

FIREARM RESTRAINING ORDERS IN ILLINOIS



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Abstract: Illinois' firearm restraining orders, known in other states as "red flag laws" or "extreme risk protection orders," are civil orders that temporarily remove firearms from individuals who are a potential danger to themselves or others. These laws aim to prevent firearm injury through a removal of means from persons experiencing a temporary crisis. Data suggest firearm restraining orders have been infrequently employed in Illinois since the law's enactment in 2019. Nationally, initial research suggests these types of laws are associated with reductions in firearm suicide. However, national findings have not conclusively shown a significant reduction in firearm assaults attributable to these laws. As the majority of these laws have been passed relatively recently, more research is needed as data become available on their usage and outcomes.

Firearm Restraining Orders

Firearm restraining orders (FRO) in Illinois are civil orders that allow for temporary removal of firearms, ammunition, and firearm parts that could be assembled to make an operable firearm, as well as removal of an individual's firearm owner's identification (FOID) card when the individual is deemed a potential danger to themselves or others [430 ILCS 67]. The goal of the action is to protect an individual from harming themselves or those around them with a firearm. Additionally, an individual cannot purchase or possess firearms while the order is in effect. A FRO does not bring about any criminal charges or otherwise penalize the individual.¹

FROs can be pursued in response to various actions, including brandishing of a firearm, threatened use of a firearm, and violation of an order of protection, among others. While status-based prohibitions on firearm possession are determined by an individual's prior criminal or mental health history, FRO laws differ because they are temporary and require present and observable actions, which may or may not be criminal.² FRO laws' emphasis on immediate and observed behaviors, regardless of an individual's psychiatric diagnosis, can prevent firearm violence while avoiding wrongly stigmatizing the larger population living with mental health diagnoses.³

Nationwide, FRO laws have been passed as a response to suicide, mass shootings, and domestic and other violence.⁴ Nineteen states and the District of Columbia have laws of this type. Other states refer to these types of laws as "red flag laws" or "extreme risk protection orders."⁵ There is little empirical research on these types of laws, in part because of how recently many have been passed; laws in 18 states were passed in 2016 or later.⁶ Illinois' FRO law initially went into effect on January 1, 2019. In May 2021, *HB1092* was passed by the Illinois state legislature, expanding the original FRO law.

Structure of Firearm Restraining Orders in Illinois

A judge oversees the FRO process and determines if the circumstances warrant granting a FRO. The individual who files a FRO is called the petitioner and the individual against whom the FRO is filed is called the respondent. Illinois courts employ two FRO types:

