



Jeffrey R. Gahler,  
Sheriff

# HARFORD COUNTY SHERIFF'S OFFICE OPERATIONS POLICY

## Extreme Risk Protective Orders (ERPO)

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| <b>Distribution:</b>     | <b>All Employees</b>          | <b>Index:</b>    | <b>OPS 1709</b>  |
| <b>Responsible Unit:</b> | <b>Domestic Violence Unit</b> | <b>Rescinds:</b> |                  |
|                          |                               | <b>MD Code:</b>  | <b>See below</b> |

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|----------------|-----------------|-----------------|-----------------|---------------------|-----------------|
| <b>Issued:</b> | <b>01/18/22</b> | <b>Reviewed</b> | <b>01/13/22</b> | <b>Next Review:</b> | <b>01/13/25</b> |
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### 1. Purpose

To establish procedures and guidance for Extreme Risk Protective Orders (ERPO).

### 2. Policy

ERPOs are meant to prohibit a Respondent from purchasing or possessing a firearm and/or ammunition where there are reasonable grounds to believe the Respondent poses an immediate and present danger of causing personal injury to himself, the Petitioner, or other individuals by purchasing or possessing a firearm. A Petition for, or the issuance of an ERPO does not in any way affect the ability of deputies to remove or seize firearm(s) and/or ammunition from any person or property as otherwise permitted by law. ERPOs do not prohibit contact between the Respondent and Petitioner or others.

Deputies will comply with the law and this policy when handling incidents meeting the criteria for ERPOs.

### 3. Definitions

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

**ELIGIBLE PERSON:** any of the following persons are deemed by the courts to be eligible to file for an ERPO:

- A physician;
- A psychologist;
- A clinical social worker;
- A psychiatric nurse practitioner;
- A spouse;
- A licensed clinical professional counselor;
- A cohabitant;
- A person related by blood, marriage or adoption;
- A person who has a child in common;
- A current dating or intimate partner;
- A current or former legal guardian;
- A designee of a health officer who has examined the individual;
- A licensed clinical marriage or family therapist;
- A clinical nurse specialist in psychiatric and mental health nursing; and/or
- A law enforcement officer.

**EXTREME RISK PROTECTIVE ORDER (ERPO):** a civil Protective Order prohibiting the Respondent from purchasing or possessing a firearm and/or ammunition and ordering the Respondent to surrender to law enforcement any firearm and/or ammunition in the Respondent's possession for the duration of the Order; it includes an Interim, Temporary, and Final ERPO.

**FINAL ERPO:** after a hearing on a Petition for the issuance of a Final ERPO, a Final ERPO may be issued by a judge requiring the Respondent to surrender any firearm(s) and/or ammunition in the Respondent's possession; prohibits the Respondent from purchasing or possessing any firearm and/or ammunition for the duration of the ERPO. A Final ERPO will be valid for a period stated in the ERPO, not to exceed one year, unless superseded by a judge or if the ERPO is modified, rescinded or, for good cause shown, extended for six months beyond the period specified.

**FIREARM:** any 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. It includes but may not be limited to a handgun, a rifle, a shotgun, a starter gun, and black powder guns.

**INTERIM ERPO:** when the District Court is closed, the Petitioner can file a Petition with the District Court commissioner. If the Interim ERPO is issued, it requires the Respondent to surrender any firearm and/or ammunition in the Respondent's possession; prohibits the Respondent from purchasing or possessing any firearm and/or ammunition for the duration of the Interim ERPO. 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 evaluation. An Interim ERPO will be effective until the Temporary ERPO hearing. If the court is closed on the day on which the Interim ERPO is due to expire, it will be effective until the next day on which the court is open.

**PETITIONER:** an individual who files a Petition for an ERPO. A Petitioner may be any one of the following: 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 individual; 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.

**POSSESSING A FIREARM AND/OR AMMUNITION:** where the Respondent has firearm(s) and/or ammunition within his custody (ownership), control, or possession. If a person other than the Respondent claims ownership to any firearms that could be considered accessible by the Respondent, it must be determined that:

1. The firearm was removed from the Respondent's custody, control, or possession and the lawful owner agrees to store the firearm in a manner such that the Respondent does not have access to or control of the firearm at a location that a reasonable person believes to be secure (i.e. gun safe) and the only way to gain access to the firearms would be to gain it by unlawful means.
2. The firearm is not otherwise unlawfully possessed by the owner.

