 control, owning, purchasing, possessing, or receiving a firearm or ammunition.

193 “(d) In determining whether to renew an ERCPO issued under this section, the court shall
194 consider all relevant evidence presented by the petitioner, and may also consider other relevant
195 evidence, including the evidence described in section 905b(c).

196 “(e) An ERCPO renewed pursuant to this section shall expire after one year, subject to
197 termination by further order of the court at a hearing held pursuant to subsection (a) and further
198 renewal by order of the court pursuant to this section.

199 “Sec. 905d. Relinquishment of firearms and ammunition.

200 “(a) Upon issuance of an ex parte ERCPO or ERCPO, the court shall order the
201 respondent to surrender to the Metropolitan Police Department (MPD) all firearms, ammunition,
202 and registration permit in the respondent’s custody or control, or which the respondent possesses
203 or owns.

204 “(b) A law enforcement officer serving an ERCPO shall request that all firearms and
205 ammunition belonging to the respondent along with their gun registration permit be immediately
206 surrendered and shall take possession of all firearms and ammunition belonging to the
207 respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.

208 “(c) At the time of surrender or removal, a law enforcement officer taking possession of a
209 firearm or ammunition pursuant to an ERCPO shall issue a receipt identifying all firearms and
210 ammunition that have been surrendered or removed and provide a copy of the receipt to the
211 respondent. Within 72 hours after being served with the order, the officer serving the order shall
212 file the original receipt with the court that issued the ERCPO, and shall ensure that MPD retains
213 a copy of the receipt.

214 “(d) If the petitioner has proven by a preponderance of the evidence that the respondent
215 to an ERCPO has in his or her custody or control, owns, or possesses firearms or ammunition

216 that he or she has failed to surrender pursuant to this section, or has received or purchased a
217 firearm or ammunition while subject to the order, a court shall issue a warrant describing the
218 firearm or ammunition and authorizing a search of the locations where the firearms or
219 ammunition are reasonably believed to be and the seizure of any firearms or ammunition
220 discovered pursuant to such search.

221 “(e) A law enforcement agency may charge the respondent a fee not to exceed the
222 reasonable and actual costs incurred by the law enforcement agency for storing a firearm or
223 ammunition surrendered pursuant to this section for the duration of the ERCPO and any
224 additional periods necessary under section 905c.

225 “Sec. 905e. Return and disposal of firearms or ammunition.

226 “(a) Thirty days before an ERCPO is set to expire, MPD shall notify the petitioner that
227 the order is set to expire. The notice shall advise the petitioner of the procedures for seeking a
228 renewal of the order pursuant to section 905c.

229 “(b) If an ERCPO is terminated or expires and is not renewed, MPD shall notify the
230 respondent that he or she may request the return of the firearm or ammunition. MPD shall return
231 any surrendered firearm or ammunition requested by a respondent only after confirming, through
232 a background check, that the respondent is currently eligible to own or possess firearms and
233 ammunition.

234 “(c) A respondent who has surrendered any firearm or ammunition to MPD pursuant to
235 section 905d and who does not wish to have the firearm or ammunition returned or who is no
236 longer eligible to own or possess firearms or ammunition may sell or transfer title of the firearm
237 or ammunition to a licensed firearms dealer. MPD shall transfer possession of the firearm or
238 ammunition to a licensed firearms dealer only after the dealer has displayed written proof of

239 transfer of the firearm or ammunition from the respondent to the dealer and MPD has verified the
240 transfer with the respondent.

241 “(d) If a person other than the respondent claims title to any firearm or ammunition
242 surrendered pursuant to section 905d, and he or she is determined by the law enforcement agency
243 to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned
244 to him or her.

245 “Sec. 905f. Reporting of orders to a statewide system.

246 “(a) The court shall notify the Metropolitan Police Department no later than one court
247 day after issuing, renewing, dissolving, or terminating an ex parte ERCPO or an ERCPO under
248 sections 905a through 905e.

249 “(b) The information required to be submitted to the Metropolitan Police Department
250 pursuant to this section shall include identifying information about the respondent and the date
251 the order was issued, renewed, dissolved or terminated. In the case of an ERCPO, the court shall
252 include the date the order is set to expire. The court shall also indicate whether the respondent to
253 the ERCPO was present in the court to be advised of the contents of the order or if the
254 respondent failed to appear. The respondent’s presence in court shall constitute proof of service
255 of notice of the terms of the order.

256 “(c) Within one business day of service, a law enforcement officer who serves an ERCPO
257 or the clerk of the court shall submit proof of service directly into the MPD data base, including
258 his or her name and MPD.

259 “(d) The information to be submitted to MPD under this section shall be submitted in an
260 electronic format, in a manner prescribed MPD. MPD shall maintain a searchable database of
261 this information available to law enforcement agencies upon request.

262 “(e) MPD shall immediately make information about an ex parte ERCPO or an ERCPO
263 issued, renewed, or terminated, pursuant to sections 905a through 905e available to the National
264 Instant Criminal Background Check System for the purposes of firearm purchaser background
265 checks.

266 “Sec. 905g. Penalties.

267 “(a) Every person who files a petition for an ex parte ERCPO or an ERCPO, knowing the
268 information in the petition to be materially false or with an intent to harass the respondent, shall
269 be guilty of a misdemeanor and such violator shall be fined not more than \$1,000 or imprisoned
270 for not more than 60 days, or both.

271 “(b) Every person who has in his or her custody or control, owns, purchases, possesses,
272 or receives a firearm or ammunition with knowledge that he or she is prohibited from doing so
273 by an ex parte ERCPO or an ERCPO is guilty of a misdemeanor and shall be prohibited from
274 having in his or her custody or control, owning, purchasing, possessing, or receiving, or
275 attempting to purchase or receive, a firearm or ammunition for a period of 5 years from the date
276 of conviction.

277 “Sec. 905h Law enforcement to retain other authority.

278 “Sections 905a through 905g shall not affect the ability of a law enforcement officer to
279 remove firearms or ammunition from any person pursuant to other lawful authority.”.

280 Sec. 3. Fiscal impact statement.

281 The Council adopts the fiscal impact statement in the committee report as the fiscal
282 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
283 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

284 Sec. 4. Effective date.

285 This act shall take effect after approval by the Mayor (or in the event of veto by the
286 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
287 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
288 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
289 Columbia Register.