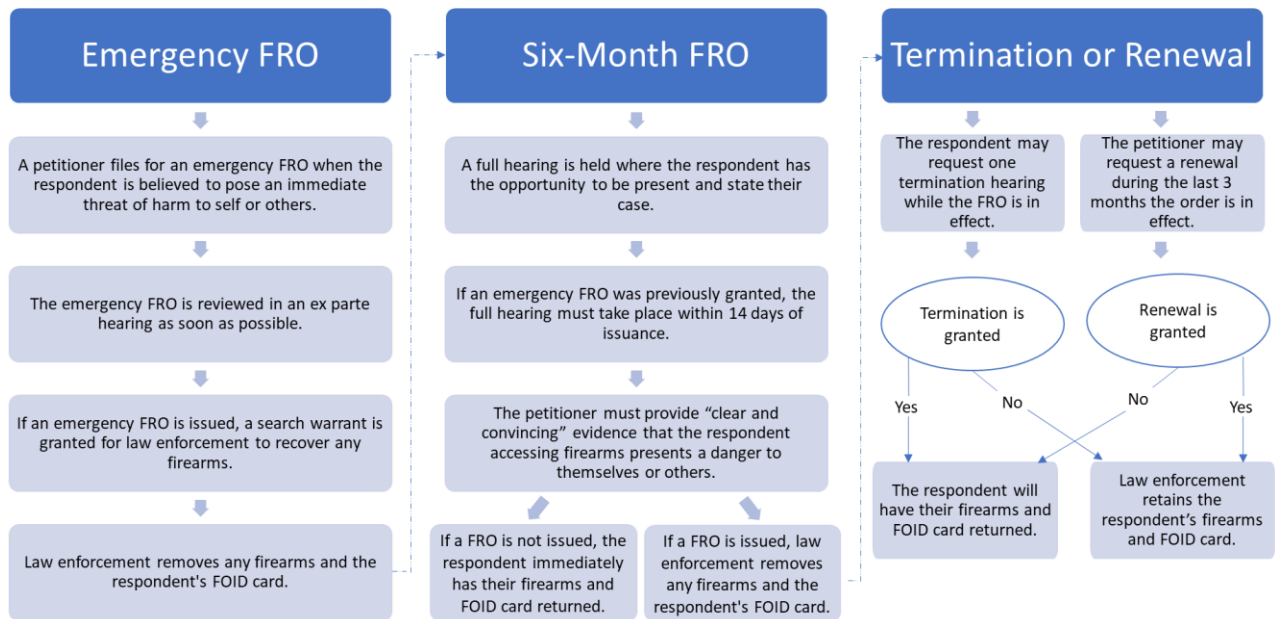
- **Emergency FROs** last up to 14 days. These orders can be requested and granted all in the same day. The hearing for an emergency FRO is an "ex parte" hearing, meaning the respondent will not be present. The burden of proof is on the petitioner to demonstrate probable cause to a judge indicating an immediate threat of danger exists as a result of the respondent having access to firearms. If granted, law enforcement will execute a search warrant to immediately remove the respondent's firearms, ammunition, firearm parts, and FOID card.
- **Six-month FROs** are valid for six months after being granted by the court and they can be renewed. Individuals may choose to petition for a six-month FRO in lieu of an Emergency FRO if the threat of violence is not imminent.⁷ If an emergency FRO was

filed and approved first, a full court hearing will be held during the period the emergency FRO is in effect and the respondent must be given the opportunity to attend.⁸ At the full court hearing, the petitioner must meet the burden of “clear and convincing” evidence that the respondent accessing firearms presents a danger to self or others.

- If the full hearing does not result in a six-month FRO, the respondent’s firearms, ammunition, firearm parts, and FOID card will be immediately returned.
- If the 6-month FRO is granted, law enforcement will remove any firearms, ammunition, firearm parts, and the respondent’s FOID card or retain them if they were seized pursuant to a prior emergency FRO.
 - If a six-month FRO is granted, the respondent may file for one termination hearing while the order is in effect.⁹ At the termination hearing, the burden of proof is on the respondent to prove they are no longer at increased risk of violence.¹⁰ If the termination is granted, respondent’s firearms, ammunition, firearm parts, and FOID card will be returned.
 - The petitioner can file for a renewal of the order within the last three months the order is in effect, following the same procedures used to obtain the initial six-month FRO.¹¹

Figure 1

Illinois Emergency and Six-Month FRO Processes



Note: Figure adapted from Johns Hopkins Bloomberg School of Public Health (n.d.). *Illinois emergency firearms restraining order: A guide to the process.*¹²

Requirements to File a FRO

Only individuals with certain relationships to those who are at risk are eligible to file a FRO petition against them in Illinois; eligible individuals include blood relatives, presently married spouses, former spouses, persons who have a child in common, and household members (e.g. roommates, unmarried partners). In other states, eligible FRO filers may include medical or mental health professionals, educators, and workplace colleagues.¹³ However, some states only allow law enforcement to initiate the process of firearm removal under the FRO law.¹⁴

When determining whether to grant a FRO, the court will consider all relevant evidence, including but not limited to, a recent threat or act of violence by the respondent targeting themselves or another, a pattern of violent threats or acts targeting themselves or another, evidence of the abuse of controlled substances or alcohol by the respondent, any prior felony arrest, a violation of an emergency order of protection, a history of use or attempted use, and threatened use of physical force against another person [430 ILCS 67/40].