**REASONABLE GROUNDS:** 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 purchasing or possessing a firearm. Reasonable grounds is similar to probable cause. The determination of whether probable cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a situation. Probable cause 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 purchasing or possessing a firearm.

**RESPONDENT:** a person against whom a Petition for an ERPO is filed.

**TEMPORARY ERPO:** when the District Court is open, a Petitioner can file a Petition with the District Court judge. A hearing will be held and if the Temporary ERPO is issued, it requires the Respondent to surrender any firearm(s) and/or ammunition in the Respondent's possession and prohibits the Respondent from purchasing or possessing any firearm and/or ammunition for the duration of the Temporary ERPO. A Temporary ERPO may include a referral from the judge for an emergency evaluation. A Temporary ERPO will be effective for not more than seven days after service of the ERPO unless extended by the judge. If the court is closed on the day on which the Temporary ERPO is due to expire, it will be effective until the second day on which the court is open.

#### **4. References**

MD. CODE. ANN., PUBLIC SAFETY § 5-101  
MD. CODE. ANN., PUBLIC SAFETY § 5-133.1  
MD. CODE. ANN., PUBLIC SAFETY § 5-601 et. seq.  
MD. CODE. ANN., HEALTH - GEN § 10-622

#### **5. Procedures**

##### **A. Factors Used by the Court in Determining Whether an ERPO is Appropriate**

1. Any information known to the Petitioner that the Respondent poses an immediate and present danger of causing personal injury to himself, the Petitioner, or another person, by purchasing or possessing a firearm.
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 the Respondent presents an immediate and present danger of causing personal injury to himself, the Petitioner, or another person.
3. A description of the number, types, and location of any firearm(s) 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 or a Peace Order;
  - d. Any abuse of a controlled dangerous substance (CDS) or alcohol by the Respondent, including any conviction for a criminal offense involving a CDS or alcohol; and

- e. Where disclosure is permitted or not otherwise prohibited by law, any health records or other health information concerning the Respondent.
5. The standard of issuance for a Final ERPO (clear and convincing evidence) is higher than the standard for the issuance of an Interim or Temporary ERPO (reasonable grounds). The court is required to consider the amount of time that has elapsed since any events described in the petition when determining if a Final ERPO will be issued.
6. The ERPO does not contain any provisions related to protection for the Petitioners or others from abuse, contact, etc.

## B. Law Enforcement Response

### 1. Determination

- a. A Petition for an ERPO will be filed when a subject has demonstrated behavior indicating that they present an immediate and present danger of causing personal injury to themselves or another by possessing a firearm.
- b. Specific factors that may be used to determine if a subject presents an immediate and present danger include when the subject has:
  - i. Made verbal or written threats of, or expressed feelings, regarding suicidal or homicidal actions. The timeline for the making and carrying out of these threats will be considered;
  - ii. A history of mental health issues, emergency evaluations, and/or suicide attempts;
  - iii. The knowledge and/or means to act upon/carry out the threats;
  - iv. Current access to (as described above), or possession of, firearms and ammunition, or the ability to obtain or access them;
  - v. Unlawfully, recklessly, or negligently used, displayed, stored, possessed, or brandished firearms;
  - vi. Committed or threatened violence against themselves or others, whether or not the threat involved a firearm;
  - vii. Violated a Peace Order or Protective Order; and/or
  - viii. Abusively used a CDS and/or alcohol or has been convicted of a criminal offense involving CDS or alcohol.
- c. The list above is not exhaustive and if an Agency member believes that there are additional factors indicating that the subject likely poses an immediate and present danger of causing personal injury to themselves or others by possessing a firearm, an ERPO will be completed.

### 2. Calls for Service – Personal Observation of Behavior

- a. To qualify for an ERPO, the deputy must have reasonable grounds to believe that an individual, on any type of call for service, poses an immediate or present danger and has possession of (as defined above) a firearm.
- b. When a deputy on scene personally observes behavior that would lead the deputy to conclude that he has reasonable grounds that an individual poses an immediate and present danger of causing personal injury to himself or to other persons and possesses a firearm (as defined above), the deputy should encourage an eligible Petitioner with direct knowledge of the Respondent to file the ERPO with the assistance of the deputy.
  - i. The deputy will explain the process for filing an ERPO and provide the eligible Petitioner with a District Court ERPO Information Pamphlet (DC-ERPO-001BR), which explains the process.
- c. If the reporting party is unable, deemed ineligible, or unwilling to file for the ERPO, the deputy will file for the ERPO himself and report the information he obtained as thoroughly as possible.
- d. Deputies will also make every attempt to get a written statement from any witnesses to support the ERPO.
- e. Even if Agency members believe all firearms and ammunition in a subject's possession have been surrendered or stored, or if the subject is not in possession of firearms at the time of the incident, an application for ERPO will be filed when the criteria are met.

