
	GAITHERSBURG POLICE DEPARTMENT		
	Extreme Risk Protection Orders		
	GENERAL ORDER	602.3	
Effective Date	10/29/2018		
Authorized by:	Mark P. Sroka CHIEF OF POLICE	SIGNATURE <i>Mark Sroka</i>	DATE 10/29/2018

1. **PURPOSE**- The purpose of this policy is to provide officers guidance and instructions on obtaining, serving and documenting Extreme Risk Protective Orders (ERPO).

2. **POLICY** - Department personnel may encounter persons who pose an immediate and present danger of causing personal injury to themselves, or anyone, by possessing firearms. Officers must evaluate these situations and take the appropriate steps necessary to legally remove firearms and/or ammunition from someone’s possession if they meet the above criteria. The removal of firearms in connection with ERPO’s is temporary and set by the District Court of Maryland. The removal of firearms and/or ammunition must be in accordance with the law and properly documented. Additionally, officers must make proper and timely notifications to those agencies who will enter and track such orders.

3. **DEFINITIONS**

31. **Extreme Risk Protection Order (ERPO)** - Is a civil interim, temporary, or final protective order issued in accordance with Maryland Public Safety Articles 5-601 through 5-610 meant to remove firearms and ammunition from someone’s possession who has been determined to be an immediate and present danger of causing personal injury to themselves or others by the courts.

32. **Petitioner** - A petitioner can be any of the following: a 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 health officer or designee of a health officer who has examined the respondent; a law enforcement officer; the spouse of the respondent; a cohabitant of the respondent; a person related to the respondent by blood, marriage, or adoption; an individual who has a child in common with the respondent; a current dating or intimate partner of the respondent; or a current or former legal guardian of the respondent.

33. **Respondent** - The respondent is the party whom an ERPO is issued to and who poses an immediate and present danger of causing personal injury to themselves, or anyone, by possessing firearms.

4. **PROCEDURES**

4.1. **Initial Response**

- 4.1.1. Any officer who investigates an incident that involves an individual or suspect believed to be an imminent danger to themselves or others and it is determined the individual possesses or has access to guns, the officer will contact his or her supervisor who will respond to the scene.
- 4.1.2. After first assessing the scene, the supervisor will then contact the Gaithersburg Police Department Investigations Supervisor and a joint decision as to the need for an ERPO will be determined.
- 4.1.3. If the decision is made to seek an ERPO, the GPD Investigations Supervisor will assign an investigator(s) to respond to the scene.
 - 4.1.3.1. The Investigator(s) will assume the lead investigative responsibilities and the on-scene officers shall assist, as needed.

42. ERPO's in Conjunction with an Emergency Evaluation Petition (EEP)

- 4.2.1. It is recommended that if the individual or suspect needs to be taken into custody for an (EEP) (General Order 602.2 Response to Persons with Mental Illness or Cognitive Disability) the patrol officer(s) will transport the individual to the nearest hospital and handle the EEP accordingly. Patrol officers will notify hospital staff of any pending criminal charges and/or the filing of an ERPO.
- 4.2.2. The investigator will apply for the ERPO petition in an expedited manner at the District Court, if open for business, or otherwise with a District Court Commissioner.
- 4.2.3. The ERPO will be served upon the respondent by the investigator as soon as practical.
- 4.2.4. Upon service of the ERPO, the investigator will contact the Montgomery County Sheriff's Office (MCSO) and promptly provide the MCSO with a copy of the served ERPO and all related documents.

43. ERPO's Related to Domestic Violence Charges

- 4.3.1. In any ERPO-related investigation that is domestic violence related, officers shall notify the investigators from the Montgomery County Police (MCP) Special Victims Investigative Division (SVID), Domestic Violence Unit (DVU), will be called upon to investigate and apply for the ERPO.
- 4.3.2. If the SVID DVU will not handle the case deemed to be an ERPO-related investigation, officers shall follow provisions described in Section 4.1 of the General Order.

