PROTECTION ORDERS, ORDERS TO SURRENDER WEAPONS AND EXTREME RISK PROTECTION ORDERS INFORMATION

June 8, 2018

Disclaimer: This information is not a WASPC Model Policy. It is, however, a model policy substantially adopted by the King County Chiefs Association and the Snohomish County Chiefs Association, and is provided here as information available to law enforcement agencies seeking to review/revise their related policies.

WASH STATE LAW ENFORCEMENT TRAINING, POLICY AND PROCEDURE CHECKLIST

In 2014, in recognition of the risks survivors face when their abusers can access firearms, the Washington State Legislature unanimously passed ESHB 1840 (RCW 9.41) to add Orders To Surrender Weapons to Protection Orders. In 2015, the Legislature passed SB 5381, known as "Sheena's Law," which requires all law enforcement agencies to develop policies for storing surrendered firearms, procedures for notifying family members when firearms are being returned, and procedures for checking various databases to verify that the person requesting return of a surrendered firearm is eligible to possess firearms. In 2016, the voters adopted I-1491 (RCW 7.94) authorizing Extreme Risk Protection Orders. And in 2016, the Legislature passed HB 1501 regarding actions law enforcement must take when they become aware through a failed background check that a person prohibited from possessing firearms has attempted to purchase firearms. The following checklist was designed to assist law enforcement agencies throughout the State of Washington to ensure that training, policies and procedures concerning Protection Orders, OTSWs, ERPOs, Domestic Violence and firearms prohibitions are in compliance with current law and are as effective as possible in reducing risk through use of recommended best practices.

Agencies are encouraged to carefully review the checklist, compare the checklist recommendations with existing Department training, policies and procedures, and complete any updates as needed. Some agencies have ERPO and OTSW policies and training distinct from those for other types of court orders, as well as for domestic violence, and voluntary surrender of firearms. Other agencies combine these topics. Some put more detail in policy; others have briefer policies and put more in their procedures. The purpose of the checklist is to help ensure the critically important elements are addressed regardless of how the agency organizes its training, policies and procedures. A model policy that incorporates both policy and procedure suggestions for three primary areas (Protection Orders, OTSWs, and ERPOs), is available to all Departments at: www.WASPC.org, under Program Services → Model Policies. This indexed document also includes suggested language updates and considerations for domestic violence policies and procedures, as well as forms and templates.

GENERAL

- □ Policy and training explain that one of the most important ways to significantly enhance the safety of domestic violence victims, those requesting protective orders, their families and law enforcement, is by enforcing court orders that prohibit individuals from possessing firearms. Policy and training provides a brief overview of the importance of a risk-based, prevention of harm approach to improve the safety of intimate partners, family members, the community and law enforcement, prioritizing temporary removal of weapons from those known to pose greater risk.
 - Research shows that domestic violence abusers have high rates of recidivism, when they have access to firearms the risk of lethality is significant, and the lethality risks are even higher immediately after a victim indicates she is leaving the relationship, which may occur at the time of 911 calls or when protection orders are first served.
 - Research shows that laws that prohibit respondents to domestic violence protection orders from purchasing and possessing firearms are associated with reductions in intimate partner homicide, and <u>enforcement</u> of these prohibitions leads to further reductions in intimate partner homicide rates.
 - In the United States, a woman is fatally shot by her partner every 16 hours.

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- When a gun is present in a domestic violence situation, a woman is five times more likely to be murdered.
- In more than half of the domestic violence homicides in Washington State from 2006-2015, the defendant had previously been ordered to surrender firearms.
- Batterers also employ guns as tools of intimidation against their partners and children. An estimated 4.5 million women in the U.S. have, at one time, been threatened with a gun by an intimate partner.
- Exposure to domestic violence and firearms violence negatively impacts the well-being of children.
- D Policy and training provide clear, legally sufficient definitions for those persons listed in court orders:
 - Family or Household Member
 - Intimate Partner
 - Petitioner
 - Protected Person
 - Respondent
 - Restrained Person
- Policy and training provide clear information about the following types of court orders. Information includes the types available, who may obtain, what the order prohibits, what constitutes a criminal violation of each order type and crime classifications, mandatory arrest situations with order violations, penalties for violations:
 - No Contact Order
 - Protection Order (DVPOs, SAPOs, VAPOs, Anti-Harassment, and Stalking; see: http://protectionorder.org)
 - Ex Parte Protection Order
 - Restraining Order
 - Order to Surrender Weapons
 - Extreme Risk Protection Order (ERPO)
 - Ex Parte ERPO

INITIAL ENTRY OF COURT ORDERS

- Delicy establishes who has responsibility for entering court orders into State and Local databases.
- Policy provides language to ensure expediency of entering court orders, emphasizing that orders, including temporary orders, should be entered the same day they are received whenever possible, so that all law enforcement personnel are aware of them, that timely, accurate and complete entry is also important to ensure proper tracking of orders and to be able to work effectively inter-jurisdictionally.

PREPARING ORDER FOR SERVICE

- Policy and training explain the importance of understanding risk factors in domestic violence situations, that the risk of lethality to a Petitioner is heightened upon a Respondent's first notification of an order, and that timing of order service and any required surrender of weapons should be prioritized to occur as expediently as possible based on factors considered in the risk assessment. Factors that should be taken into consideration during the risk assessment include:
 - Prior incidents of assault (domestic violence and non-domestic violence)
 - Prior incidents of assault or threat against children

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- Prior incidents of assault against law enforcement
- Any type of physical violence, stalking or sexual harm toward victim
- Threat to harm or kill victim or others
- Conviction or arrest involving violent acts
- Presence of firearms or other dangerous weapons
- History of alcohol or substance abuse
- Violence against animals
- Behavioral crisis indicative of dangerousness to self and/or others including suicidality
- D Policy establishes responsibility for creating a service packet for order-serving personnel.
- Policy provides clear direction to conduct research prior to service and inclusion of key information with the packet to help reduce risks associated with service:
 - Clear list of items to be included with information packet (for serving personnel only and not for release to the Respondent (such as the LEIS, which is never to be served on the Respondent)
 - Clear list of items to be served on the Respondent
- D Policy requires supervisor to conduct a risk assessment prior to attempting order service:
 - Policy includes factors to be taken into consideration during the risk assessment.
 - Policy includes minimum staffing considerations for serving orders deemed to be high-risk.
- Policy provides instructions on what to do if a court order is not sufficient for service (such as incorrect address, wrong jurisdiction, missing expiration date, or unsigned.)
- D Policy requires serving personnel to conduct a thorough review of the service packet prior to service.
- □ Policy establishes a high priority on serving the order in an expedited timeframe.

SERVICE OF ORDERS

- Policy and training explain the importance of reading the order and the Petition thoroughly, being cognizant of all firearms that the Respondent may possess or have access to, and making sure that all firearms are surrendered at the time the court order is served (that just like a No Contact Order or other type of order, the obligation to comply with the order is effective when the person is served.)
- Policy and training explain that every box on the Return of Service form must be marked for each document that was required to be served, including the separate boxes for OTSWs, or the court may find that the service was incomplete and will require further service, which causes delay in being able to enforce the court order.
- Policy and training emphasize that while the law allows for private individuals to serve orders, non-law enforcement service should be discouraged due to increased risk.
- Policy and training encourage ongoing attempts to complete order service and how to increase the likelihood of service as well as the number of attempts that should be made.
- Policy and training provide information about the importance of completing service within a specified timeframe to avoid the delay of court hearings (because that means the Respondent has continued access to any firearms.)
- Policy and training instruct serving personnel to document each attempt of service, any attempts by the Respondent to avoid service, along with any observations about the presence of firearms, concerns about the Respondent's behavior or assertions of non-possession contrary to other information, of which the court should be aware.
- Policy and training provide instructions to separate Respondents from Protected Persons during service whenever possible.

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- Policy and training provide instruction on how personnel should take reasonable steps to help safeguard the Protected Person.
- □ Policy and training provide direction for handling expired orders.
- Policy and training direct personnel to notify the Petitioner when an order cannot be served, since that may affect the safety of the Petitioner and any children.
- Policy and training provide instructions for specific items to serve on the Respondent. Instructions include proper documentation of service.
- □ Policy and training provide instructions on what to do when attempts at service are not successful.

ORDERS TO SURRENDER WEAPONS (OTSW)

- Policy and training direct assigned personnel to verify all firearms from any available information (including police reports leading to the order, information in the petition about firearms, CPL information, additional information the Petitioner may have about the number, type and location of firearms), and explain that while the Petition or order may not have details about *all* weapons, an OTSW requires that the Respondent not purchase, possess or have custody or control of *any* weapon, so personnel should also ask the victim separately for ALL firearms to which a Respondent has access to or is in possession of, in addition to any firearms specifically listed in the order.
- Policy and training explain that personnel should not share any list of Respondent's firearms with the Respondent unless asking about a firearm that has not been turned over *after* the Respondent has relinquished their firearms (so as to not limit the firearms surrendered, since there are often more in the Respondent's possession than law enforcement knows about.)
- □ Policy and training provide instructions to personnel to ADVISE the Respondent when serving an OTSW that the court has ordered that *all firearms in his or her custody, control, or possession, and any CPL, must be immediately temporarily turned over to law enforcement for safe-keeping;* that this is a temporary court order, law enforcement will retain the firearms for safe-keeping, and the Respondent can contest it at the hearing.
- □ Policy and training provide instructions on what to do when a Respondent denies possession of firearm(s).
- □ Policy and training provide instructions to personnel for when a Respondent reports that his/her firearms were transferred to another party or sold (which is a violation of a court order if it occurs after service.)
- Policy and training instruct serving personnel on when to ask for consent to search a Respondent's residence or vehicle.
- D Policy and training provide information about applying for search warrants in certain situations.
- Policy and training instruct serving personnel to take possession of all firearms that are surrendered, are in plain view, or are discovered pursuant to a lawful search.
- Policy directs personnel to provide the Respondent with a receipt for all surrendered firearms, and to file the receipt and the completed form called "Proof of Surrender" (not the form called "Declaration of Non-Surrender") with the court within 72 hours after the service of the order.