FRO laws are often modeled after domestic violence restraining orders.¹⁵ In Illinois, emergency FROs can be granted ex parte, whereas a domestic violence order of protection requires the respondent to take part in the hearing before firearms can be removed.¹⁶ The Consortium for Risk-Based Firearm Policy recommends that FRO laws establish a process for executing orders without a warrant in emergency situations, as well as a procedure that includes obtaining a warrant in non-emergency situations.¹⁷ Illinois FRO petitions must be filed with the circuit court where the respondent lives or in any county in which the respondent was seen to present a danger to self or others. Alternatively, individuals can work with local law enforcement in the respondent's jurisdiction to carry out FRO filings.

Impacts of Firearm Restraining Orders

Law enforcement agencies in various states report that FROs are most commonly used to prevent suicide.¹⁸ As a result of the often impulsive nature of suicide, a temporary removal of means can potentially avert lethal situations.¹⁹ Suicide by firearm is by far the most lethal modality, with about 85% to 90% of attempts resulting in fatality; by temporarily restricting access to the most lethal means of suicide, lives can be saved.²⁰ FRO laws also may be employed to protect elderly individuals who are experiencing dementia or cognitive decline from accessing firearms and potentially harming themselves or others.²¹

In general, the extent to which FROs are used will likely depend on existing state-level gun laws, as each state has varying firearm eligibility requirements.²² The Consortium for Risk-Based Firearm Policy recommends that FRO legislation include a provision stating that when firearms not owned by the respondent (e.g. owned by another occupant of the residence) are recovered by law enforcement, lawful owners should be able to petition to have their firearms returned, pursuant to a safe storage plan that precludes the respondent from access.²³ Then, if the firearm owner knowingly, recklessly, or negligently allows the respondent to access the firearms in violation of the FRO, civil penalties could apply.²⁴

FROs can serve as one component of a larger policy strategy to prevent firearm injury. Acts of violence and suicide with firearms are considered by some to be failures of policy and/or enforcement. Those who are legally allowed to possess a firearm and commit suicide or violent acts perhaps could have been excluded from prior legal access (suggesting a lapse in policy) and those who were prohibited from possessing a firearm but obtained one anyway could have been prevented from gaining illicit access (suggesting a lapse in enforcement).²⁵ However, firearm violence and suicide are typically too infrequent to predict with precision, making it difficult to craft specific and effective policy.²⁶ Current federal and state laws outlining those prohibited to own a firearm are not strongly associated with those likely to harm themselves or others with a firearm, with many low-risk individuals being unnecessarily prohibited and some high-risk individuals still being permitted to possess a firearm.²⁷ While background check requirements are in place to prevent individuals with a higher risk of misuse from acquiring new firearms, FRO laws fill the need for a mechanism for removal of firearms when a person identified to have higher risk of misuse already possesses or has access to them.²⁸

Usage of FROs in Illinois

[Speak for Safety Illinois](#), an advocacy group, tracks statewide usage of FROs. The group reported 34 FROs were filed in 2019 and 19 FROs were filed in 2020 in Illinois.²⁹ At least one FRO was filed in 19 counties in 2019 and seven counties in 2020. DuPage County accounts for many FROs, with 12 filed in both 2019 and 2020. No other county filed more than two FROs in either year. Some FRO records are sealed, with no further information available about the circumstances or the respondent.³⁰ Speak for Safety reported the majority of FROs in 2019 were filed by a law enforcement officer (25); just five were filed by family members, including spouses and children. Similarly, in 2020, four FROs were filed by family or household members and 30 were initiated by law enforcement or sealed.

Table 1*Illinois FRO Measures, 2019 and 2020*

Variable	Year		Total
	2019	2020	
Total filed	34	19	53
Number of counties filing at least one FRO	19	7	
Petitioner Group			
Family/household member	5	4	9
Law enforcement	25	13	38
Unknown	4	2	6
Respondent Sex			
Male	29	5	34
Female	2	0	2
Unknown	3	14	17
Filing Outcomes			
Emergency FRO granted, followed by six-month order	3	6	9
Emergency FRO granted (no six-month FRO sought or unknown)	5	7	12
Six-Month FRO granted (no emergency FRO sought or unknown)	5	0	5
Emergency FRO granted, six-month order denied	1	1	2
Emergency FRO denied or dismissed	0	3	3
Unknown	20	2	22

Note: These data were provided by Speak for Safety Illinois.

