

The Firearms Restraining Order

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What is the FRO law?

Illinois Public Act 100-0607-430 *ILCS 67*

This law, passed in the Summer of 2018, allows for Illinoisans to use Firearms Restraining Orders to prevent violence in their home and community. It provides family/household members and law enforcement to be proactive in addressing their concerns, by providing them a civil measure to prevent a person who is exhibiting dangerous behavior from legally accessing firearms, ammunition or parts that can be assembled to make guns.

What is a Firearm Restraining Order?

430 ILCS 67

The Firearms Restraining Order (FRO) allows family/household members, and law enforcement to work with courts to temporarily remove guns and prevent the purchase of new guns by individuals who pose a significant risk of harm to themselves or others. The FRO is a civil procedure, not a criminal one. The goal is to ensure safety of the individual and those around them.

How does a FRO help people in crisis stay safe?

The FRO requires temporary removal of guns from the subject of the order and prohibits new purchases for the duration of the order. This creates safer circumstances for the individual to seek treatment, stabilize their behavior, or access resources to address the underlying causes of their dangerous behaviors. An Emergency FRO can last up to **14 days**, while a Plenary FRO can last **six months up to a year** (and can be renewed beyond that) after a court hearing is held.

History of the FRO in Illinois

Illinois' FRO law was established in response a series of deadly mass shootings and increased rates of suicide across the country. In the Summer of 2018, the bill was passed thanks to hard work from many stakeholders and legislators across Illinois, including the Illinois Attorney General Kwame Raoul and became law on January 1st of 2019.

Academic Research on FROs

2017 Duke Study, Jeffrey W. Swanson et al.:

- Examined the results of Connecticut's firearm seizure law which has been in effect since 1999.
- On average law enforcement removed 7 guns for each order.
- 1 in 3 subjects were given access to mental health care and drug/alcohol misuse counseling— often for the first time.
- For every 10 to 20 orders, at least one suicide was prevented.
- After the Virginia Tech shooting in 2007 the annual number of gun removals increased about fivefold—to about 100 cases per year.

Academic Research on FROs

2018 American Psychiatric Association Study

- Examined Indiana and Connecticut's firearm seizure laws.
- Indiana's firearm seizure law was associated with a 7.5% reduction in firearm suicides in the ten years following its enactment.
- Enactment of Connecticut's law was associated with a 1.6% reduction in firearm suicides immediately after its passage and a 13.7% reduction in firearm suicides in the post–Virginia Tech period, when enforcement of the law substantially increased.
- Risk-based firearm seizure laws were associated with reduced population-level firearm suicide rates.

What are the types of FROs available in Illinois?

- Emergency Firearm Restraining Order
- Plenary Firearm Restraining Order

Who can apply?

- Law Enforcement
- Family member of the respondent: spouse, former spouse, person with whom the respondent has a minor child in common, parent, child, or step-child of the respondent, any other person related by blood or present marriage to the respondent, or a person who shares a common dwelling with the respondent.

In making FRO decisions, judges may also consider evidence of an increased risk for violence, including, but not limited to:

- The unlawful and reckless use, display, or brandishing of a firearm
- History of threatened, attempted, or actual physical force against another person
- Prior arrest for a felony offense
- History of violation of a protective order
- Evidence demonstrating abuse of alcohol or controlled substances.
- Recent threat or act of violence directed toward self or others
- Violation of a protective order currently in effect or unexpired
- Conviction for any crime that prohibits purchase and possession of firearms under Illinois law
- A pattern of violent acts or violent threats, including but not limited to, threats of violence or acts of violence by the respondent directed towards themselves or another.

An emergency FRO is a type of order available to law enforcement and family/household members and may be obtained with the oral approval of a judge on the same day it was filed.

- A hearing for an emergency order will be held on an “ex-parte” basis (without notice to the respondent) on the same day the order was filed.
- The petitioner shall describe the concerning behavior and the petitioner shall describe the number types and locations of any firearms believed by petitioner to be possessed or controlled by the respondent.
- If a judge finds **probable cause to believe that the respondent poses an immediate and present danger of causing personal injury to themselves or another person by having in his or her custody or control, purchasing, possessing, or receiving a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm**, the circuit or associate judge shall issue an emergency order.