REFUSAL TO SURRENDER WEAPONS

Policy and training provide guidance and instructions to personnel on what to do when a Respondent refuses to surrender weapons.

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EXTREME RISK PROTECTION ORDERS

- □ Policy and training provide a brief overview that ERPOs are an additional tool to temporarily prevent individuals who are at high risk of harming themselves or others from possessing or accessing firearms, without law enforcement having to arrest or civilly commit that person; that unlike other types of protection orders, family, household members, and police agencies may petition the court for an ERPO; and that proceeding quickly to obtain an ERPO and remove access to firearms is important given the nature of the risk.
- Policy and training provide clear guidance on when Department personnel can file for an Extreme Risk Protection Order.
- □ Policy and training provide clear procedures for Department personnel on how to complete an ERPO petition, including required information and documentation, as well as utilizing the Law Enforcement Addendum (LEA) to the Petition, which is for law enforcement Petitioners only. (The Addendum can offer the court a more complete picture of the Respondent and history than may otherwise be included in the Petition because the Petition is also designed for use by family and household members.)
- Policy and training provide clarification as to court(s) of jurisdiction (e.g. municipal, district, superior) for filing ERPO and Ex Parte ERPO Petitions.
- Policy and training provide information about processes utilized by court for ERPO and Ex Parte ERPO Petitions (e.g. hearing, in-session, in-person testimony, etc.).
- Policy and training provide instruction on how to handle a situation with an ERPO where there is a refusal to relinquish the firearm(s) or denial of access, possession or control of any firearms contrary to information.
- □ Policy and training provide instruction on how to handle access to firearms owned or possessed by others in the household, so that they understand both they and the Respondent may be subject to enforcement if access is allowed.
- □ Policy and training provide information about how to obtain, process, and serve any subsequent search warrants issued by a court following a review of non-surrender with an ERPO.

SURRENDER, STORAGE AND RETURN OF FIREARMS

- Policy emphasizes the importance of making voluntary surrender of firearms as easy and as immediate as possible to reduce risk of ongoing possession or access to firearms and states that Department will accept and document surrendered firearms regardless of where a Respondent resides.
- Policy requires personnel to record as soon as possible in the appropriate database which firearms were surrendered and when, to ensure that verification of compliance with the Court Order can be determined.
- Delicy sets forth procedures on how a Respondent may surrender firearms, minimizing delay and difficulty.
- Policy establishes that surrendered firearms and CPLs will be stored for safekeeping (using the Respondent's name or the name of the person who turned them in, with the OTSW/ERPO number, so that compliance can be verified.)
- Policy explains that firearms are stored with the expectation that if possession is again permitted, the firearms will be returned in the same condition.
- Policy establishes criteria that must be met and best practices for records search to ensure the owner is not a prohibited possessor prior the release or return of any surrendered firearms.
- Policy requires timely notification of the Protected Person of surrendered firearms to be returned (and the Petitioner, if different) so that there is an opportunity to provide current or additional information to the court about ongoing risk of harm prior to return.

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Policy instructs what the LEA should do if they receive a CPL for surrender that was issued by another LEA (to ensure that the issuing LEA takes the necessary steps required by law.)

DOMESTIC VIOLENCE

Agencies should carefully review and update training, policies and procedures related to Response and Investigation of Domestic Violence Incidents to ensure firearms aspects have been updated. Recommended updates include:

- Policy and training establish that it is a priority of the Department to timely serve and enforce protective court orders, and to track and report on orders received and enforced as part of Department performance measures.
- Agencies with Communications Centers should ensure that call-takers inquire about accessibility of firearms with all domestic violence calls, and that available information is provided to responding personnel before they arrive at the scene.
- Policy and training direct that officers should separate involved parties so that the victim is out of the hearing range of the alleged suspect at the scene, prior to any inquiry by the responding officers.
- Policy and training establish that temporary removal of firearms for safekeeping is within community caretaking authority given known risks of ongoing access to firearms by domestic violence abusers; <u>permission of both parties is</u> <u>not requisite, nor is use of the firearm in the incident.</u>
- Policy and training direct that PRIOR to asking for the temporary removal of firearms, responding personnel should inquire of the victim about all firearms to which the suspect has access, control, or possession, so that there is a complete record for future court proceedings. The inquiry should make clear to the victim that the officer is not just asking about whether a firearm was used at that time (i.e., the suspect may keep a firearm in plain sight in a manner that is coercive; the suspect may have threatened use of firearms in the past; the suspect may have additional firearms in a vehicle, etc.) Personnel should be advised that use of a firearms pictures tool may help with descriptions.
- Policy and training direct responding personnel to comprehensively document in incident reports details about all firearms to which a suspect may have access, control or possession, to help reduce the risk to victims, families and law enforcement of ongoing access to firearms.
- Policy and training direct that responding personnel should ask the victim for permission to remove all accessible firearms temporarily for the safety of the victim, family and others until the court holds a hearing.
- □ Policy and training instruct responding personnel to provide victims, family, or household members with information and resources about orders (including OTSW and ERPO) that may be available for their protection. Personnel should be advised that situations that don't meet the criteria for domestic violence orders may be appropriate for ERPOs.
- Policy and training clearly instruct personnel to enforce any order restricting a Respondent's ability to have contact with a victim and to take appropriate arrest action when there is probable cause to believe an order was violated.
- Policy and training instruct personnel to complete a substantive investigation of the incident leading to the domestic violence call. Policy and training include details about information to include in report, and provide an understanding of risk factors to which personnel should be attentive.
- □ Policy requires all offense reports are documented under the appropriate crime classification with department code for Domestic Violence (RCW 10.99.030(11)). Departments should also have a code for reports where there are firearms, so that those cases are appropriately followed up on by supervisors, prosecutors and judicial officers.
- □ Policy requires the Department to forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed (RCW 10.99.030(9)).

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(Note: Sections in orange are specific to Snohomish County agencies and sections in green are specific to King County agencies)

INTRODUCTION (note: a longer and a shorter version are included as examples below)

Domestic violence is a serious crime against victims, families, and society. Domestic violence laws emphasize the criminal nature of domestic violence and establish enforcement of the law, victim safety, and offender accountability as the priorities for the law enforcement response. The failure of any law enforcement officer to properly respond and handle a domestic violence call in accordance with existing law and agency procedure is a violation of this department's policy,

Every response to a domestic call will include a substantive investigation of the incident leading to the call. Officers responding to a domestic violence call will complete a thorough investigation and shall take a complete offense report to include:

- Background information detailing the relationship;
- domestic violence history (risk assessment factors);
- the presence, possession, and availability of firearms;
- injuries and complaints of pain;
- victim and witness statements to include children in the home;
- physical evidence to include photos of injuries and scene, text messages, clothing and weapons;
- the attempt to locate and physically arrest the suspect.

Officers will complete the Domestic Violence Report Checklist and Domestic Violence History forms as part of their investigation and report.

Officers are authorized to provide assistance by offering, facilitating, or arranging transport for a domestic violence victim and children to a hospital for treatment, or to a place of safety or shelter.

In any criminal domestic violence incident, officers will provide the victim with a victim services information sheet detailing resources available to the victim.

If an officer has probable cause to believe that a crime has been committed, the officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. If the suspect is not present for arrest, officers will broadcast probable cause for arrest and make a reasonable effort to locate and arrest the suspect.

In all domestic violence incidents, officers will make inquiry with the victim and any witnesses to get as much information as possible about any firearms the suspect has possession, access to, or control over. This will include firearms that may be in the residence but are owned by other parties, or firearms that are stored or kept in locations outside of the residence or location of the incident, or held by other family members for the suspect. Officers will provide as much detail as possible about such firearms in the police report. If the firearms are jointly in the custody of the victim, witnesses, or other parties at the location, officers shall ask if the firearms may be removed by law enforcement and impounded for safekeeping. If the firearms are solely under the control

of and only accessible by the suspect, officers will make the same inquiry with the suspect.

Court orders are issued by the courts to protect victims of domestic violence and to prevent possession of firearms by domestic violence offenders or others that exhibit that they are at a high risk of harming themselves or others. These orders include:

- Domestic Violence No Contact Orders
- Domestic Violence Protection Orders
- Order to Surrender Weapons
- Extreme Risk Protection Orders

It is the policy of this agency to locate and serve in a timely manner Respondents to such orders and to enforce the terms of these court orders. Officers responding to an order violation call will complete a thorough investigation. Officers will enforce any order restricting the Respondent's ability to have contact with a victim by arresting and taking the Respondent into custody if the officer has probable cause to believe that the Respondent has violated the terms of that order. If the suspect is not present for arrest, officers will broadcast probable cause for arrest and make a reasonable effort to locate and arrest the suspect.

All domestic violence incident calls and domestic violence order violation calls will be investigated thoroughly enough to minimize the need for follow-up and with a goal of being able to prosecute the case without victim participation or cooperation if necessary.

Domestic violence calls can be highly emotional situations and should be considered as an officer safety risk as well as a risk to victims. Officers will always approach in-progress domestic violence incidents with a sufficient number of responding officers and using appropriate caution and tactics.

BACKGROUND

The purpose of domestic violence laws in the State of Washington is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse with the law and those who enforce the law can provide. In 1979, the Washington State Legislature found that existing criminal statutes were adequate to provide protection for victims of domestic violence. However, previous societal attitudes reflected in policies and practices of law enforcement agencies and prosecutors resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the Washington State Legislature that the official response to cases of domestic violence stress the enforcement of the laws to protect the victim and communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the Washington State Legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

In 1984, the Legislature enacted the Domestic Violence Prevention Act (RCW 26.50) creating orders for protection to further the tools available to protect victims of domestic violence.

