

Ridgely Police Department

2 Central Ave. Ridgely, MD 21660

Phone - 410-634-2151

Fax - 410-634-8083



To: All RPD Personnel

From: Chief Gary Manos

Date: March 1, 2019

Ref: S.O.P. 19:001 - Extreme Risk Protective Orders

Purpose:

Extreme Risk Protective Orders (ERPO) are meant to prohibit a Respondent from possessing a firearm where there is sufficient information to believe that the Respondent poses an IMMEDIATE and PRESENT DANGER of causing personal injury to the Respondent, the Petitioner, or other individuals by possessing a firearm. The purpose of the ERPO is to reduce gun deaths and injuries by restricting a Respondent's access to firearms and ammunition.

A petition for or the issuance of the ERPO does not in any way affect the ability of law enforcement to remove or seize firearms and/or ammunition from any person or property as permitted by any other law.

Policy:

It is the policy of the Ridgely Police Department (RPD) to petition for and serve ERPOs in compliance with state law, and to properly account for firearms and ammunition obtained by the department pursuant to such orders.

RPD members will read, and be familiar with, Maryland Public Safety Code 5 Sec 602 – 610 as it pertains to ERPOs.

Definitions:

Extreme Risk Protective Order (ERPO) means: a civil Interim, Temporary, or Final Protective Order prohibiting the Respondent from possessing and purchasing a firearm and ammunition and ordering the Respondent to surrender to law enforcement any firearm and ammunition in the Respondent's possession for the duration of the Order.

Ammunition means: a cartridge, shell, or any other device containing explosive or incendiary material designed and intended for use in a firearm.

Firearm means: a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or the frame or receiver of such a weapon. Firearm includes a handgun, rifle, shotgun and starter gun.

Petitioner means: an individual who files a petition for an Interim, Temporary or Final ERPO. A Petitioner may be any one of the following:

1. Physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage or family therapist, or designee of a health officer who has examined the individual;
2. A law enforcement officer;
3. The spouse of the Respondent;
4. A cohabitant of the Respondent;
5. A person related to the Respondent by blood, marriage, or adoption;
6. An individual who has a child in common with the Respondent;
7. A current dating or intimate partner of the Respondent; or
8. A current or former legal guardian of the Respondent.

Respondent means: a person against whom a petition for an ERPO is filed.

Possessing a firearm and ammunition means: the Respondent has firearms and/or ammunition within his/her control; this includes those firearms and ammunition where the Respondent has access to or is within his/her easy reach. Possession also includes firearms and ammunition in other locations inside and outside of the Respondent's residence and where the Respondent may not be the owner of the property but the circumstances show that the Respondent has reasonable control or possessory interest over the firearms and/or ammunition.

Petition for emergency evaluation means: where the officer has personally observed an individual or the individual's behavior, and the officer has reason to believe the individual has a mental disorder and presents a danger to the life or safety of the individual or others, the officer may file a petition with the treating facility for an emergency evaluation.

Interim ERPO means: when the District Court is closed, the Petitioner can file a petition with the court commissioner for an Order and the court commissioner can issue an Order. The Extreme Risk Protective Interim Order requires the Respondent to surrender to law enforcement authorities any firearms and ammunition in the Respondent's possession; and prohibits the Respondent from purchasing or possessing any firearms or ammunition for the duration of the Interim Order. An Interim ERPO may include a referral from the commissioner to law enforcement for a determination of whether the Respondent should be taken for an emergency mental evaluation. An Interim ERPO shall be effective until the earlier of the Temporary ERPO hearing or the end of the second business day the office of the

District Court clerk is open following the issuance of the Interim ERPO. If the court is closed unexpectedly on the expiration date the order will remain in effect until the next day the court is open.

Temporary ERPO means: when the District Court is open, a Petitioner can file a petition with the District Court for the issuance of an ERPO. A hearing will be held and if the Temporary ERPO is issued by a District Court judge, it requires the Respondent to surrender to law enforcement authorities any firearms and ammunition in the Respondent's possession; and prohibits the Respondent from purchasing or possessing any firearms or ammunition for the duration of the Temporary Order. A Temporary ERPO may include a referral from the District Court judge for an emergency mental evaluation of the Respondent. A Temporary ERPO shall be effective for not more than seven (7) days after service of the Order unless extended by the judge or in the event the Order expires when the court is closed, the Order shall be effective until the second day on which the court is open.

Final ERPO means: after a hearing on a petition for the issuance of a Final ERPO, an Order may be issued by a District Court judge requiring the Respondent to surrender to law enforcement authorities any firearms and ammunition in the Respondent's possession; and prohibits the Respondent from purchasing or possessing any firearm or ammunition for the duration of the Order. A final ERPO shall be valid for a period stated in the Order not to exceed one year unless superseded by a Circuit Court judge's order or the Order is modified, rescinded, or for good cause shown, extended for 6 months beyond the period specified.

Reasonable grounds means: where there is a preponderance of the evidence to support the belief that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another individual by possessing a firearm. Reasonable grounds exists where the facts and circumstances, taken as a whole, would lead a reasonably cautious person to believe that the Respondent poses an immediate and present danger of causing personal injury to himself, the Petitioner, or another individual by possessing a firearm.