In 2019, eight FROs were sought claiming the respondent was exhibiting suicidal behavior, four respondents were alleged to be dangerous to others, and two were thought to be a danger to themselves and/or others. Additionally, five FROs were filed in response to mental health issues or dementia, two were in response to domestic violence, and two cited “shots fired”. In 2020, six FROs were sought due to concerns of self-harm by the respondent, eight were filed in response to threats of harm to others, and two reported the respondent was a potential danger to themselves and others.

Speak for Safety demographic data indicated two 2019 FRO respondents were women, while the rest were male; in 2020, all respondents were male (when sex was known). When race of the respondent was known, all were reported as White in both 2019 and 2020. In 2019, the ages of respondents ranged from 19 to 88, with an average of 52 years old. Ages of respondents were only available for three 2020 FROs; respondents were 47, 54, and 82 years of age.

Nine FROs filed in 2019 and 2020 resulted in an emergency order followed by a six-month order. In both years, five filed FROs resulted in a six-month order with no emergency order sought. Twelve emergency FROs were granted and in those cases either no six-month order was sought or the status of the six-month order was unknown. In two instances, an emergency FRO

was granted and the six-month order was denied. In three instances, an emergency FRO was sought and the order was denied or dismissed. No information was available on order types and outcomes for 22 petitions filed in the years examined.

Speak for Safety also reported the numbers of firearms temporarily seized in 2020 ranged from one to 156 per FRO, with an average of 16.5 and a median of six firearms recovered.

Expansion of FRO Training in Illinois

HB1092, passed by the Illinois legislature in May 2021, includes provisions to expand training and awareness of FROs to various groups. The law requires the Illinois Law Enforcement Training and Standards Board to develop a police training curriculum on using FROs, with a specific provision on promoting the use of FROs in domestic violence situations. The Illinois Department of Public Health (IDPH) is tasked with developing a FRO awareness program for the general public via online resources or pamphlets. IDPH is also required to create materials that increase awareness of situations where a FRO may be appropriate, including instances of domestic violence and mental health crises or for anyone at risk of harming themselves or others. Additionally, IDPH is tasked with producing materials to aid health care workers on identifying victims of domestic violence who may benefit from a FRO and how to discreetly discern if an abuser possesses a firearm. Lastly, the law created a 12-member commission to advise on education and implementation strategies around the FRO law. The commission will produce an annual report and develop a model policy to be implemented across agencies in Illinois.

Research on FROs and Similar Types of Laws

Evidence on FRO law usage in many states indicates a lag time between the laws' passage and the point at which they are used with reasonable frequency.³¹ However, two states displayed exceptions. After Maryland's FRO law was enacted, the courts recorded 148 applications of the law to seize firearms within the first three months. Florida saw over 1,000 usages of its law nine months after passage.³² Much variation exists within states, with some counties employing FRO laws much more frequently than others.³³ For example, in Indiana, the majority of FROs were filed in Marion County, Indiana's most populous county.³⁴ In Connecticut and Indiana, the two states that have had FRO laws in effect the longest, firearm seizure actions have affected less than 0.05% of gun owning households in each state.³⁵ Illinois trends are similar; two years after legislation, FROs were not frequently used and a single county (DuPage) accounted for the majority of Illinois filings.

Research indicates consistency on how FRO legislation is applied across states. Four years after California's law was passed, law enforcement officers accounted for nearly all petitioners (96%).³⁶ Similarly, Washington law enforcement officers accounted for 86% of all petitioners.³⁷ In contrast, a 14-year study of Connecticut's FRO law revealed half of petitioners were family members, employers, or clinicians.³⁸ Across numerous studies in various states, FRO respondents were overwhelmingly male.³⁹ In Connecticut, an average of seven firearms were removed per FRO served; in Indiana, an average of 2.7 firearms were removed.⁴⁰