The Legislature further recognized that in the effort of seeking protection from batterers and other violent persons, victims, family members, Petitioners, and law enforcement personnel face significant risks. In the United States, based on an analysis of FBI and Florida State homicide reports, a woman is fatally shot by her partner every 16 hours. Research shows that people with a history of domestic violence are five-times more likely to murder their partner if there is a firearm in the house. A 2016 report from the National Law Enforcement Officers Memorial Fund found that calls related to domestic disputes and domestic-related incidents resulted in more police fatalities than any other type of call. Further, research reveals that a woman's risk of homicide is highest when she is trying to end the relationship. For these reasons, in 2014, the Washington State Legislature unanimously passed a law requiring immediate surrender of weapons for certain persons subject to Protection Orders.

In addition, in 2016, the Washington voters authorized a new type of order, the Extreme Risk Protection Order (ERPO), mandating immediate removal of firearms from those posing risk of harm to self or others, such as individuals in crisis.

Swift order service, along with temporarily removing firearms for safekeeping at the time of service, particularly for those Restrained Persons who present the greatest risk, is critically important.

This policy is designed to provide law enforcement personnel with clear definitions, direction, and procedures for response to domestic violence incidents; entry, service, and enforcement of all types of court orders, including Extreme Risk Protection Orders and Orders to Surrender Weapons, to most effectively reduce risk of harm to victims, the community, and law enforcement.

This model policy and procedures may be supplemented and/or updated as needed based on changes in the law or best practices as recommended by the Snohomish County Sheriff and Police Chiefs Association.

[shorter alternative intro: In the effort of seeking protection from batterers and other violent persons, victims, family members, Petitioners, and law enforcement personnel face significant risks. In the United States, based on an analysis of FBI and Florida State homicide reports, a woman is fatally shot by her partner every 16 hours. And research shows that people with a history of domestic violence are five-times more likely to murder their partner if there is a firearm in the house. A 2016 report from the National Law Enforcement Officers Memorial Fund found that calls related to domestic disputes and domestic-related incidents resulted in more police fatalities than any other type of call. Further, research also tells us that a woman's risk of homicide is highest when she is trying to end the relationship. For these reasons, in 2014, the Washington State Legislature unanimously passed a law requiring immediate surrender of weapons for certain persons subject to Protection Orders.

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DEFINITIONS

<u>Family or Household Member</u> – Individuals who have the following types of relationships with a Respondent/Restrained Person:

- Persons related by blood, marriage or adoption
- Dating partners. Persons 13 years of age or older in a dating relationship with a person 16 years of age or older
- Persons with a child in common, regardless of whether such persons have been married or have lived together
- Persons who reside or have resided together (for an ERPO, the persons must have resided together within the past year)
- Domestic partner
- Person in a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren
- Persons acting or have acted as the Respondent/Restrained Person's legal guardian

<u>Intimate Partner</u> – A person who is or was married, in a state-registered domestic partnership, or in an intimate or dating relationship with another person at the present or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time, shall be treated as an Intimate Partner.

<u>Petitioner</u> – The person who files the initial case. In most cases, the person who initiates the case is also the Protected Person. In some situations, where there is an overarching family law case, such as a dissolution, or parenting plan, the person who initiated that case may be listed as the Respondent/Restrained Person on the Protection Order.

<u>Protected Person</u> – The person who asks the court to issue a Protection Order. The Protected Person may be either the named Petitioner or Respondent, depending upon the type of case, as noted above. In the case of ERPOs, there is no Protected Person; rather there is a Petitioner, who may be an individual or a law enforcement agency.

<u>Respondent</u> – The person who initially must respond to the case filed by the Petitioner and who is the "Restrained Person". In an Extreme Risk Protection Order, the Respondent is always the person ordered to surrender firearms/concealed pistol license.

<u>Restrained Person</u> – The person to whom the order applies. A Restrained Person may be prohibited from having contact with the Protected Person or other family member, or having access to any firearm and concealed pistol license.

TYPES OF ORDERS

(See also: https://wscadv.org/wp-content/uploads/2015/06/WA-State-Civil-Safety-Order-Comparison-Chart.pdf)

<u>Court Orders</u> – Court orders come in many forms and may be issued by a Superior Court, Juvenile Court, District Court, Municipal Court, other states, or a Tribal Court. For some orders, the court may issue an Ex Parte Order (a temporary/emergency order obtained after hearing only from the Petitioner) that is effective until the court holds a hearing with both the Petitioner and Respondent having been given notice of the hearing. Different types of orders include:

- No Contact Order No Contact Orders may be imposed as part of a criminal proceeding, usually during a defendant's first court appearance. The order is served in court, and does not require a petition, request, or approval from the victim. No Contact Orders can be issued in any Superior, District or Municipal Court. No Contact Orders may be issued for the following types of criminal events:
 - a. Domestic Violence (RCW <u>10.99</u>)
 - b. Promoting Prostitution (RCW <u>9A.88</u>)
 - c. Trafficking (RCW <u>9A.40</u>)
 - d. Harassment (<u>9A.46</u>) Obtained by a person alarmed, annoyed or harassed by another person.
 - e. Stalking (RCW <u>7.92.160</u>) When any person charged with or arrested for stalking as defined in RCW <u>9A.46.110</u> or any other stalking-related offense under RCW <u>9A.46.060</u> is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim does not qualify for a domestic violence Protection Order under chapter RCW <u>26.50</u>, the court authorizing release may issue, by telephone, a stalking no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

2. Protection Orders and Ex Parte Protection Orders – Civil order obtained by a person who has been assaulted or who fears abuse. These types of orders are issued at the request of an alleged victim. Presence of a related criminal case is not required. Protection Orders are most often issued by Superior and District Courts. Some Municipal Courts accept Protection Order filings, but not all. Some orders must originate in District Court, while others can be filed directly into Superior Court. When the person seeking protection alleges that harm could result if an order is not issued immediately without prior notice to the Respondent, the court may grant an Ex Parte Temporary Protection Order, which lasts until the full hearing, for which the Respondent will be served notice. Some Temporary Orders entered in District Court will be transferred to Superior Court for the full hearing (most commonly when children are involved.)

The following types of Protection Orders are available:

- a. Domestic Violence (RCW <u>26.50</u>)
- b. Vulnerable Adult (RCW <u>74.34</u>) Obtained by a vulnerable adult or an interested person on behalf of a vulnerable adult.
- c. Stalking (RCW <u>7.92</u>) Obtained by a person who does not qualify as a family or household member for a Protection Order under RCW <u>26.50</u> and who is a victim of stalking conduct. The order can also be obtained by an interested person on behalf of a vulnerable adult or the legal guardian of a minor child.
- d. Sexual Assault (RCW <u>7.90</u>) Obtained by a person who does not qualify for a Domestic Violence Protection Order and is a victim of non-consensual sexual conduct or non-consensual sexual penetration, including a single incident.
- e. Anti-Harassment (RCW 10.14) Obtained by a person who does not qualify for a Stalking Order and who is the victim of unwanted continuing contact that seriously annoys, alarms, or causes distress. Courts often require a showing that the person being harassed has made it clear to the other party that they want no further contact. There are filing fees for this type of order but fees can be waived if the person filing is low-income.

Orders to Surrender Weapon Issued Without Notice entered at the time of the Temporary Domestic Violence Protection Order are becoming more common. Personnel should look through all order paperwork sent for service to see if this type of order has been granted. Refer to the "Service of Orders" section for more details.

 Restraining Order (RCW <u>26.09</u>, <u>26.10</u>, <u>26.44</u>) – Temporary and Permanent Restraining Orders are generally filed as part of an existing family law case, generally in conjunction with divorce proceedings or child custody cases. Restraining Orders may also be granted when there are allegations of domestic violence, child sexual or physical abuse by a parent or family member.

- 4. Order to Surrender Weapons (OTSW) and Order to Surrender Weapon Without Notice (OTSWWN) (RCW 9.41.800) – Depending on the facts, a court must or may order a party to surrender any firearm or other dangerous weapon. The court directs surrender to law enforcement, to the party's legal counsel, or to any person designated by the court. An Order to Surrender Weapons is generally issued in conjunction with other orders and requires a Respondent/Restrained person to:
 - a. Immediately surrender all firearm or other dangerous weapons;
 - b. Surrender any concealed pistol license issued under RCW 9.41.070;
 - c. Prohibit the party from obtaining or possessing firearms or other dangerous weapons;
 - d. Prohibit the party from obtaining or possessing a concealed pistol license.
- 5. Extreme Risk Protection Order (ERPO) (RCW 7.94) A court order that temporarily suspends a person's access to firearms if there is evidence that the person is threatening to harm him or herself or others. Unlike a No Contact Order or Protection Order, ERPOs do not restrict contact with persons or locations. ERPOs are limited to restricting access to firearms. Because of the risk of violent behavior, the person, who is called a "Respondent" in the ERPO, is ordered by the court to immediately turn over all firearms and any concealed pistol license to law enforcement. The Respondent is also directed not to have a firearm in his or her custody or control, and not to purchase, possess, receive, or attempt to purchase or receive a firearm.

A family or household member or a law enforcement officer or agency may ask the court to issue an ERPO by filing a petition. No criminal case is needed. The law defines a family or household member as any of the following:

- Person related by blood, marriage, or adoption to the Respondent;
- Dating partner of the Respondent;
- Person who has a child in common with the Respondent, regardless of whether such person has been married to the Respondent or has lived together with the Respondent at any time;
- Person who resides or has resided with the Respondent within the past year;
- Domestic partner of the Respondent;
- · Person who has a biological or legal parent-child relationship with the Respondent, including stepparents and stepchildren and grandparents and grandchildren, or;
- Person who is acting or has acted as the Respondent's legal guardian.
- 6. Ex Parte Extreme Risk Protection Orders

This Temporary Order is issued by the court without notification to the Respondent. A full ERPO must be issued by Superior Court following a hearing with notice to the Respondent; however, an Ex Parte ERPO may be initially issued by District or Municipal court and transferred by the court to Superior Court for the full hearing and final order (RCW 7.94.030(10)) and (RCW 7.94.050).

