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Chief of Police

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"INTEGRITY...FAIRNESS...SERVICE"

SPECIAL ORDER # 2018-03

DATE: September 17, 2018

TO: All Police Department Personnel. To be Announced at Roll Call and a Copy Posted on the Department's Intranet Site.

RE: Extreme Risk Protective Order (ERPO).

EFFECTIVE: Immediately.

BACKGROUND: During the 2018 legislative session of the Maryland General Assembly, House Bill 1302, Public Safety – Extreme Risk Protective Orders, was passed. The bill establishes the Extreme Risk Protective Order, a tool designed to restrict access to firearms and ammunition by persons who pose an immediate and present danger of causing personal injury to themselves or another by possessing a firearm. These orders are similar to Civil Protective Orders in terminology (i.e., petitioner, respondent, Interim, Temporary, and Final orders, etc.), and processing (i.e., order service, hearings, etc.). However, they are unique in that police officers have been appointed by law as eligible petitioners. Extreme Risk Protective Orders may also include a referral to law enforcement for a determination regarding the need for an Emergency Evaluation, or may be accompanied by an Emergency Evaluation to also be served on the respondent. The bill includes procedures for the surrender of firearms and ammunition, and specified timelines and method for possible return of these items after expiration or termination of the ERPO.

PURPOSE: To establish procedures for members to follow when encountering subjects who pose an immediate and present danger of causing personal injury to themselves or another by possessing a firearm. To establish procedures for obtaining, serving, and enforcing an ERPO.

RELATIONSHIP TO DEPARTMENTAL VALUES: The Department's policy and procedures for Extreme Risk Protective Orders support the Department's value of **SERVICE** by ensuring an ERPO is obtained when allowed by law, is served upon receipt by the Department, and that due diligence is taken to identify and obtain firearms and ammunition in the possession of the respondent.

POLICY: It is the policy of the Baltimore County Police Department to utilize Extreme Risk Protective Orders, in accordance with Maryland law, as a tool to restrict access to firearms and ammunition by persons who pose an immediate and present danger of causing personal injury to themselves or another by possessing a firearm.

PROCEDURES:

EXTREME RISK PROTECTIVE ORDERS

COURT FORMS

- Form DC-ERPO-001, Petition for Extreme Risk Protective Order.
- Form DC-ERPO-001A, Addendum to Petition for Extreme Risk Protective Order.
- Extreme Risk Protective Order Brochure.

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DEPARTMENT FORMS

- Extreme Risk Protective Order – Notice to Surrender Firearms and Ammunition.
- Extreme Risk Protective Order – Notification to Parent/Guardian Letter.
- Form 15, Property Inventory.
- Form 132, Control Sheet.
- Form 342, Notification of Disposition for Firearms or Ammunition Held for an Extreme Risk Protective Order.

EXTREME RISK PROTECTIVE ORDER

- Upon service, prohibits a respondent from possessing or purchasing firearms and ammunition for the duration of the order.
NOTE: Possession includes firearms and ammunition that are in the control of or are accessible to the respondent. The Department has determined that all firearms and ammunition at the location where the respondent resides, including items in a locked safe inside the home, belonging to a roommate, etc., are considered to be accessible. Accessible firearms and ammunition may also include firearms and ammunition at a third-party location (e.g., in the home of a friend, neighbor, or relative, etc.). Members and shift commanders will use all available information (e.g., information regarding the method and location of storage, prior history of the subject accessing the firearms or ammunition, etc.) to make their decisions regarding what is considered “access” in regard to firearms or ammunition at third-party locations. Members and shift commanders will be mindful that just because a safe is locked, does not mean it cannot be accessed. Additional factors such as the size and type of safe, location of the safe, ability to prevent access to the keys, etc. will be considered.
- May be applied for by an eligible petitioner.
- May be issued as an Interim or Temporary ERPO, when there are reasonable grounds to believe that the respondent possesses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.
- May be issued as a Final ERPO, when there is clear and convincing evidence to believe that the respondent possesses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.
NOTE: The standard for issuance of a Final ERPO (i.e., clear and convincing evidence) is higher than the standard for issuance of an Interim or Temporary ERPO (i.e., 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 an ERPO will be issued.
- Does not contain provisions related to protection for the petitioner or others from abuse, contact, etc.
- Requires the respondent to immediately surrender firearms and ammunition in their possession to law enforcement.
- If a District Court judge grants or denies a petition for an ERPO, a respondent or a petitioner may file an appeal with the District Court Clerk.
NOTE: The District Court order remains in effect until superseded by an order of the Circuit Court.

ELIGIBLE PETITIONERS

- A specified health or mental health practitioner (as defined in Public Safety 5-601) 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.
- A current or former legal guardian of the respondent.

DETERMINING WHEN TO PETITION FOR AN EXTREME RISK PROTECTIVE ORDER

- A petition for an ERPO will be filed (by a Department member or other qualified petitioner) 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.
- Specific factors that may be used to determine if a subject presents an immediate and present danger include when the subject has:
 1. Made verbal or written threats of, or expressed feelings regarding suicidal or homicidal actions, particularly those involving a firearm.
NOTE: The timeline for the making and carrying out of these threats will be taken into consideration.
 2. A history of mental health issues, emergency evaluations, and/or suicide attempts.
 3. The knowledge and/or means to act upon/carry out the threats/feelings.
 4. Current access to or possession of firearms and ammunition, or the ability to obtain or access them.
 5. Unlawfully, recklessly, or negligently used, displayed, stored, possessed or brandished firearms.
 6. Committed or threatened violence against themselves or others, whether or not the threat involved a firearm.
 7. Violated a Peace Order.
 8. Violated a Protective Order.
 9. Abusively used a controlled dangerous substance (CDS) and/or alcohol, or has been convicted of a criminal offense involving CDS or alcohol.**NOTE:** This list is not exhaustive. If the shift/unit commander believes that there are additional factors indicating that the subject likely poses an immediate and present danger of causing personal injury to themselves or another by possessing a firearm, an ERPO petition will be completed.

MEMBERS ENCOUNTERING SUBJECTS POSING A FIREARMS-RELATED RISK TO SELF OR OTHERS

- Use available knowledge and investigation to determine if the subject may pose a danger of causing injury to themselves or another by possessing (i.e., having control of or access to) a firearm.
 - Ascertain whether the subject is a juvenile or is otherwise prohibited from possessing ammunition and firearms.
NOTE: Members will investigate and place appropriate criminal charges if a juvenile or otherwise prohibited person is in possession of firearms.
 - Seize any observed firearms and ammunition.
NOTE: Officers may not conduct a search for firearms or ammunition other than when allowed by law, or with consent.
 - Make a good faith effort to obtain consent to take additional firearms and ammunition for safekeeping, when possible.
NOTE: This includes firearms and ammunition owned by others that the subject has access to.
 - Apply for a Search and Seizure Warrant to seize additional firearms, when a crime has been committed.
 - May, with shift/unit commander approval, under the Community Caretaking Doctrine exception to the 4th Amendment, immediately search for and seize additional firearms, ammunition, other weapons, etc. when:
 1. A crime has not yet been committed; and
 2. There is a compelling need to secure the weapons based on the size of the event, likelihood of the event, and the imminence of the event.
NOTE: As the likelihood, urgency, and magnitude of a threat increases, so does the justification for the scope of search.
- NOTE:** