

FIREARMS RESTRAINING ORDER:
EMPOWERING LAW ENFORCEMENT AND FAMILIES TO PREVENT GUN VIOLENCE
BY ATTORNEY GENERAL KWAME RAOUL

I believe it is the responsibility of every public servant to oppose gun violence: a criminal and public health issue that affects communities throughout Illinois. When we see horrific shootings like the ones committed at Chicago’s Mercy Hospital and in suburban Aurora, those of us tasked with enforcing the law ask ourselves: could these crimes have been prevented? In 2018, the Illinois General Assembly passed legislation establishing a Firearms Restraining Order (FRO) as a legal option for individuals with reason to believe that someone with access to firearms may pose an immediate danger to themselves or others. Including Illinois, 17 states and the District of Columbia now have similar “red flag laws.” My office is working to educate the public about the availability and use of FROs and to partner with law enforcement to ensure this new law is implemented effectively.

WHAT IS A FIREARMS RESTRAINING ORDER? On January 1, 2019, the Firearms Restraining Order Act (430 ILCS 67/1) went into effect in Illinois. The Firearms Restraining Order Act provides a formal legal process to ask a court to issue a Firearms Restraining Order (or “FRO”) to temporarily limit an individual’s access to firearms when that person poses a significant danger to themselves or others. A Firearms Restraining Order is a civil court order that temporarily prohibits a person from possessing or buying firearms.

WHEN IS A FIREARMS RESTRAINING ORDER NEEDED? The purpose of the Firearms Restraining Order Act is to prevent individuals who pose an elevated risk of endangering themselves or others from accessing guns before they harm themselves or others. Before many shootings, family members of the shooter have observed dangerous behaviors or have grown concerned about their risk of harming themselves or others. Family and household members are often the first to know when someone is in crisis or poses a harm. In addition, law enforcement officers frequently come in contact with individuals who are dangerous or in crisis. The Firearms Restraining Order Act allows a family or household member and law enforcement officers to ask a court to restrict a person’s access to guns to prevent the commission of gun violence.

HOW LONG DOES A FIREARMS RESTRAINING ORDER LAST? There are two types of FROs: an emergency FRO that immediately addresses a crisis and lasts up to 14 days, and a six-month FRO that provides longer protection but only after there has been a full court hearing.

HOW DOES A FIREARMS RESTRAINING ORDER WORK? A family member or household member or law enforcement can petition an Illinois circuit court for an order to temporarily limit the access to firearms of a named “respondent”—the individual who poses a danger of injury. Based on the evidence in the petition, a judge may issue an emergency FRO immediately that will be in place for 14 days. The judge then will hold a full hearing to decide whether to end the emergency FRO or whether to issue a longer, six-month FRO.

There are two stages in the process for obtaining an FRO:

Stage 1: Law enforcement or family/household member fills out a petition explaining how the respondent’s access to firearms poses an immediate and present danger of causing injury to themselves

or others. The petition may be filed in any county where the respondent lives. Generally the petitioner does not have to notify the respondent yet, but the petitioner must make an effort to notify an intimate partner of the respondent if they are a target of the respondent.

An emergency hearing is held the next day court is in session. The judge issues an emergency FRO if they find probable cause to believe the respondent poses an immediate and present danger of causing injury. If an emergency FRO is issued, a full hearing is scheduled as soon as possible so the respondent can be heard, and the full hearing must be held within 14 days. During the short period of time before a full hearing can be held, the emergency FRO ensures that the respondent is prohibited from purchasing or possessing a firearm.

Stage 2: At the full hearing, the judge considers whether to end the emergency FRO or whether to extend it to a six-month FRO. At the hearing, the burden is on the petitioner to show “by clear and convincing evidence” that the respondent creates “a significant danger” of injury to themselves or others by having access to firearms. Petitioners are required to present evidence to the court, and respondents also have an opportunity to present evidence. If the court decides the respondent presents a significant danger, the court will issue an order prohibiting the respondent from the purchase and possession of firearms for six months.

Note that family, household members, or law enforcement can choose to skip the emergency FRO process and petition directly for a six-month FRO. Further, a petitioner who obtains a 14-day FRO is not required to proceed with the six-month FRO process if the danger is no longer present.

WHAT KINDS OF EVIDENCE DOES THE COURT NEED? The petitioner and respondent can present any evidence they think will be relevant to the court’s decision. Examples of evidence that may help the court make a decision include, but are not limited to, facts about the respondent’s: (1) unlawful or reckless use of firearms; (2) history of physical force; (3) prior felony arrests; (4) abuse of controlled substances or alcohol; (5) recent threats or acts of violence; (6) violations of domestic violence protection orders; or (7) pattern of violence.

CAN FROs BE TERMINATED? Yes. The respondent is allowed one opportunity to ask the court to terminate the FRO before it expires (either before the 14-day or six-month period). In order to have the court end the FRO, the respondent must prove to the court by a “preponderance of the evidence” that he or she does not pose a danger.

CAN FROs BE RENEWED? Yes. A court can renew a FRO. A petitioner may file a written request for an extension of an FRO during the final three months before the order is scheduled to expire. Before the judge will extend an FRO, the court will hold another full hearing where the petitioner again must prove by “clear and convincing evidence” that the respondent continues to pose a danger.

My office is committed to preventing gun violence, and FROs are a valuable new tool for law enforcement and the general public alike. For more information or trainings, please email Assistant Attorney General Cordelia Coppleson at ccoppleson@atg.state.il.us.