Petitioners may request the issuance of an Ex Parte ERPO prior to a full hearing, by including facts in the Petition that based on personal knowledge the Respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. Providing notice of the hearing to the Respondent may increase the danger to the Petitioner or others. The court may factor this in their decision to issue an Ex Parte ERPO.

If a court finds there is reasonable cause to believe that the Respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, (and may also note that providing notice increases danger to the Petitioner or others), the court shall issue an Ex Parte ERPO.

ORDER VIOLATIONS

A violation of an order may constitute a criminal offense if:

- 1. The order was in place <u>AND</u>
- 2. The offender knew about the order AND
 - The offender engaged in any type of prohibited contact, OR
 - The offender possessed or attempted to possess a firearm (ERPO/OTSW/DVPO's)

Violations may be:

- Gross Misdemeanor If the violation did not involve an assault or reckless endangerment and if the Respondent/Restrained Person does not have two prior convictions for violating an order.
- Class C Felony for some types of Protective Orders) If the contact involved assault or reckless endangerment or if the Respondent/Restrained Person has two prior convictions for violating an order.

Mandatory Arrests for Some Court Order Violations

Personnel are encouraged to contact and consult with appropriate prosecutors regarding questions about Court Order violations. Personnel should also contact the Law Enforcement Agency responsible for entering the order to do a hand search, if they do not see the order in WACIC. Per RCW 26.50.115(3), presentation of an unexpired, certified copy of a Protection Order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system.

Per RCW <u>10.31.100(2)(a)</u>, officers are mandated to make arrests for some Court Order violations:

- 1. A Respondent/Restrained Person has violated the terms of an order by committing an act or threat of violence, <u>and/or</u> going onto the grounds of or entering a residence, workplace, school, or day care, or knowingly coming within or remaining within, a specified distance of a location prohibited in the order, **AND**
- 2. The type of order is one of the following:
 - Stalking Protection Order and Court-Initiated Stalking No Contact Orders (RCW <u>7.92</u>)
 - Sexual Assault Protection Order (RCW 7.90)
 - Harassment No Contact Order (RCW 9A.46)
 - Domestic Violence No Contact Order (RCW 10.99)
 - Domestic Violence Protection Order (RCW <u>26.50</u>)
 - Vulnerable Adult Protection Order (RCW <u>74.34</u>)
 - Restraining Order (RCW <u>26.09</u> & <u>26.10</u>) Front page of Order must state: "VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER RCW <u>26.50</u> AND WILL SUBJECT A VIOLATOR TO ARREST"
 - Foreign Protection Order (RCW <u>26.52.020</u>)

Additionally, per RCW <u>26.50.110</u>, arrests are mandated for violations of the following additional types of orders if a Respondent/Restrained Person knowingly comes within a prohibited residence, workplace, school, day care, or the person knowingly remains within a specified distance of a prohibited location:

- Trafficking No Contact Order (RCW <u>9A.40</u>)
- Promoting Prostitution No Contact Order (RCW <u>9A.88</u>)

ENTRY OF ORDERS RECEIVED FROM COURT

The law enforcement agency has responsibility for entering court orders into the state (WACIC/NCIC) and local databases. Orders, Including Temporary Orders, should be entered the same day they are received whenever possible, so that all law enforcement personnel are aware of them. Timely and complete entry is also important to ensure proper tracking of orders and to be able to work effectively inter-jurisdictionally.

The Entering Agency is generally the law enforcement agency with jurisdiction for where a Petitioner resides. If an order was issued by a jurisdiction's Municipal Court, that jurisdiction should enter the order regardless of where the Petitioner resides. The Serving Agency is the law enforcement agency with jurisdiction for where the Respondent/Restrained Person resides. If both Petitioner and Respondent/Restrained Person reside in the same city, the law enforcement agency with jurisdiction will both enter and serve the order.

Personnel should also notify the law enforcement agency that issued the CPL to have them inactivate the CPL.

PREPARING ORDER FOR SERVICE / CREATING INFORMATION PACKET AND SERVICE PACKET

The (Insert applicable agency division/section/unit) / Records Unit should conduct research regarding the Respondent/Restrained Person's history, and create a packet of information for personnel serving the orders. This will help ensure that service is successfully completed and will reduce risks associated with the service.

The information packet should include the following research and documents (these are not provided to the Respondent/Restrained Person):

- Whether the Respondent/Restrained Person has any outstanding warrants or has knowingly attempted to acquire a firearm in violation of federal or state law, or been denied an application to purchase or transfer a firearm as the result of a background check that indicates the Respondent/Restrained Person is ineligible to possess a firearm under state or federal law. (WACIC/NCIC check);
- Known information about the Respondent/Restrained Person's in- custody status;
- Information from State DOL regarding any concealed pistol license and pistol transfers, and firearm purchase history (if Social Security Number is known);
- State DOL photograph of Respondent/Restrained Person;
- Local / Agency records of Respondent/Restrained Person;
- Law Enforcement Information Sheet (LEIS), for law enforcement personnel use only;
- Supplemental Law Enforcement Information Sheet Firearms. The Firearm LEIS is first-hand information from the Petitioner on the types of firearms and the likely known location of the firearms.

The service packet, to be served on the Respondent/Restrained Person, should contain the following documents:

- Petition for Order for Protection and any law enforcement affidavit or other reports or documents incorporated into the petition by reference
- Law Enforcement Addendum to the Petition (for ERPOs where law enforcement is the Petitioner)
- Temporary Order for Protection and Notice of Hearing
- Order to Surrender Weapons Without Notice (this may not always be issued with a Temporary Order for Protection)
- Proof of Surrender form
- Order Transferring Case to Superior Court (if ex parte order obtained in Municipal or District court)
- Instructions explaining how weapons are to be surrendered when applicable

If a court order is not sufficient for service (e.g. expired order, unsigned order, wrong address, etc.), law enforcement personnel should contact the Court Orders Problem-Solver in the Regional Domestic Violence Firearms Enforcement Unit / clerk of the issuing

court, to resolve the problem if possible, and efforts should be made to notify the Petitioner.

SERVICE OF ORDERS

Risk Assessment

Some orders may carry more risk for the Protected Person, family, community, or law enforcement, and should be prioritized for service. The (insert applicable agency division/section/unit should submit all service packets to the on-duty supervisor for review of appropriate staffing and expertise needed for service. After completing the information and service packet, the Records Unit provide the packet to an on-duty supervisor for review and evaluation of service requirements.

The reviewing supervisor should conduct a formal risk assessment on all orders involving the surrender of weapons, including Extreme Risk Protection Orders. Prioritization of all other orders should be based on the Risk Assessment criteria noted below.

In conducting the review, the reviewing supervisor should keep in mind that the risk of lethality to a Petitioner is heightened upon a Respondent/Restrained Person's first notification of an order. Timing of order service and any required surrender of weapons should be prioritized to occur as expediently as possible based on factors considered in the risk assessment.

High-risk orders should not be served with fewer than two personnel. Factors that should be taken into consideration during the risk assessment include:

- Prior incidents of assault (domestic violence and non-domestic violence)
- Prior incidents of assault or threat against children
- Prior incidents of assault against law enforcement
- Any type of physical violence, stalking or sexual harm toward victim
- Threat to harm or kill victim or others
- Conviction or arrest involving violent acts
- Presence of firearms or other dangerous weapons
- History of alcohol or substance abuse
- Violence against animals
- Behavioral crisis indicative of dangerousness to self and/or others including suicidality.

Order Service

- 1. Prior to serving the order, assigned personnel should read the order and the petition thoroughly and verify that the correct person is being served.
- 2. Prior to serving the order, assigned personnel should verify all firearms identified in the order and from any available information, including police reports leading to the order. All firearms must be surrendered upon service.

- 3. Service is not considered valid unless the Respondent/Restrained Person is personally served, has knowledge of the order, or unless the court specifies otherwise.
- 4. The first attempt at service should, if possible, occur within 24 hours of receiving the order and service packet from the (insert applicable agency division/section/unit) / Records Unit. If the first attempt is not successful, no fewer than two additional attempts should be made to serve the order. If the Respondent/Restrained Person was determined to be high-risk, additional attempts at service should be made.
- 5. Each attempt at service should be noted in the Service Packet and reflected in CAD records, with date, time, address, and the reason service was not completed. Any known or suspected attempts by a Respondent/Restrained Person to avoid service should also be noted on the Return of Service form.
- 6. Service should be completed at least five court days prior to the hearing date (business days Monday through Friday, excluding holidays) wherever possible so that the court hearing is not delayed, which can result in ongoing risk to the victim. However, service attempts should continue until the date of the hearing.
- 7. If the Respondent/Restrained Person is in the Protected Person's presence at the time of contact for service, serving personnel should take reasonable steps to separate the parties when possible prior to completing the service or inquiring about or collecting firearms.
- 8. If the Respondent/Restrained Person is served in the Protected Person's presence, serving personnel should take reasonable steps to help safeguard the Protected Person. (See Washburn v. Federal Way, 178 Wn.2nd 732 (2013)). These steps also apply to civil standbys. Personnel should document any steps taken to ensure Protected Person's safety. Examples of reasonable steps may include:
 - If the order is served at the Protected Person's home, personnel should remain on-scene until the Respondent/Restrained Person departs.
 - If the order is served at the Respondent/Restrained Person's home, personnel should remain on-scene until the Protected Person departs.
 - If the order is served at a third-party location, personnel should remain on-scene until either the Respondent/Restrained Person or the Protected Person departs.
- 9. If the Protected Person has provided information about additional firearms the Respondent/Restrained Person has access to, personnel should take reasonable steps to obtain them in accordance with this policy/procedure.