Elements of an ERPO:

The following factors should be used by a petitioner to determine the appropriateness of filing an ERPO.

1. Any information known to the Petitioner that the Respondent poses an immediate and present danger of causing personal injury to the Respondent, the Petitioner, or another person by possessing a firearm and any specific facts in support of this information;
2. The Petitioner's basis of knowledge of supporting facts, including a description of the behavior, statements of the Respondent or any other information that led the Petitioner to believe that the Respondent presents an immediate and present danger of causing personal injury to the Respondent or another person;
3. A description of the number, types, and location of any known firearms believed to be possessed by the Respondent;

4. Any supporting documents or information regarding:
 - a. Any unlawful, reckless, or negligent use, display, storage, possession, or brandishing of a firearm by the Respondent;
 - b. Any act or threat of violence the Respondent made against the Petitioner or against another person, whether or not the threat of violence involved a firearm;
 - c. Any violation by the Respondent of a Protective Order under Title 4, Subtitle 5 of the Family Law Article;
 - d. Any violation by the Respondent of a Peace Order under Title 3, Subtitle 15 of the Courts Article;
 - e. Any abuse of a controlled dangerous substance or alcohol by the Respondent, including any conviction for a criminal offense involving a controlled dangerous substance or alcohol; and
 - f. Where disclosure is permitted or not otherwise prohibited by law, any health records or other health information concerning the Respondent.

Law Enforcement Response:

1. Calls for service:
 - a. Where an officer is on a scene and the officer personally observes behavior that would lead the officer to conclude that he has reasonable grounds that an individual poses an immediate and present danger of causing personal injury to himself/herself or to other persons by possessing a firearm, the officer shall contact a supervisor and a decision to file a petition for an ERPO will be determined. If it is determined that an ERPO is appropriate, officers will apply for it consistent with state law.
 - b. Where an officer is on the scene but does not personally observe behavior that an individual poses an immediate and present danger of causing personal injury to himself/herself or to other persons by possessing a firearm, however, the officer receives information meeting the criteria stated above, the officer shall immediately make a determination whether the complainant/witness/victim meets the legal criteria to petition the court for the issuance of an ERPO. In those cases where the complainant/witness/victim is an eligible person for relief, the on-scene officer shall explain to the complainant/witness/victim what an ERPO is and the process to obtain the Interim or Temporary Order as is appropriate. In these situations, the complainant/witness/victim is in the best position to obtain the ERPO since the complainant/witness/victim has the necessary background information regarding the Respondent's behavior and the specific facts that may be needed to justify the issuance of an Order. For this reason, the officer shall provide the complainant/witness/victim with the ERPO information pamphlet which explains the process for filing of the petition. The officer shall then determine if the complainant/witness/victim intends to file a petition for an ERPO. In those

instances where the complainant/witness/victim indicates that they will be pursuing an ERPO, the officer shall document this fact in their incident report.

- c. In cases where the officer does not personally observe the behavior of the individual and the witness/complainant/victim is not a person eligible to file the petition, the officer should determine whether it is appropriate for the officer to file the petition.
- d. Emergency Evaluations:
 1. Where an officer files a petition for an emergency evaluation and the officer has reasonable grounds to believe that the evaluatee poses an immediate and present danger of causing personal injury to themselves or other persons by possessing a firearm, the officer may also file a petition for an ERPO.

Service of ERPO Orders:

1. Interim Orders:
 - a. On receipt of an Interim Order, RPD personnel shall initiate a computer check to determine whether the Respondent is the registered owner of a regulated firearm.
 - b. A minimum of TWO officers shall attempt to serve the order on the Respondent;
 - c. Officers shall make a good faith effort to secure any firearm(s) and/or ammunition in the Respondent's possession;
 - d. A court commissioner may make a referral to law enforcement for an emergency evaluation on the Interim Order. A referral on the order does not provide law enforcement the legal authority to take the Respondent into custody for an evaluation.
 - e. Officers shall evaluate the Respondent during the service of the order and complete an emergency petition, if appropriate.
 - f. Officers shall make a return of service as required; and shall ensure that the Caroline County 911 Center makes the necessary notification to the Department of Public Safety within 2 hours of service.
2. Temporary Orders:
 - a. On receipt of a Temporary Order RPD personnel shall initiate a computer check to determine whether the Respondent is the registered owner of a regulated firearm;
 - b. A minimum of TWO officers shall attempt to serve the order on the Respondent;

- c. Officers shall make a good faith effort to secure any firearm(s) and/or ammunition in the Respondent's possession;
 - d. A judge may make a finding, based upon the information contained within the petition, that there is probable cause to believe the Respondent meets the requirement for an emergency evaluation.
 - e. If a judge has ordered an emergency petition the officer shall take custody of the respondent and transport the respondent to the nearest emergency facility and complete the emergency petition process.
 - f. Officers shall make a return of service as required; and shall ensure that the Caroline County 911 Center makes the necessary notification to the Department of Public Safety within 2 hours of service.
3. Final Orders:
- a. On receipt of the law enforcement copy of a Final Order, RPD personnel shall ensure that the computerized record of the order is properly updated.
 - b. If a judge has ordered an emergency petition an officer shall take custody of the respondent and transport the respondent to the nearest emergency facility and complete the emergency petition process.