### 3. Calls for Service – Behavior Not Personally Observed by Deputy

- a. When a deputy receives secondhand information about a person's behavior that would lead the deputy to conclude that he has reasonable grounds that the individual poses an immediate and present danger of causing personal injury to himself or to other persons and possesses a firearm (as defined above), the deputy will make every attempt to verify the information being reported.
  - i. If the deputy is unable to verify the information, he will explain the process for filing an ERPO Petition and provide the eligible Petitioner with a District Court ERPO Information Pamphlet (DC-ERPO-001BR), which explains the process.
  - ii. If the deputy is able to verify the information the deputy will file for the ERPO himself, even if the reporting person is deemed ineligible or is unwilling to file for the ERPO.
    - a) The deputy will report the information he obtained as thoroughly as possible and make every attempt to get a written statement from any witnesses to support the ERPO.
- b. When a deputy receives secondhand information that an individual poses an immediate and present danger of causing personal injury to himself or to other persons but determines, through investigation, interviews, or other interrogative methods that there is no imminent danger and/or no firearms, the deputy will **NOT** apply for an ERPO after supervisor review.
  - i. Deputies will determine if there are other methods to alleviate the situation such as a protective order referral, peace order referral, or emergency petition.
  - ii. If documentation for the call is required, the deputy must articulate why there is no imminent danger or why no firearm was involved.

iii. The incident will be documented on an Incident Report.

#### 4. Deputies as ERPO Petitioners

- a. When a deputy determines that he has reasonable grounds that an individual poses an immediate and present danger of causing personal injury to himself or to other persons and possesses a firearm (as defined above) the deputy will respond directly from the call for service to the District Court or the Court Commissioner to obtain an ERPO naming the individual as the Respondent.
- b. After the Petition is submitted at district court or the commissioner's office, the deputy will wait for the ERPO to be issued and will personally take it to Law Enforcement Records for entry into the Records Management System (RMS).
- c. If applicable, and a third party is needed to testify, then deputies will fill out the witness summons form related to the ERPO (a supply of pre-authorized blank civil summons forms will be kept at Law Enforcement Records, Civil Unit, and PowerDMS).
- d. The deputy or a Law Enforcement Records Technician will immediately walk the summons form to the Civil Unit and place it in the mailbox marked "ERPO summons."
- e. The Civil Unit will log the summons into RMS and put the requests on the road for service as quickly as possible.
- f. Deputies who apply for an ERPO will be required to attend all court proceeding(s) related to the ERPO even if they do not receive a summons.
- g. The Agency member will pursue the continuance of the order through the final hearing unless continuance is denied by the judge at the temporary hearing or unless directed otherwise by competent authority.
- h. If applicable, when the deputy is the Petitioner in a Temporary ERPO, the deputy should attempt to contact witnesses prior to the hearing and request they attend.
- i. Deputies will not utilize the accessories of the office (uniform, badge, etc.) to file a Petition for a personal matter; in this instance the deputy must file a Petition as a normal citizen.

#### 5. Civilian as the Petitioner

- a. An eligible Petitioner with direct knowledge of the Respondent, who wishes to act as the Petitioner, will be escorted to the District Court or the Court Commissioner to obtain the ERPO.
- b. Deputies will make every effort to ensure the qualified Petitioner follows through with the ERPO application process.
- c. Due diligence will be satisfied by ensuring the Petitioner reaches District Court or the Court Commissioner. The deputy does not have to wait with the Petitioner until after seeing a judicial officer.

## 6. Reporting

- a. Actions related to ERPOs require the deputy to complete an Incident Report and/or a Supplemental Report; this includes the service of ERPOs.

## 7. Emergency Evaluations

- a. When a deputy files a Petition for an emergency evaluation and has reasonable grounds to believe the person poses an immediate and present danger of causing personal injury to himself or other persons by purchasing or possessing a firearm, the deputy will also file a Petition for an ERPO. Example: A person threatening suicide by using a firearm.
- b. A Court Commissioner or judge may make a finding, based upon the information contained within an ERPO Petition, that there is probable cause to believe the Respondent meets the requirement for an emergency evaluation.
  - i. Commissioners may refer the Respondent to law enforcement for a determination of whether the Respondent should be taken for an emergency evaluation.
  - ii. A referral on the ERPO by a commissioner does not provide law enforcement the legal authority to take the Respondent into custody for an evaluation; the referral and any subsequent request for an emergency evaluation must follow the criteria set forth in the Health General Article.
  - iii. Judges may refer the Respondent for an emergency evaluation; a referral on the ERPO by a judge requires law enforcement to take the Respondent into custody for an evaluation.