- 10. Personnel completing the service should take steps, when needed, to ensure that the Respondent/Restrained Person understands the order (e.g. use of an interpreter).
- 11. Expired court orders shall not be served and should be returned to the Court Orders Problem-Solver in the Regional Domestic Violence Firearms Enforcement Unit.
- 12. Unsigned court orders shall not be served and should be returned to the Court Orders Problem-Solver.
- 13. Attempts should be made to notify the Petitioner if an order cannot be served.

Successful Service of Orders

- 1. Provide the Respondent/Restrained Person with copies of all the forms, **EXCEPT**:
 - Law Enforcement Information Sheet (LEIS)
 - Supplemental Law Enforcement Information Sheet Firearms
 - Return of Service Sheet
- 2. Complete the Return of Service form. Note that every box must be marked for each document that was required to be served or the court may determine that the service was incomplete and will require a continuance and further attempts to serve the Respondent/Restrained person to ensure proper service. These delays can result in additional risk to the Protected Person. Sign and date the form. Your agency's procedure may also include immediate notification of the records unit of the time and date service was completed.
- 3. Document on the Return of Service form any behavior or pertinent evidence (e.g. belligerence at time of service, threats, avoidance of service, description of firearms seen at the time of service, as well as Respondent's statements regarding possession of the firearms. This kind of information will not be available to the court unless it is included on the Return of Service form.
- 4. A supervisor should review the completed Return of Service form for thoroughness and quality control.
- 5. Attempt to notify the Petitioner/Protected Person if phone or email contact information has been provided.

Unsuccessful Service of Orders

If attempts at service are not successful, complete the Return of Service form or the form letter showing that the order was not served, stating the reason. Include all attempts made to serve the Respondent/Restrained Person, including any avoidance attempts made by the Respondent/Restrained Person. Efforts should be made to contact the protected party about the inability to serve, using the email or phone number provided.

ORDER TO SURRENDER WEAPONS

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No Contact Orders and Protection Orders may also include an Order to Surrender Weapons (OTSW). No Contact Orders issued by the court may have limited information about what firearms the Respondent possesses or has access to. Typically, in Protection Orders and Extreme Risk Protection Orders, the Petitioner will provide information as to the number and types of firearms the Restrained Person possesses, if it is known. Personnel should follow the following procedures for an OTSW:

- 1. Follow the instructions provided in the court order.
- 2. Although the order may specify specific firearms brands and models to be surrendered, personnel should also ask the victim separately for ALL firearms to which a Respondent/Restrained Person has access to or is in possession of, in addition to any firearms specifically listed in the order. Assigned personnel should verify all firearms from any available information including police reports leading to the order.
- 3. Advise the Respondent/Restrained Person that the court has ordered that all firearms in his or her custody, control, or possession, and any CPL, must be immediately temporarily turned over to law enforcement for safekeeping.
- 4. Explain to the Respondent/Restrained Person this is a temporary court order, law enforcement will retain the firearms for safekeeping, and s/he can contest it at the hearing.
- 5. If the Respondent/Restrained Person denies possession of firearm(s) or reports that firearms have been transferred to another party or sold, conduct basic investigative steps to help verify or disprove Respondent/Restrained Person's claims, to include contacting the party the Respondent claims to have transferred the firearms to. Obtain a statement if possible and a signed "Declaration of Non-Surrender." Note on the Return of Service if Respondent/Restrained Person asserts he or she possesses no weapons or a CPL.
- 6. Ask the Respondent/Restrained Person if s/he will consent to a search. (*Refer to specific agency policies concerning search procedures.*)
- 7. Consider application for a search warrant to ensure all firearms in the Respondent/Restrained Person's custody, control or possession have been surrendered. Take possession of all firearms that are surrendered, are in plain view, or are discovered pursuant to a lawful search. For victim safety, every lawful effort should be made to obtain any and all firearms at the time of the order service, rather than asking the Respondent/Restrained Person to bring firearms to the agency at a later date.
- 8. In order to reduce risk of lethality and harm, if the Respondent/Restrained Person is not physically located where his/her firearms and CPL are located, transport or follow him or her to retrieve all firearms and the CPL whenever practicable.
 - If a Respondent/Restrained Person is served in court or via mail/publication, he or she may surrender firearms and CPL to law enforcement within 48 hours of

receiving notice, rather than immediate surrender. Follow-up should be done to ensure this occurred.

- 9. Provide a receipt for all surrendered firearms and CPL to the Respondent/Restrained Person. Keep a copy for agency files. The original is to be filed with the court within 72 hours after the service of the order.
- 10. Book the firearms into evidence according to Department procedure.
- 11. Complete and sign the Return of Service form and mark the appropriate box for surrender of firearms.
 - Every box must be marked for each document that was required to be served or the court may find that the service was incomplete and will require further service of the Respondent/Restrained Person. Note that there are separate boxes for Orders to Surrender Weapons.
- 12. Attempt to notify the Petitioner/Protected Person if phone or email contact information was provided.

Refusal to Surrender Weapons

An Order to Surrender Weapons or Extreme Risk Protection Order does not by itself, grant personnel authority to enter homes to seize firearms or effect an arrest. Depending on the specific facts and observations available to personnel at the time of service there may be articulable exigencies, or keeping in mind victim, family and community safety, it may be prudent under the community caretaking function, for personnel to proceed in seizing firearms without first obtaining a search warrant. Personnel will, if feasible, consult with an on-duty supervisor in such situations, and are encouraged to consult with the police legal advisor for further guidance in this area as necessary.

If a Respondent/Restrained Person refuses to surrender firearms and/or CPL, he or she should be advised that possessing or acquiring a firearm or CPL is prohibited and that violating the order may subject the Respondent/Restrained Person to criminal and civil penalties.

If a Respondent/Restrained Person states they do not possess any firearms and there is probable cause to believe otherwise, personnel should request consent for a search. (*Refer to specific agency policies for consent to search procedures*). Failure to turn over firearms as mandated by an ERPO <u>must</u> be reviewed by the courts. If firearms are not surrendered as directed by an ERPO officers will complete a report documenting the incident for court review. See "Non-surrender" and "Search Warrant" sections under the following ERPO portion of this policy/procedure.

If the Respondent/Restrained Person fails to comply with the surrender of firearms as directed by the order, fails to provide consent for a search, and there is probable cause to believe that the Respondent/Restrained Person possesses or has access to firearms, personnel may apply for a search warrant. In the case of an ERPO court review is automatic and required.

 Absent exigent circumstances or for an articulable community caretaking function, personnel do not have legal authority to detain a Respondent/Restrained Person during OTSW or ERPO service, including the time while applying for a search warrant.

EXTREME RISK PROTECTION ORDERS (ERPOs)

An Extreme Risk Protection Order is intended to temporarily prevent individuals who are at high risk of harming themselves or others from possessing or accessing firearms. Family, household members, and police agencies may obtain an ERPO when there is evidence that a Respondent/Restrained Person poses a significant danger, including danger as a result of dangerous mental health crisis or violent behavior.

With an ERPO, there is no separate Order to Surrender Weapons. The order itself is the order to surrender. The service of ERPOs takes precedence over the service of other orders, unless the other orders are of similar emergency nature. Due to the nature of these orders, the Respondent/Restrained Person may be uncooperative and present a significant danger to Petitioners and law enforcement.

When personnel encounter a person who expresses interest in petitioning for an ERPO, information should be provided to the person about what an ERPO is and that one may be obtained at Superior Court (or at District Court or Municipal Court for a temporary ex parte order). Personnel should provide the person with an ERPO brochure or information on how to find additional resources. Available web resources include:

- http://www.protectionorder.org
- <u>https://www.courts.wa.gov/forms</u>

An ERPO is issued for one year by the court. The Respondent/Restrained Person may ask the court to cancel the order once in the 12-month period but must prove that he or she no longer poses a significant danger to self or others by having access to firearms. The Petitioner may ask the court to renew the order for another year at any time after the order has been in effect for 260 days.

Unlike all other types of Protection Orders, with ERPOs, a law enforcement officer may be the individual who files a petition for this type of order. (RCW <u>7.94.030</u>). If there is reasonable belief that a person is a present danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving or otherwise having custody of a firearm and an officer believes an ERPO would assist, the officer should review the circumstances with his/her on-duty supervisor. The supervisor will review any requests to petition the court for an ERPO with a command staff officer to approve and coordinate a petition through the department.

Personnel petitioning the court must use the ERPO petition and order forms created by the Administrative Office of the Court. In addition, a Law Enforcement Addendum to the

Petition and Law Enforcement Affidavit is available for Law Enforcement Petitioners and should be submitted with the ERPO petition.