NOTICE TO INTIMATE PARTNER:

Definition: a spouse, former spouse, a person with whom the respondent has or allegedly has a child in common, or a person with whom the respondent has or has had a dating or engagement relationship.

- If the respondent poses a significant danger of causing personal injury to an intimate partner or the intimate partner is the target of a threat by the respondent, petitioner shall make good faith effort to provide notice to any and all intimate partners of the respondent.
- The notice **MUST** include:
 - That the petitioner intends to petition the court for a Plenary Firearms Restraining Order.
 - If petitioner is law enforcement, they must include including referral to relevant domestic violence or stalking advocacy or counseling resources if appropriate.

An Emergency Restraining Order shall require:

1. The respondent to refrain from **by having in his/her custody or control, purchasing, possessing or receiving a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm** for the duration of the order; and
 2. The respondent turn over to local law enforcement agency any FOID and conceal and carry license in his or her possession.
- Law Enforcement ***shall immediately*** mail the FOID card and conceal and carry license to the Department of State Police Firearms Services Bureau for safekeeping, if unexpired, shall be returned to the respondent after the firearms restraining order is terminated or expired.

- If the court issues an emergency firearms restraining order, it shall upon a finding of probable cause that the respondent possesses firearms issue a search warrant directing a law enforcement agency to seize the respondent's firearms.
- The court may, as part of that warrant, direct the law enforcement agency to search the respondent's residents and other places where the court finds there is probable cause to believe he or she is likely to possess the firearms.
- 4 day return on the search warrant

- A hearing must be set NO LONGER than 14 days from the ex parte hearing to determine if a plenary firearms restraining order shall be issued.
- An ex parte order may be extended out farther by mutual agreement of the parties.

Plenary FRO

In the case a petitioner applies directly for a plenary FRO, a hearing will be scheduled within 30 days. If an ex parte order is already in place, they have 14 days to have the hearing.

Plenary FRO

- During the hearing the responding party has the opportunity to respond to the order, and the court will review the same type of evidence used when considering the emergency order. The court may also review testimony from the petitioner and any witnesses which they produce, including law enforcement officers.
- If the order is granted, it is issued for six months up to a year from the hearing date.
- A petitioner may petition for renewal of a plenary FRO up to three months before it expires. A FRO may not be renewed after it expires.
- Notice to Intimate Partner same as in the Emergency FRO

- For a Plenary FRO Petitioner must file an affidavit or verified pleading that the **respondent poses a significant danger of personal injury to him/herself, or another *in the near future* by having in his/her custody or control, purchasing, possessing or receiving a firearm , ammunition, and firearm parts that could be assembled to make an operable firearm.**
- The petitioner shall describe the number types and locations of any firearms believed by petitioner to be possessed or controlled by the respondent.
- If the threat was posed to an intimate partner, petitioner must allege that they either
 1. notified the intimate partner or;
 2. made a good faith effort to notify and describe the efforts made.

Burden of Proof:

- At the Plenary FRO the petitioner has the burden of proving **by clear and convincing evidence** (the contention is highly probable) that the respondent poses a significant danger of personal injury to him/herself, or another by having in his/her custody or control, purchasing, possessing or receiving a firearm.

*higher than the standard burden in most OP cases of preponderance of the evidence

A plenary firearm restraining order shall require:

1. The respondent to refrain from having in his or her custody or control, purchasing, possessing, or receiving additional firearms for the duration of the order; and
 2. The respondent turn over to local law enforcement agency any FOID and conceal and carry license in his or her possession.
- Law Enforcement *shall immediately* mail the FOID card and conceal and carry license to the Department of State Police Firearms Services Bureau for safekeeping, if unexpired, shall be returned to the respondent after the firearms restraining order is terminated or expired.