44. Ways to Obtain an ERPO

441. Much like protective and peace orders, an ERPO can be applied for by the petitioner at the District Court level or with the District Court Commissioner's office when the District Court is closed.
442. A petitioner will be able to apply for an ERPO when they swear under the penalty of perjury that they believe a respondent poses an immediate and present danger of causing personal injury to themselves, or anyone else, by possessing a firearm.
443. The order can require a respondent to turn over any and all firearms and ammunition in their possession and prohibit them from purchasing or possessing any firearm or ammunition for the duration of the order.
444. Any petitioner who applies for an ERPO in good faith is not civilly or criminally liable for filing the petition.
445. ERPO via the District Court Commissioner
- 445.1. When an order is issued by a District Court Commissioner, it will be deemed an Interim ERPO and will be valid until there can be a Temporary ERPO hearing, **or** two (2) days after the District Courts re-opens for business, whichever comes first.
- 445.2. An Interim ERPO is based solely upon the petitioner's articulation of the facts and circumstances that lead them to believe the respondent poses an immediate and present danger of causing personal injury to themselves, or anyone else, by possessing a firearm.
- 445.3.** The burden of proof that must be met in order for an Interim ERPO to be issued is: **Reasonable Grounds**
446. ERPO via the District Court
- 446.1. When an initial order is issued by a District Court Judge, it will be deemed a Temporary ERPO and will be valid for seven (7) days unless extended by the court for no more than seven (7) days.
- 446.2. If the end of the seventh day falls on a day when the court is closed, the order will stay valid until the second day the courts are open for official business.
- 446.3. If a Temporary ERPO is not served within those seven (7) days, the judge may extend the order, but for no more than six (6) months before a new petition has to be filed.
- 446.4. Although a judge may hear arguments from the respondent at a Temporary ERPO hearing it is not required for the order to

be issued.

4465. The burden of proof that must be met in order for a Temporary ERPO to be issued is: **Reasonable Grounds**

45. Final Protective Orders

- 451. A Final ERPO can be issued by a judge only, and can be valid for up to one (1) year with the potential to have that time extended no more than six (6) months if good cause is shown (for a total of eighteen (18) months).
- 452. A Final ERPO hearing should be set no more than seven (7) days after the respondent is served with their Temporary ERPO unless the respondent requests an extension, in which case, it may be scheduled up to thirty (30) days from the original hearing date.
- 453. A respondent must be given the opportunity to be heard by the court as to whether a Final ERPO should be issued if they are present at the hearing, however, a respondent's failure to appear at the hearing does not preclude the judge from issuing the order.
- 454.** The burden of proof that must be met in order for a Final ERPO to be issued is: **Clear and Convincing Evidence.**

46. Appealing Final Orders

- 461. A respondent has the ability to appeal a Final ERPO and the Circuit Court must hear the case within sixty (60) days of the appeal being filed.
- 462. In the time between the appeal being filed and the case being heard by the Circuit Court, the conditions listed in the Final ERPO issued by the District Court will stay in effect.

5. NOTIFICATIONS AND DOCUMENTATION

5.1. Notification to Montgomery County Sheriff's Office (MCSO)

- 5.1.1. If an officer serves an Interim ERPO or a Temporary ERPO upon a respondent, they must within two (2) hours make notification to the MCSO of the service.
- 5.1.2. Along with the notification, all related paperwork must be sent to the MCSO if applicable.
 - 5.1.2.1. This may include the return of service, emergency petition forms, criminal charges, protection orders and any other relative documents.

5.2. Documentation of Taking Possession of Firearms and/or Ammunition

- 521. When an officer takes possession of a firearm(s) and/or ammunition as

a result of an ERPO, the officer must provide written documentation to the respondent which includes the make, model and serial number of each firearm on a GPD Firearms Temporary Hold Receipt Form.

- 5.22. The documentation must also include instructions on the process of retaking possession of their firearm(s) and/or ammunition upon the expiration or termination of the ERPO.
- 5.23. The firearms and/or ammunition must be handled, submitted and stored in accordance with this directive as outlined in General Order 1105.1 The Property and Evidence Function. Firearms must be stored in a protective case, if available, in a manner intended to prevent damage.

6. RETURN OF FIREARMS AND/OR AMMUNITION TO THE RESPONDENT

- 6.1. Upon the expiration or termination of the ERPO and at the request of the respondent, the Department must return all firearms and/or ammunition no later than fourteen (14) days after the expiration of an Interim or Temporary ERPO.
- 6.2. If the court terminates a Final ERPO the Department has fourteen (14) days to return the firearms and/or ammunition.
 - 6.2.1. However, if the Final ERPO expires naturally, the Department only has forty-eight (48) hours to return the firearms and/or ammunition.
- 6.3. If any firearm and/or ammunition is not reclaimed within six (6) months, the firearms and/or ammunition may be destroyed.
- 6.4. All firearm returns related to an ERPO served by this Department will be handled by the MCP Firearms Investigation Unit.

7. CRIMINAL CHARGES FOR VIOLATING ERPO

- 7.1. Officers who have probable cause to believe a person is in violation of an Interim, Temporary, or Final ERPO **shall** arrest the person and charge them with the violation of the order.
- 7.2. This is a **MANDATORY ARREST** situation, no exceptions.