Removing Firearms and Ammunition in the Possession of the Respondent:

1. Upon serving an Interim or Temporary ERPO officers shall make a good faith effort to secure all firearms and ammunitions in the possession of the Respondent. There may be occasions where the Respondent has been served with an order in court and law enforcement will be subsequently notified by receipt of a copy of said order. In such cases, upon receipt of the copy of the order, officers shall then make a good faith effort to secure all firearms and ammunitions in the possession of the Respondent.
2. Consent Search: Although every situation is different, when an ERPO has been issued, officers may subsequently develop information that firearms and/or ammunition are in the possession of the Respondent, the Petitioner, or other individuals. In this case, the Petitioner or other individuals may have the legal authority to give consent to the officers and allow officers access into the home or other locations to secure any firearms and/or ammunition. The Respondent may also have the legal authority to give officers consent to search the home or other location.
3. Search Warrant: During their investigations, officers may develop probable cause to apply to the court for an order to search a specific location or locations in situations where the Respondent has failed to surrender firearms and/or ammunition. If the respondent named in an ERPO refuses to surrender all firearms and ammunition, or if an officer serving the ERPO reasonably believes that there are firearms/ammunition in the person's custody, control, or possession that have not been surrendered, then the officer shall consider whether to seek a search warrant. The officer shall consult with the Chief of Police as soon as practical to assist in making this decision.

4. Where officers have *probable cause* to believe that the Respondent is in possession of firearms and/or ammunition and after giving proper notice, the Respondent refuses to surrender the firearms and/or ammunition, officers shall arrest the Respondent for violating the ERPO.

Requirements upon Taking Possession of Firearms and/or Ammunition:

Officers coming into possession of firearms and/or ammunition in accordance with an ERPO shall at the time of surrender or seizure:

1. Complete a RPD Property Receipt (Form #74) and provide a copy to the surrendering party and the Evidence Unit. Form #74 will specify the make, model, and serial number of any seized firearms and/or ammunition.
2. Package and submit the surrendered firearms in accordance with evidence procedures.
3. Complete a detailed Incident Report.
4. Provide information to the Respondent on the process for retaking possession of the firearms and/or ammunition on the expiration or termination of the Order.

Court Attendance:

1. Officers who apply for an ERPO will be required to attend any subsequent court proceeding(s) pertaining to the order.
2. Generally, the court dates will occur within 2 days of an Interim Order and within 7 days of a Temporary Order.

Agency Requirements upon Expiration of ERPO:

Upon the expiration or termination of an ERPO, the agency shall:

1. Notify the Respondent that they may request the return of the firearms and/or ammunition;
2. Before releasing firearms and/or ammunition to the Respondent, verify that the Respondent is not otherwise prohibited from possessing firearms and/or ammunition.
3. On request of the Respondent who is not otherwise prohibited from possessing firearms and/or ammunition, the agency shall return the firearms and/or ammunition to the Respondent no later than:
 - a. 14 days after the expiration of an Interim or Temporary Order;
 - b. 14 days after the court terminates a Final Order; or

- c. 48 hours after the expiration of the Final Order.
4. A respondent who does not wish to recover firearms and/or ammunition or who is otherwise prohibited from possessing firearms and/or ammunition may sell or transfer the firearms and/or ammunition to:
 - a. A Federal Firearms Licensed Dealer (the FFL must provide written proof that the Respondent has agreed to transfer the firearms and/or ammunition to the dealer and this Agreement must be verified with the Respondent and the verification documented in writing);
 - b. Another person who is not prohibited from possessing the firearms and/or ammunition under State and/or Federal Law and who does not reside in the same residence as the Respondent (the person must provide written proof that the Respondent has agreed to transfer the firearms and/or ammunition to the person and the Agreement must be verified with the Respondent and the verification documented in writing); or
 - c. Request the Agency destroy the firearms and/or ammunition.
5. If an individual other than the Respondent claims ownership of a firearm and/or ammunition surrendered or seized as a result of an ERPO, the Agency shall only release the firearm and/or ammunition to the individual if:
 - a. The individual provides proof of ownership of the firearm and/or ammunition; and
 - b. The agency determines the individual is not otherwise prohibited from possessing the firearm and/or ammunition.
6. In the event a firearm and/or ammunition is not reclaimed within 6 months after the notice to a Respondent as required, no party shall have the right to assert ownership of the firearm or ammunition and the agency may destroy the firearm and/or the ammunition. The Evidence Unit supervisor is responsible for notifying the Respondent of any unclaimed firearms/ammunition prior to disposition.
7. The release of any firearm will be completed by the Evidence Section in accordance with established procedures.

Violations of an ERPO:

Officers shall arrest with or without an arrest warrant any person whom the officer has probable cause to believe is in violation of an Interim, Temporary, or Final ERPO in effect at the time of the violation.