## 8. Service of ERPO

- a. Upon receipt of an ERPO from the Court, deputies will immediately contact the Gun Center to determine whether the Respondent is the registered owner of a regulated firearm.
- b. Deputies will promptly attempt to serve the ERPO on the Respondent and all attempts to serve the ERPO will be documented in computer-aided dispatch (CAD).
- c. During their investigations, deputies may develop probable cause to apply to the court for a search warrant to search a specific location(s) in situations when the Respondent fails to surrender firearm(s) and/or ammunition. If this occurs, refer to the ERPO search warrant template in PowerDMS. If further assistance is needed, contact the on-call Criminal Investigations Division (CID) supervisor or the on-duty Domestic Violence Unit (DVU) supervisor during regular shift hours.
- d. When deputies have probable cause to believe the Respondent is in possession of firearm(s) and/or ammunition, and after giving proper notice, the Respondent refuses to surrender the firearm(s) and/or ammunition, deputies will arrest the Respondent for violating the ERPO (Public Safety Article 5-610).
- e. If the Respondent is on location and unwilling to comply with the provisions of the ERPO:

- i. Explain to the Respondent that failure to surrender the firearms and ammunition will result in their arrest and criminal charges;
  - ii. If they are still unwilling to comply, arrest the Respondent for violation of the ERPO; and
  - iii. Secure the location and obtain a search and seizure warrant for the firearms and ammunition. If this occurs, refer to the ERPO search warrant template in PowerDMS. If further assistance is needed, contact the on-call CID supervisor or on-duty DVU supervisor during regular shift hours.
- f. If the Respondent is unable to surrender the firearms and ammunition because the firearms and ammunition are at a different location:
- i. Serve the Respondent with the ERPO;
  - ii. Ask the Respondent to accompany deputies to where the firearms and ammunition are located so they may be surrendered, or to provide written consent for the deputies to retrieve the firearms and ammunition or send other Agency personnel to retrieve the firearms and ammunition; and
  - iii. If the Respondent refuses, place him under arrest, if applicable, for failure to comply with the ERPO and obtain a search warrant for the firearms. If this occurs, refer to the ERPO search warrant template in PowerDMS. If further assistance is needed, contact the on-call CID supervisor or on-duty DVU supervisor during regular shift hours.
- g. If the Respondent is subject to a court ordered Emergency Petition (EP) as well as an ERPO:
- i. Serve the Respondent with the ERPO and request the surrender of firearms and ammunition prior to service of the EP;
  - ii. If the Respondent refuses to comply with the ERPO, serve the Respondent with the EP and transport them to the hospital;
  - iii. Secure the location and obtain a search warrant to retrieve the firearms and ammunition. If this occurs, refer to the ERPO search warrant template in PowerDMS. If further assistance is needed, contact the on-call CID supervisor or on-duty DVU supervisor during regular shift hours; and
  - iv. If the Respondent is not on location or cannot be located the deputy should attempt to make arrangements with an adult in the residence (i.e. a spouse or parent) to recover the firearms.
- h. If after reasonable attempts to serve the ERPO, the Respondent cannot be located and another adult person is not present in the location to turn over the firearms and ammunition, the supervisor on scene will determine:
- i. If the order will be passed on to oncoming patrol shift; or



- ii. If a search warrant and application for charges will be applied for if the deputy can articulate the Respondent is intentionally avoiding service. If this occurs, refer to the ERPO search warrant template in PowerDMS. If further assistance is needed, contact the on-call CID supervisor or on-duty DVU supervisor during regular shift hours.