Law Enforcement ERPO Petition Procedure

Law enforcement personnel should obtain approval from and coordinate with command personnel prior to submitting a petition on behalf of the Department for an Extreme Risk Protection Order. Consideration should also be given to consulting with the Department legal advisor (local prosecutor or Snohomish County Prosecutor's Office Civil Division) / Agency Navigator and/or one of the Regional Unit prosecutors or local prosecutor when petitioning for an ERPO. Personnel should follow the following procedures to petition for an ERPO:

- 1. Complete ERPO Petition forms. The forms are located at <u>www.protectionorder.org</u> / the Snohomish County Prosecutor's law enforcement forms website at https://snohomishcountywa.gov/DocumentCenter/Index/3836. The Petition must be completed in full, but has limited space for law enforcement information. The petition may have an "affidavit attached and incorporated by reference herein" with a detailed description of law enforcement information leading to the request for an ERPO. The affidavit form is included on the website. Information in the Petition and the affidavit should include the following:
 - Detailed explanation of why the Respondent/Restrained Person poses a significant danger of injuring self or others by having in his or her custody or control, purchasing, possessing, or receiving firearms. Explanations may include:
 - A recent act or threat of violence by the Respondent/Restrained Person against self or others, whether or not such violence or threat of violence involves a firearm;
 - A pattern of acts or threats of violence by the Respondent/Restrained Person against self or others;
 - Any behavioral issues of the Respondent/Restrained Person that might contribute to dangerousness;
 - The history of use, attempted use, or threatened use of physical force by the Respondent/Restrained Person against another person, or the Respondent/Restrained Person's history of stalking another person.
 - The number, types, and locations of any firearms believed to be in the Respondent/Restrained Person's current ownership possession, custody, or control;
 - Whether there is a known existing Protection Order governing the Respondent/Restrained Person, under chapter <u>7.90</u>, <u>7.92</u>, <u>10.14</u>, <u>9A.46</u>, <u>10.99</u>, <u>26.50</u>, or <u>26.52</u> RCW or under any other applicable statute;
 - Whether there is a pending lawsuit, complaint, petition, or other action between the parties under the laws of Washington;

- A violation by the Respondent/Restrained Person of a Protection Order or a No Contact Order issued under chapter <u>7.90</u>, <u>7.92</u>, <u>10.14</u>, <u>9A.46</u>, <u>10.99</u>, 26.50, or 26.52 RCW;
- A previous or existing ERPO issued against the Respondent/Restrained Person;
- A violation of a previous or existing ERPO issued against the Respondent/Restrained Person;
- A prior arrest or conviction of the Respondent/Restrained Person for a crime that constitutes domestic violence as defined in RCW <u>10.99.020;</u>
- The Respondent/Restrained Person's ownership or access to, or intent to possess firearms;
- The unlawful or reckless use, display, or brandishing of a firearm by the Respondent/Restrained Person;
- Any prior arrest of the Respondent/Restrained Person for a felony offense or violent crime;
- Corroborated evidence of the abuse of controlled substances or alcohol by the Respondent/Restrained Person; and
- Evidence of recent acquisition of firearms by the Respondent/Restrained Person.
- Police reports or other documents related to the ERPO petition may be referenced in the affidavit and "attached and incorporated by reference herein."
- 2. Complete Law Enforcement Addendum (LEA). The LEA Addendum to the Petition is for law enforcement Petitioners only and provides additional information regarding the Respondent/Restrained Person.
- 3. Complete the Law Enforcement Information Sheet (LEIS). The LEIS should include the Respondent/Restrained Person's full name, date of birth, address, and other identifying information (e.g. height, weight, eye color, driver's license, etc.)
- 4. In the case of a Temporary Order, prepare the Temporary Extreme Risk Protection Order form for the court and an Order Transferring Case to Superior Court. In the case of the full hearing ERPO, the court will complete the order.
- 5. Personnel should make a good faith effort to provide notice to a family or household member of the Respondent/Restrained Person and any known third parties who have been specifically identified as being at risk of violence. Personnel will attempt notification prior to filing the Petition, if possible, and if not possible, personnel will notify after filing the Petition. Notification attempts should be documented in the CAD or supplemental report.

6. Submit completed forms to the appropriate court / legal advisor for review. The legal advisor will coordinate a hearing with the clerk of the court hearing the petition. In the case of ex parte ERPOs, it is recommended that a district court or municipal court review the petition. The court clerk will assign the Petition a case number and provide a date and time for the hearing. If a temporary order is not requested, the hearing to issue the order may take place in up to 14 days, as it requires notice to the Respondent in advance of the hearing.

The Snohomish County Prosecutor's Office Civil Division will be the legal advisor for any agency submitting an ex parte ERPO to a Snohomish County District Court. Contact the Prosecutor's office for review and coordination with the court clerk for the hearing.

7. If law enforcement personnel file the Petition, they must attend the hearing(s). (If a hearing is continued and law enforcement does not appear, the court may dismiss the ERPO Petition). In the case of an ex parte order, the officer completing the Petition and Affidavit will appear before the court to answer any questions relating to the petition. The hearing will be "in session" and on the record. In the case of a full hearing, the Petitioner (or law enforcement officer) will be sworn in and must testify as to the facts supporting the order. If the Respondent is present, the Respondent (or Respondent's attorney) may cross-examine the Petitioner. The Respondent will be sworn in to testify and will also be open to cross-examination. Witnesses may be called to testify at the hearing and are also open to cross-examination.

Ex Parte Extreme Risk Protection Orders

This temporary order is issued by the court without notification to the Respondent/Restrained Person. Petitioners may request that an Ex Parte ERPO be issued before a full hearing on the Petition, by including facts in the Petition that based on personal knowledge the Respondent/Restrained Person poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. It is helpful to note as well that providing notice of the hearing to the Respondent/Restrained Person may increase the danger to the Petitioner or others.

If a court finds there is reasonable cause to believe that the Respondent/Restrained Person poses a significant danger of causing personal injury to self or others in the near <u>future</u> by having in his or her custody or control, purchasing, possessing, or receiving a firearm, (and may also note that providing notice increases danger to the Petitioner or others), the court shall issue an Ex Parte ERPO.

If law enforcement is seeking an Ex Parte ERPO during non-business hours (nights and weekends), law enforcement should contact the Regional Domestic Violence Firearms Enforcement Unit / Snohomish County on-duty prosecutor (as with the after-hours search warrant process).

Service of ERPOs

ERPOs and Ex Parte ERPOs should be served in the same manner as Orders to Surrender Weapons. A patrol supervisor will complete a risk analysis prior to service. Service will be completed with the appropriate resources based on the risk analysis, but in no case with fewer than two officers and one supervisor. Command staff notifications should be made in advance of service at the discretion of the supervisor. Personnel should be cognizant there may be an escalated risk of danger to officers and Petitioners during and following the service of ERPOs.

Ex Parte ERPOs and ERPOs should be served concurrently with the notice of hearing, order transferring case to superior court, petition, and other documents required for service in the service packet (documents attached and incorporated in the Petition and Affidavit, etc.)

Upon service, the respondent is required to surrender all firearms under his or her control and any concealed pistol license (CPL). It is a crime for the respondent to be in possession of or in control of a firearm once the order has been served. Assigned officers will request voluntary surrender of all firearms and any CPL, and request permission to conduct a consensual search of the location. Officers will take possession of all firearms and any CPL voluntarily surrendered or lawfully discovered during the consensual search.

If all firearms possessed or controlled by the respondent are surrendered, an officer will complete the form "Receipt for Surrendered Weapons and Concealed Pistol License" and "Proof of Surrender" The officer will make three copies of the forms once completed, leaving one copy with the respondent, immediately turning in the second copy with the police case report, and attaching the third copy to the firearms being impounded.

Non-surrender

If the respondent claims the he or she does not possess or control any firearms or have a CPL, an assigned officer will request the respondent complete a statement form and sign the form "Declaration of Non-Surrender" explaining/verifying that the respondent has no firearms or a CPL to surrender. The officer must then complete a police case report documenting the incident, and then complete the form "Receipt for Surrendered Weapons and Concealed Pistol License And/or Proof of Fail to Surrender." The officer will then consult the legal advisor and advise of the non-surrender.

RCW 7.94.090 mandates that in any case where firearms were not surrendered as required the courts will hold a hearing to determine if probable cause exists to believe the respondent failed to surrender weapons and, if so, the court will issue a warrant authorizing a search of the places where the firearms are reasonably believed to be located. The agency legal advisor will work with the department to provide the information needed by the courts for a hearing to review the case.

Regardless of what court issued the ERPO, a local court will be considered as the first option for conducting a hearing related to non-surrender. The local court will coordinate with the court that issued the ERPO to determine which court is best situated to hold the hearing.

Search Warrant

If a search warrant is issued by a court following a review of non-surrender, the search warrant will be given to an on duty supervisor for review and coordination of service. The supervisor will see that a Risk Analysis is completed based on the available information and manage service of the search warrant.

If firearms are located during a search, a new "Receipt for Surrendered Weapons and Concealed Pistol Licenses" and "Proof of Surrender" forms will be completed to document the firearms being taken, and a copy left at the location with a copy of the warrant and the inventory.

Notification to Courts

The Department Records Unit will forward a copy of all Receipt for Surrendered Weapons and Concealed Pistol Licenses and Proof of Surrender forms to the court where the order was issued. If a search warrant is being obtained from a court other than the issuing court, the department will inform the originating court of the petition for the warrant and the outcome.

Renewal of Extreme Risk Protection Orders

The Department Records Unit will monitor all ERPOs obtained by the department, and advise the office of the Chief and the Department legal advisor of an upcoming expiration not less than 30 days prior to the expiration of the order. The Department will evaluate the order to determine if a renewal should be requested through the courts.

SURRENDER, STORAGE AND RETURN OF FIREARMS

In the interest of public safety, it is the policy of this department to accept surrendered firearms regardless of where a Respondent/Restrained Person resides, and to record which firearms were surrendered and when, to ensure that verification of compliance with the Court Order can be determined.

Surrender by appointment (When allowed by agency):

- 1. Respondent/Restrained Person may call the law enforcement agency to schedule an appointment to surrender firearms and CPL. In the interest of public safety, appointments should be scheduled at the soonest opportunity. Respondent/Restrained Person should also be advised of the potential for delay based on personnel availability, even with a scheduled appointment.
- 2. Respondent/Restrained Person should be advised to come to the agency at the appointed time with unloaded firearms in vehicle. Respondent/Restrained Person should be advised to leave the firearms and ammunition inside the vehicle and contact the front desk. No firearms should be brought into the agency building by the Respondent/Restrained Person. Note: In some cases, Respondent/Restrained

Persons may appear in department facilities in possession of firearms in order to surrender them without an appointment. These subjects may not be aware of the department's preference to leave such firearms secured outside the facility. In such cases, if an officer is present, the officer should immediately take custody of any firearms. If no officer is present, civilian staff will ask the Respondent/Restrained Person to secure the firearm in their vehicle before returning to the facility to wait for an officer. Civilian staff will not take possession of firearms.