Researchers estimate one suicide is prevented for every 10 to 20 FROs carried out in Connecticut; one is prevented for every 10.1 FROs in Indiana.⁴¹ Another analysis of Connecticut data found that once the law was regularly utilized (post-2007), the state saw a 13.7% reduction in firearm suicides.⁴² The same authors found a 7.5% reduction in firearm suicides following enactment of the FRO law in Indiana.⁴³ The study found evidence of a replacement effect, in which some individuals employed alternative, non-firearm means to carry out suicides, particularly in Connecticut. A significantly lower proportion of Connecticut respondent suicides were carried out with a firearm than would be expected based on aggregate statistics for the population of gun owners.⁴⁴

Results on FRO-related non-suicide outcomes have been less conclusive. One study examined the 21 instances California's FRO law was employed in cases related to mass shootings.⁴⁵ Researchers found that none of the FRO respondents went on to commit mass shootings, other homicides, or suicide during the period examined; however, the authors stated that FROs cannot be causally linked to the absence of violence in these cases.⁴⁶ A study of Indiana's FRO law found that 2% of respondents were arrested for a gun-related crime within the following year and that about 15% were arrested for any crime during the one-year follow-up period.⁴⁷ More research is needed to better understand the impact of these laws on non-suicide outcomes.

Limitations and Criticisms of FRO Laws

Critics of FRO laws argue they infringe on Second Amendment rights and that law enforcement should not be involved if no crime has been committed.⁴⁸ Some local law enforcement agencies refuse to carry out gun removals resulting from FRO laws.⁴⁹ Challenges to FRO laws have been heard by courts in Connecticut, Indiana, and Florida, all of which upheld the constitutionality of such laws.⁵⁰

Similarly, some Illinois counties have encountered pushback. Sixty-four counties have passed resolutions to declare themselves "sanctuary counties" implying that sheriffs and other law enforcement officials will employ their discretion and may choose not to enforce gun laws they believe to be unconstitutional.⁵¹ However, data indicate a small number of FROs were carried out in those counties.

Some law enforcement departments suggest carrying out firearm seizures related to FRO laws is overly time-consuming. The Seattle Police Department addressed this by forming a team that specifically handles firearm removals pursuant to domestic violence and FRO laws.⁵² In contrast, some police officers reported supporting Indiana's FRO law because they are often put in danger when responding to a person in crisis who is in possession of a firearm.⁵³ One survey found that FRO laws are supported by about three-fourths of non-gun owners and two-thirds of gun owners.⁵⁴

Future Directions for FRO Laws and Research

The Consortium for Risk-Based Firearm Policy highlights training for law enforcement, judges, and other court staff as critical to effective implementation of FRO laws.⁵⁵ The 2021 expansion of Illinois' FRO law requires the Illinois State Police to provide an annual report to the General Assembly or provide statistics on their website detailing how many FRO petitions are filed. More research is needed on how FRO laws impact mental health treatment-seeking behavior by individuals whose firearms were seized.⁵⁶ The Colorado FRO law requires the appointment of counsel for the respondent to rectify an imbalance of power when the State is the petitioner; future research should examine the impact of this directive on court outcomes in FRO proceedings.⁵⁷ Additionally, further consideration should be given to how voluntary firearm surrender and voluntary self-prohibition policies can work in tandem with FRO laws.

Conclusion

Many states, including Illinois, have recently passed laws allowing for civil court-ordered temporary firearm removal from individuals at risk of committing firearm violence. FRO laws aim to restrict firearm access among individuals who are judged to be a potential danger to themselves or others. Research suggests that in states where laws similar to Illinois' FRO law have been in place and used regularly for many years are associated with reductions in firearm suicide. However, more research is needed to examine the effectiveness of these types of laws in preventing firearm injury. Data indicate only 53 FROs were filed in Illinois in 2019 and 2020; therefore, few conclusions can be drawn about the impact the policy has had thus far. Additional information on implementation and barriers to FRO law application would inform practitioners on whether the infrequent use stems from a lack of public awareness, lack of law enforcement training, or other reasons. The FRO law's recent expansion, which outlines strategies for increased training and awareness, aims to address some of these potential barriers and will likely provide more comprehensive information on Illinois FRO usage in the coming years.

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