- If the court issues a plenary firearms restraining order, it shall upon a finding of probable cause that the respondent possesses firearms issue a search warrant directing a law enforcement agency to seize the respondent's firearms.
- The court may, as part of that warrant, direct the law enforcement agency to search the respondent's residents and other places where the court finds there is probable cause to believe he or she is likely to possess the firearms.
- 4 day return on the search warrant

Termination of an Order:

- The respondent may submit ONE written request at any time during the effective period of the order for a hearing to terminate the order.
- The respondent has the burden of proving **by a preponderance of the evidence** (more probably true than untrue) that the respondent does not pose a danger of causing personal injury to her/himself, or another in the near future by having in his or her control, purchasing, possessing, or receiving a firearm , ammunition, and firearm parts that could be assembled to make an operable firearm.
- If the judge makes the finding that the respondent met their burden, the court shall terminate the order.

Renewal of an Order:

- Petitioner may request a renewal of the plenary firearms restraining order within three months of the expiration of the order.
- Respondent is entitled to notice.
- The order will be renewed if the petitioner proves by **clear and convincing evidence** (that the contention is highly probable) that the respondent continues to pose a danger of causing personal injury to her/himself, or another in the near future by having in his or her custody or control, purchasing, possessing or receiving a firearm.
- If granted the renewal will be another 6 months up to 1 year.

Violation of the Firearms Restraining Order:

A Respondent who violates the Firearms Restraining Order is guilty of a Class A misdemeanor.

Expungement or Sealing:

- If the court denies issuance of a firearms restraining order against the respondent, all records of the proceeding shall be IMMEDIATELY expunged from the court record.
- If the restraining order is granted, all records of the proceeding shall, 3 years after the expiration of the order, be sealed.

Frequently Asked Questions

Does the respondent need to be guilty of a crime to obtain a FRO?

No. The FRO is a civil procedure, not a criminal one. The goal is to ensure safety and allow the subject of the FRO the opportunity to heal or stabilize. However, if the order is violated, the subject may be charged with a misdemeanor crime.

Can the respondent of the petition contest a FRO?

If the respondent of the petition disagrees with the order, they will have the opportunity to respond during the hearing contesting the order. If the order is issued, respondents are provided one opportunity during the duration of the order to file for termination of the order. This will require the scheduling of another hearing to determine if the respondent is a danger.

Frequently Asked Questions

What's the difference between a FRO and a Domestic Violence Order of Protection?

A FRO only prevents the subject of the order from possessing or obtaining firearms, it does not bar contact or require that the subject restrict themselves from being near the petitioner. For personal protection from a spouse, family member, or household member, one can proceed under the Illinois Domestic Violence Act for an Order of Protection. The process of obtaining a Order of Protection is similar to the FRO but there are different requirements and documentation needed to obtain an order.

Frequently Asked Questions

Q: What if an individual comes to court and claims title to the guns that were taken enforcing the Firearms Restraining Order?

A: The individual may petition the court, with notice to the petitioner, to have the guns returned to him or her. If the court determines that individual to be the lawful owner of the firearm, the firearm shall be returned to him or her if:

1. The firearm I removed from the respondent's custody, control or possession and the lawful owner agrees to store the firearm in a manner such that the respondent does not have access to or control of the firearm; and
2. The firearm is not otherwise unlawfully possessed by the owner.
3. The person petitioning for the return of the firearm must swear to an affidavit that he or she:
 - a) Is the lawful owner of the firearm;
 - b) Shall not transfer the firearm to the respondent;
 - c) Will store the firearm in a manner that the respondent does not have access or control of the firearm.

*Again, the legal owner of the firearms should present BOTH the court order and the petition in order to take custody of the firearms from LE.

Jurisdiction

A petition for a firearm restraining order may be filed in any county:

- where the respondent resides or
- any county where an incident occurred that involved the respondent posing an immediate and present danger of causing personal injury to the respondent or another by having in his or her custody or control or purchasing, possessing or receiving a firearm, ammunition, or firearm parts that could be assembled to make an operable firearm.

Questions?

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