- 3. Personnel should take the surrendered firearms, ammunition and CPL into agency custody immediately and, if possible, with the Respondent/Restrained Person and any other persons away from the vehicle or location of the firearm(s).
- 4. Personnel should check WACIC/NCIC to ensure that any firearm is not listed as stolen and that all identified firearms have been surrendered.
- 5. Personnel should provide the Respondent/Restrained Person with a property receipt. A copy of the receipt should be added to the agency case file.
- 6. Personnel should complete the Proof of Surrender form and provide a copy of the form to the Respondent/Restrained Person, route a copy to the appropriate court that issued the order to surrender weapons, and attach a copy to the agency case file.
- 7. Personnel should complete a report (or follow-up) to be added to the agency case file.
- 8. Personnel should notify the clerk's office in the applicable issuing court of the weapon surrender or the court will not find compliance with the Court Order.

Surrender by Walk-in

Same as steps 2 through 6 above. Respondent/Restrained Person should be encouraged to wait for available personnel if the agency anticipates a delay by responding personnel.

Storage of Firearms

Firearms and CPLs surrendered under RCW <u>9.41.800</u> (Surrender of Weapons or Licenses) should be stored for safekeeping pursuant to the procedures in the agency Property and Evidence Manual.

Return of Firearms and CPL

The Respondent/Restrained Person must have proper identification and authority from the court for the firearms and CPL to be returned. In addition, the Protected Person or family members could be at greater risk after a firearm is returned. Timely notification to the Protected Person of any firearms to be returned may help reduce the risk of violence or lethality.

Firearms surrendered pursuant to a Court Order should only be returned to the rightful owner pursuant to proof of a specific court order revoking the Surrender Order and granting the release of the firearms at issue, subject to the Respondent/Restrained Person's eligibility to possess firearms, or to a new owner if the Respondent/Restrained Person has transferred ownership, with affidavits from both parties confirming transfer of ownership, following a background check on the new owner, and with the new owner attesting that Respondent/Restrained Person will not control, possess, or have access to the firearms.

Prior to the return of a firearms or CPL, Evidence personnel should ensure confirmation of the following:

- That, if required or requested, the Protected Person and/or family or household members have been notified immediately that the Respondent/Restrained Person has requested the return of surrendered firearms and/or CPL. The law requires reasonable efforts be made to reach the Protected Person when required or requested.
- That the individual and/or owner is otherwise eligible to possess a firearm and/or CPL, regardless of the status of this particular order. The following databases must be checked:
 - NCIC III / WACIC Check for protection orders, felony or DV warrants, or active DOC status.
 - NICS Obtain an NTN number.
 - JIS / DISCUS / JABS (if agency has access) Check for pending cases that may not be included in the NCIC check. Check for disqualifying juvenile convictions.
 - DSHS Request mental health background check.
- That the individual to whom the firearms are to be returned is the individual from whom the firearms were obtained, or an authorized representative of that individual, or the legal owner of the firearms, or another person identified by a Court Order.
- Proof of a Court Order authorizing release of the firearms and CPL.
- The Protection Order has expired by its terms or is dismissed and is no longer in effect.
- The Order was a temporary order that has expired and the court denied a motion for a permanent order.
- The Order has been modified by the court and the person is no longer prohibited from possessing firearms.
- The firearms are not required to be held for evidence or another reason.

- If the owner is eligible to possess firearms but the agency has knowledge the owner lives with a person who is ineligible to possess firearms (felon, disqualifying DV convictions, No Contact and Protection Orders), the firearms may not be released without a Court Order / agency legal advisor must be contacted prior to release of the firearms. Felons and others disqualified from possession are prohibited from actual or constructive possession.
- If a person other than the Respondent/Restrained Person claims title to any firearms surrendered and is determined by the agency to be the lawful owner of the firearm, the owner should be advised that he or she may request of the court that the firearm should be returned to him or her.

Agencies should also ensure that firearms surrender protocols are included in their Domestic Violence policies and procedures. Essential elements include:

Domestic Violence 911 Response Regarding Firearms

It is a priority of the Department to timely serve and enforce protective court orders, and to track and report on orders received and enforced as part of Department performance measures.

- Communications Centers should ensure that call-takers inquire about accessibility of firearms with all domestic violence calls, and that available information is provided to responding personnel before they arrive at the scene.
- Officers should separate involved parties so that the victim is out of the hearing range of the alleged suspect at the scene, prior to any inquiry by the responding officers.
- Temporary removal of firearms for safekeeping is within community caretaking authority given known risks of ongoing access to firearms by domestic violence abusers; <u>permission of both parties is not requisite, nor is use of the firearm in the incident.</u>
- PRIOR to asking for the temporary removal of firearms, responding personnel should inquire of the victim about all firearms to which the suspect has access, control, or possession, so that there is a complete record for future court proceedings. The inquiry should make clear to the victim that the officer is not just asking about whether a firearm was used at that time (i.e., the suspect may keep a firearm in plain sight in a manner that is coercive; the suspect may have threatened use of firearms in the past; the suspect may have additional firearms in a vehicle, etc.) Personnel should be advised that use of a firearms pictures tool may help with descriptions.
- Responding personnel should comprehensively document in incident reports details about all firearms to which a suspect may have access, control or possession, to help reduce the risk to victims, families and law enforcement of ongoing access to firearms.
- Responding personnel should ask the victim for permission to remove all accessible firearms temporarily for the safety of the victim, family and others until the court holds a hearing.
- Responding personnel to provide victims, family, or household members with information and resources about orders (including OTSW and ERPO) that may be available for their protection.

Personnel should be advised that situations that don't meet the criteria for domestic violence orders may be appropriate for ERPOs.

- Personnel must enforce any order restricting a Respondent's ability to have contact with a victim and to take appropriate arrest action when there is probable cause to believe an order was violated.
- Personnel must complete a substantive investigation of the incident leading to the domestic violence call. Policy and training include details about information to include in report, and provide an understanding of risk factors to which personnel should be attentive.
- All offense reports are documented under the appropriate crime classification with department code for Domestic Violence (RCW 10.99.030(11)). Departments should also have a code for reports where there are firearms, so that those cases are appropriately followed up on by supervisors, prosecutors and judicial officers.
- Offense reports must be forwarded to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed (RCW 10.99.030(9)).

RESOURCES

King County Regional Domestic Violence Firearms Enforcement Unit

The mission of the King County DV Firearms Unit is to reduce gun violence and increase victim and community safety through regional collaboration, proactive implementation and enforcement of firearms laws. The unit is available as a resource to police agencies with questions about Protection Orders, Orders To Surrender Weapons, and Extreme Risk Protection Orders.

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Public Materials, Brochure

<u>www.protectionorder.org</u> has extensive information about various orders, and includes FAQs and an ERPO brochure meant for the public. Click on: "Extreme Risk Protection Orders".

POLICY FORM ATTACHMENTS

- Domestic Violence Report Checklist
- Domestic Violence History Form
- Petition for Extreme Risk Protection Order
- Law Enforcement Affidavit

- Law Enforcement Agency Addendum to the ERPO Petition
- Temporary Extreme Risk Protection Order
- Order Transferring Case
- Extreme Risk Protection Order
- Law Enforcement Information Sheet
- Paper Service Record Sheet Example
- Receipt for Surrendered Weapons and Concealed Pistol License
- Proof of Surrender
- Declaration of Non-Surrender
- Responding to ERPO Information Sheet (For Respondents)
- Return of Service Sheet
- Risk Analysis / Threat Assessment Worksheet Examples
- Weapons Surrender Instruction

Extreme Risk Protection Orders - Scenarios for Law Enforcement

Please note that the following ERPO hypothetical scenarios with associated procedural questions are guidelines for law enforcement. However, each case will be fact-specific and law enforcement should reach out to the firearm prosecutors assigned to the Regional DV Firearms Enforcement Unit (RDVFEU) or to their local prosecutor for additional guidance.

- 1) Officer serves the Temporary ERPO. The Respondent answers the door and tells the officer that s/he does not have any firearms or a CPL to surrender. What should the officer do?
 - Prior to service, officers should verify if the Respondent has any firearm purchase history or a CPL.
 - If the Respondent has firearm purchase history, how recent is the information (e.g. it is unlikely that a Respondent disposed of a recently purchased firearm)? Can officers see any firearms, ammunition, firearm accessories in plain view?
 - Respondent should be reminded that they are committing a crime if now in possession of any firearms or CPL.
 - If the Respondent has no firearm purchase history, are there facts in the ERPO petition that suggest the Respondent has firearms (for example, how recent is the last known time someone saw the firearm)?
 - Officers should advise the Respondent that they cannot possess firearms and if they are in possession of firearms they are committing a crime.
 - Officers should call the RDVFEU prosecutors to consult on next steps (e.g. possible search warrant).
 - If officers have sufficient information that the Respondent has firearms, officers could consider arresting the Respondent on violation of the Extreme Risk Protection Order (PC for ERPO violation: Respondent is in violation of the ERPO by remaining in possession of firearms).

2) Officer serves an ERPO and the Respondent answers door and steps outside. The Respondent tells the officer s/he will not turn over firearms. What should the officer do?

- Officers should remind the Respondent that the order requires **immediate** surrender and by failing to surrender they are committing a crime.
- Officers could arrest the Respondent on the gross misdemeanor of violation of the Extreme Risk Protection Order. Specifically, probable cause for the crime of ERPO violation by the Respondent remaining in possession of firearms, RCW 7.84.120(2).
- Officers should apply for an immediate search warrant.

<u>Search Warrant Tip</u>: The ERPO petition should serve as the basis for the affidavit (probable cause) for the SW. The more recent and specific information about the firearms, the better (CPL record/ registered firearms, fish and wildlife hunting records/ licenses, social media postings about firearms or family member/ friends' first-hand knowledge of the defendant's possession of firearms, etc.).