## 9. Firearms

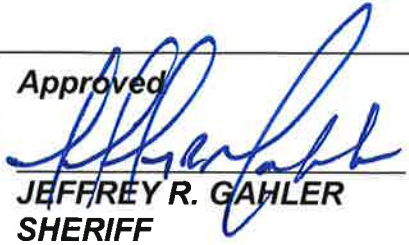
- a. Deputies who are investigating cases where an ERPO may be appropriate, and one has not yet been issued, should consider other options to legally secure firearm(s) and/or ammunition in the suspect's possession during the original call for service (e.g. consent, securing the location pending a search warrant, plain view at domestic violence scenes).
- b. If appropriate, the State's Attorney Office will be contacted for guidance.
- c. Such actions should be considered to minimize the potential risk and the need to secure the firearm(s) and/or ammunition prior to the suspect returning to the location.
- d. If compelled to turn over firearms to a law enforcement agency, Respondents of ERPOs may surrender their firearm(s) and/or ammunition to any law enforcement agency in the state.
- e. Deputies taking possession of firearm(s) and/or ammunition in accordance with an ERPO will, at the time of surrender/seizure, ensure the following steps are taken:
  - i. If criminal charges are being sought for a firearms related violation, contact the Gun Center to determine if the Respondent is a prohibited person. Conduct a Maryland Automated Firearms Services System (MAFSS) check for registered firearms;
  - ii. Unless also seized as evidence of a crime, firearm(s) should not be test fired;
  - iii. If the gun was not originally seized as evidence of a crime, but probable cause develops regarding a possible crime, a search warrant should be sought prior to any testing;
  - iv. Firearm(s) will be stored in a manner intended to prevent damage; and
  - v. Employees will not place any mark on the firearm(s) for identification or other purposes.
- f. Deputies submitting property pursuant to an ERPO Property/Evidence Record (SO-258F) will check the ERPO box on the property form. Take photographs of all firearms to include serial numbers, make/model, and any existing damage. Code the seizure with an "N8" disposition code and forward all reports and attachments to the Domestic Violence Unit (DVU).
- g. If the Respondent's firearms are located outside of Harford County, then the ERPO will be sent to the appropriate jurisdiction for service and seizure of any firearms.
- h. If the HCSO receives any ERPOs from another jurisdiction that order will be served, and any firearms will be seized and submitted in accordance with Agency policy.

## 10. DVU Responsibility upon Expiration of an ERPO

- a. Upon the expiration or termination of an ERPO, the DVU will:
    - i. Contact the Gun Center to determine if the Respondent is prohibited from purchasing or possessing firearm(s) and/or ammunition;
    - ii. Have the Respondent complete an Application for Return of Firearms (SO-153) and an Authorized Release of Information (SO-158); and
    - iii. If appropriate, attempt to notify the Respondent that he may request the return of the firearm(s) and/or ammunition.
  - b. On request of the Respondent who is not otherwise prohibited from purchasing or possessing firearm(s) and/or ammunition, the DVU will return the firearm(s) and/or ammunition to the Respondent no later than:
    - i. Fourteen days after the expiration of an Interim or Temporary ERPO;
    - ii. Fourteen days after the court terminates a Final ERPO; or
    - iii. Forty-eight hours after the expiration of the Final ERPO.
  - c. When a Respondent does not wish to have his firearm(s) and/or ammunition returned or is otherwise prohibited from purchasing or possessing firearm(s) and/or ammunition, the firearm(s)/ammunition will be disposed of in the following manner:
    - i. Option # 1 - The firearm(s) may be transferred to a Federal Firearms Licensed (FFL) Dealer; the FFL must provide written proof that the Respondent has agreed to transfer the firearm(s) and/or ammunition to the FFL; this agreement must be verified with the Respondent and the verification documented in writing; or
    - ii. Option # 2 - Request the HCSO to dispose of the firearm(s) and/or ammunition.
  - d. If firearm(s) and/or ammunition is not reclaimed within 90 days after the HCSO provides written notification to the Respondent that the firearm(s)/ammunition may be released, no party will have the right to assert ownership of the firearm(s) and/or ammunition and the HCSO may destroy them.
11. Protective/Peace Order Database/Secure Case Search
- a. The use of the Maryland Protective/Peace Order Database is strictly for official and law enforcement purposes only.
  - b. The Maryland Protective/Peace Order Search may be found at <http://jportal.mdcourts.gov>.
  - c. An Agency employee must have access to J-portal to query the Protective/Peace Order Database.
  - d. The Protective/Peace Order Database can be utilized to review conditions of an ERPO if the Petitioner or Respondent does not have a copy and may print a copy of the ERPO if needed.

12. Penalties

- a. Violating an Interim, Temporary, or Final ERPO may result in a conviction, a fine up to \$1,000 and imprisonment up to 90 days, or both, for a first offense, or a fine up to \$2,500 and imprisonment up to one year for a second offense, or both.

Approved  
  
JEFFREY R. GAHLER  
SHERIFF  
DATE 1-13-2022