

**Notice:**

Effective January 1, 2019, the Firearms Restraining Order Act took effect and provides a process by which certain persons may obtain an order from the court directing the subject of the order to surrender his/her Firearm Owner Identification Card and access to any firearms. The Act also requires law enforcement to enforce such orders.

**Who can petition the court?**

- A family member of the Respondent<sup>1</sup> – any person related by blood or present marriage to the Respondent or who shares a common dwelling with the respondent; or
- *Law enforcement officers.*

**Where can the Petition be filed?**

In the circuit court in any county where the Respondent resides.

**Are there different types of Firearms Restraining Orders (FRO)?**

Yes, the court can issue:

*Ex Parte Orders* – these orders are issued on an emergency basis upon conclusion of a hearing held on the same day the petition is filed or the next day that the court is in session.

- The Petitioner, who has the burden of proof, must:
  - file an affidavit or verified pleading alleging that the Respondent meets the requisite standard<sup>2</sup>; and
  - describe the type and location of any firearm or firearms presently believed by the Petitioner to be possessed or controlled by the Respondent.
- Hearings
  - will be held on an ex parte basis without notice to the Respondent; and
  - if an Emergency FRO is issued, the court shall schedule a full hearing no later than 14 days from the issuance to determine if a 6-month FRO shall be issued.

*Six Month Orders* – these orders are issued upon conclusion of a hearing held within 30 days of receiving a petition and are subject to renewal.

- The Petitioner, who has the burden of proof, must
  - file an affidavit or verified pleading alleging that the Respondent meets the standard<sup>3</sup>; and

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<sup>1</sup> "Respondent" means the person alleged in the petition to pose a danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm.

<sup>2</sup> Ex Parte FRO Standard - Probable cause to believe that the Respondent poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm.

<sup>3</sup> 6 Month FRO Standard – Clear and convincing evidence to believe that the Respondent poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm

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- describe the type and location of any firearm or firearms presently believed by the Petitioner to be possessed or controlled by the Respondent.
- Hearings
  - Will be held after notice to the Respondent.

**Does the Petitioner have other rights and responsibilities?**

Yes,

*Notice to Intimate Partners*<sup>4</sup> –

- If the Respondent is alleged to pose an immediate and present danger or, in the case of a 6 Month FRO, a significant danger of causing personal injury to such person or an intimate partner is alleged to have been the target of a threat or act of violence by the respondent, the Petitioner must:
  - make a good faith effort to provide notice to any and all of the Respondent's intimate partners; and
  - attest to having provided such notice or describe what efforts were made to do so.
- The notice must include that the Petitioner intends to petition the court for a FRO, and
- If the Petitioner is a law enforcement officer, the notice must include referral to relevant domestic violence or stalking advocacy or counseling resources if appropriate.

When filing the affidavit or verified pleading, the Petitioner is required to attest to having provided the notice or describe what good faith efforts were made to do so unsuccessfully.

*Perjury* – Persons knowingly providing false pleadings or information to the court are guilty of perjury under the Criminal Code.

*Renewal*<sup>5</sup> – A Petitioner may request renewal any time within the 3 months before the expiration of a 6 Month FRO.

**What will the court consider in determining whether to issue a 6 Month FRO<sup>6</sup>?**

The court shall consider evidence including, but not limited to the following:

- The unlawful and reckless use, display, or brandishing of a firearm by the Respondent;
- The history of use, attempted use, or threatened use of physical force by the Respondent against another person;
- Any prior arrest of the Respondent for a felony offense;
- Evidence of the abuse of controlled substances or alcohol by the Respondent;
- A recent threat of violence or act of violence by the Respondent directed toward himself, herself, or another;

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<sup>4</sup> Intimate Partners shall mean 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.

<sup>5</sup> Ex parte orders may be extended by the court to effectuate service of the order or if necessary to continue protection pursuant to 67/35(i)

<sup>6</sup> These factors will likely be considered relevant to the court in determining whether probable cause exists to issue an ex parte order as well.