<u>Practice point</u>: For Order to Surrender Weapons (OTSWs) that are issued with a civil protection order (DVPO, DV NCO, Stalking, Stalking NCO, Sexual Assault, and AHO), the law allows for a

different legal remedy from the ERPO statute. Specifically, for OTSWs, the criminal remedy is a charge of Failure to Comply, a simple misdemeanor, RCW 9.41.800/810.

- 3) Officer serves an ERPO. Respondent answers door and tells officers he does not have any firearms to turn over. What should the officer do?
 - Prior to service, officers should have run firearm purchase history and CPL records. If the Respondent has no purchase history and no active CPL, the officer should also read the ERPO petition (any mention of firearm possession in the petition?). If not, the officer should remind the Respondent that they cannot possess or purchase any firearms (and no CPL) while the ERPO remains in place.
 - The officer should mark on the return of service any comments the Respondent makes about the firearms (for example, that the Respondent asserts that they do not have any firearms, and any other conduct that indicates risk of harm).
- 4) Officer serves an ERPO. Respondent invites officer inside. While inside, the officer views firearms or firearm accessories in plain view. May the officer take the firearms and accessories?
 - The officer should seize the firearms as part of the court order and also as part of a community caretaking function. The law is not clear on the collection of firearm accessories. The officer should ask if the Respondent consents to surrender of the firearm accessories. The officer should document any visible firearm accessories and clarify if the firearm accessories were removed from the home.
- 5) Officer serves the ERPO and while standing at the door, the officer observes firearm parts (not a fully functional firearm)? What about the possession of ammunition?
 - Officer could seize firearm parts under the belief that the parts could be used to assemble a functional firearm. Officers are allowed to seize firearms in plain view per the statute, RCW 9.94.090(2).
 - Currently, the ERPO does not apply to ammunition. The officer should ask if the Respondent consents to the surrender of the ammunition.
- 6) Officer serves the ERPO and the Respondent turns over several firearms. However, Respondent tells the officers that he does not have his CPL? What should the officer do?
 - Officer should verify if the CPL is still active. If so, officer should contact the issuing agency and provide a copy of the ERPO order and ask the issuing agency to inactivate the CPL.
- 7) Officer serves the ERPO and the Respondent surrenders 1 firearm, but the ERPO petition identifies multiple firearms. What should the officer do?
 - The officer should get as much info as possible about the other firearms. For example, did the Respondent sell the firearms? If so, ask for a record of sale or where it was sold/ pawned (check pawn records after the fact).
 - If the Respondent claims he gave the firearms to a friend, ask for the friend's information (DOB). The officer should call the friend at the scene and ask for verification.

- The officer should also verify the criminal history of the friend- is the friend prohibited from possessing firearms? See also question #11.
- The officer should advise the Respondent that he cannot be in possession, control or purchase any firearms.
- The officer should call the RDVFEU prosecutors for next steps.

8) Officer serves the ERPO and the Respondent claims that the firearms are in multiple locations. What should the officer do?

- The officer should seize the firearms in the current location and get as much information as possible for follow up on the additional firearms.
- The officer should contact the LE agency where the other firearms are located and request assistance from the local LE agency.

9) What if the Respondent claims that the firearms are located out of state?

- Officers should contact the local LE agency and request assistance in enforcing the ERPO.
- Currently, it is unclear if the ERPO is enforceable under Full Faith and Credit as with other similar civil protective orders.

10) Law enforcement learns that the Respondent has other dangerous weapons in the home in addition to firearms. Should law enforcement seize the other weapons (knives, swords, crossbows, etc.)?

- The officer should confirm, prior to service, whether there are other protective orders in place that require the surrender of dangerous weapons (e.g., DVPO with an Order To Surrender Weapons.)
- Currently, the ERPO only applies to firearms and concealed pistol licenses and does not include the collection of ammunition or other dangerous weapons (knives, swords, crossbows, etc.). However, officers should consider if they have basis to take the other dangerous weapons as a community caretaking function (e.g., suicidal ideation or Respondent appears under the influence of alcohol or drugs).

11) Law enforcement serves the ERPO and learns that the firearms are with a family member and the firearms are not in the Respondent's home. What should the officer do?

- The officer should get the name, DOB, address of the family member.
- The officer should verify when the Respondent gave the firearms to the family member.
- The officer should verify if the family member is allowed to legally possess firearms.
- The officer should try to call/ make contact with the family members to verify that the Respondent does not have access/possession of the firearms. The officer should get as much detail as possible from the family members about the firearms. The officer should ask the family members to surrender the firearms to the nearest LE agency on behalf of the Respondent.
- The officer should call the LE agency in the jurisdiction where the family member resides and ask that they follow up on the unaccounted for firearms. If the family

member refuses to comply with relinquishing the firearms to officers, the family member should be advised that the firearms must remain secured and no access should be allowed to the Respondent. The family members should be warned that they could face civil and criminal liability if they store/ hold the firearms for the Respondent.

- 12) Law enforcement has prior history with the Respondent that includes prior crisis calls (suicidal ideation), history of assaults to officers, and known firearms in the home. Law enforcement is concerned that the Respondent will refuse to open the door and may barricade himself inside the home (resulting in a SWAT callout). Can law enforcement petition for a search warrant at the time of the temporary (Ex Parte) ERPO?
 - The Respondent needs to be served or at least have personal knowledge of the temporary ERPO prior to the issuance of a search warrant. However, law enforcement could consider preparing a search warrant using the RDVFEU ERPO template and have the search warrant and affidavit ready to be issued, should the Respondent refuse to surrender.
 - Officers should consult with the firearm prosecutors on the issuance of a search warrant/ high risk service case.
 - Alternatively, officers should contact the firearm prosecutors in the RDVFEU to consult about a civil Writ of Execution. It is possible that a Writ could be obtained at the time of the issuance of the Ex Parte ERPO. The Writ would grant the Sherriff's Department authority to seize the requested property (e.g., firearms) from the Respondent.

What if I need a translator?

When you file your papers, ask the clerk if the court will provide an interpreter for you at no cost. If not, you will have to pay a fee. If one is not available for your court date, you can ask someone who is over age 18 to interpret for you.

What if I am deaf or hard of hearing?

When you file your papers, ask the clerk about assistive listening systems, computer-assisted real-time captioning, or sign language services.

May I renew the order?

Yes, you may renew the order any time after 260 days.

What if the person doesn't obey the ERPO?

If you are aware that the person is violating the order, call 911.

Can the order be canceled?

The respondent may ask the court to cancel the order once in the 12-month period and must prove that he/she no longer poses a significant danger to self or others by having access to firearms.

How are firearms surrendered?

When served with the order, the police officer is required to ask the person to immediately surrender all firearms. If the person is served the order in court, they have 48 hours to surrender firearms to the police. For More Information On ERPO's and Other Types of Protection Orders: Go to www.protectionorder.org

To Find Your Local Superior Court: Go to www.courts.wa.gov/court dir





Extreme Risk Protection Orders



An Extreme Risk Protection Order (ERPO) lets you ask the court to temporarily remove a family or household member's access to firearms if they are threatening to hurt themselves or others.

What is an ERPO?

It's a court order that temporarily removes a family member's access to guns, if they are threatening to harm themselves or others.

Will the ERPO protect me personally?

No, this order is just about temporarily removing access to firearms. If you need personal protection, you will need a separate protection order.

Who can get an ERPO?

A family or household member or a law enforcement officer can ask the court to issue an ERPO. If you are afraid to ask the court, you should talk to your local police.

How long does an ERPO last?

A temporary order will last until the court hearing date. A more permanent order can then be issued that lasts for one year and may be renewed.

What forms do I need?

You can find the petition form at www. courts.wa.gov/forms, or go to your local Superior Court Clerk's office and they will give you forms.

Where do I go to get an ERPO?

You must file a petition where either you or the person you are worried about lives. Take the filled-out forms to the Superior Court clerk's office. The clerk will give you a hearing date and time. If you want a temporary order, the hearing will likely be the same day that you file.

Will I have to pay a filling fee?

No, there is no cost for an order.

How will the person know about the hearing or temporary ERPO?

A police officer will "serve" (give) the person a copy of the order and the petition which includes the date, time, and place of the hearing.

What do I have to prove in court?

If you are asking for a temporary ERPO you will have to provide evidence the person poses a significant danger in the near future of hurting themselves, or another person, by having a firearm. At the hearing for the year-long ERPO, you will have to show the person poses a significant danger of hurting themselves, or others, by having a firearm or having access to their firearms.

How can I convince the court?

The court needs specific information, such as whether the respondent owns, has tried to purchase, or may have access to, firearms. Include in your petition why you believe the person is dangerous to themselves or others. Have there been any recent acts or threats of violence in the last 12 months? Have they violated any kind of protection order? Have the police been called? Has the person been arrested or convicted of a crime? Is there a history of violence? A history of stalking? Has the person been identified by a mental health provider as a danger? You can also include in your petition any signed, sworn statements from any other people who have direct knowledge about the person's history and actions.

How soon can I get an ERPO?

You can ask for a temporary ERPO, which will be effective immediately. If you don't, then a hearing will be held no later than 14 days after you file.

Do I have to go to court?

Yes. You must go to court on the date the clerk gives you. A court may schedule a hearing by telephone when it is necessary to accommodate a disability or "in exceptional circumstances" to protect a petitioner from potential harm.

Do I need to bring a witness to the hearing?

No, but if you think it will help convince the court, consider bringing witnesses, or witness statements made under oath, photos or videos, medical or police reports, damaged property, threatening letters, emails, texts, or telephone messages. The court may or may not let witnesses speak at the hearing. So, if possible, you should bring their written sworn statements to the hearing.

Do I need a lawyer?

It is not required. You can ask the court clerk about free and low-cost legal services in your county.

Will I see the restrained person at the court hearing?

Yes, if the respondent comes to the hearing. If you are afraid, let court staff know.