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- A violation of an emergency order of protection issued under Section 217 of the Illinois Domestic Violence Act of 1986 or Section 112A-17 of the Code of Criminal Procedure of 1963 or of an order of protection issued under Section 214 of the Illinois Domestic Violence Act of 1986 or Section 112A-14 of the Code of Criminal Procedure of 1963; and
- A pattern of violent acts or violent threats, including, but not limited to, threats of violence or acts of violence by the Respondent directed toward himself, herself, or another.

**What does an FRO require?**

- The Court –  
shall upon a finding of probable cause that the Respondent possess firearms, issue a search warrant directing a law enforcement agency to seize the Respondent's firearms.<sup>7</sup>
- The Respondent shall:
  - refrain from having in his or her custody or control, purchasing, possessing or receiving additional firearms for the duration of the order; and
  - turn over to the local law enforcement agency any firearm or Firearm Owner's Identification Card and concealed carry license in his or her possession.
- The Local Law enforcement Agency –  
shall immediately mail the card and concealed carry license to the Department of State Police Firearm Services Bureau for safekeeping.
- The Clerk of the court shall:
  - immediately, or on the next court day if an emergency firearms restraining order is issued;
  - enter the order on the record and file it in accordance with the circuit court procedures; and
  - provide a file stamped copy of the order to respondent, if present, and to petitioner.
- The Sheriff<sup>8</sup> –  
shall serve the FRO upon the Respondent, file proof of the service with the court; and enter the order and service into LEADS.
- The ISP –  
shall maintain a complete record of all valid and recorded FROs filed under the Act for use by all dispatchers and law enforcement officers, including but not limited to the effective dates and terms of the recorded orders.

**What else do I need to know?**

- Violations – a violation of an FRO is a Class A misdemeanor and may be concurrently prosecuted for any other crime that was committed at the time of the violation of the FRO.
- Foreign FROs

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<sup>7</sup> The Respondent may petition the court to transfer his/her firearms to a person who may lawfully possess such firearms if the person does not reside at the same address as the respondent. A transferee receiving the firearms must swear or affirm by affidavit that he/she will not transfer the firearm to the Respondent so long as the order is in effect.

<sup>8</sup> If the Respondent was not present in court when the order was issued, the Sheriff or other law enforcement official may serve the Respondent with a short form notification as provided in Section 112A-22.10 of the Criminal Code and follow the Leads Policy and Procedures regarding Short Form Notification.

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- FROs from other states shall be treated in the same manner as an Illinois FRO.
- The Respondent of a Foreign FRO does not have to be a resident of Illinois nor does the Foreign FRO need to be filed in Illinois for the FRO to be enforceable by law enforcement in Illinois.
- A person subject to a FRO may make one request during the effective period for a hearing to terminate the order.

### **What will the LEADS<sup>9</sup> response look like?**

**Example response:**

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CHF 121918 1121

ZEZZ LDS/C18E4650 *** FIREARMS RESTRAINING ORDER *** ACTIVE ***
CCN/18OP254 ISS/12192018 EXP/06192019 SRV/12192018
RESPONDENT:
  NAM/TEST,RECORD SEX/M RAC/W
  DOB/101062 HGT/508 WGT/190 HAI/GRY      EYE/GRN

CHF 121918 1121

      *** PROHIBITED FROM POSSESSING PURCHASING OR RECEIVING FIREARMS
PER PA100-0607 ***

CHF 121918 1121

MIS/TEST RECORD
ORA/ILLINOIS STATE POLICE
ENT/EZZ OPR/JK TME/0911 DTE/12192018
CONFIRM WITH ORA

Please contact your county's state's attorney's office with legal questions about this order. For
LEADS related questions, please contact the Help Desk (866/LEADS-00).
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### **Resources:**

- Firearms Restraining Order Act, Public Act 100-607, a copy of which can be found at the following link:  
<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0607&GA=100>
- Orders of Protection – Short Form Notification, LEADS Policy and Procedures, a copy of which can be found at the following link:  
<http://leadsinfo.isp.state.il.us/Help/Opshortformhelpfile2018.pdf>
- LEADS Daily Briefing, December 27, 2018, a copy of which can be found at the following link:  
<http://leadsinfo.isp.state.il.us/Briefings/2018/brf181227.html>

<sup>9</sup> See LEADS Daily Briefing, December 27, 2018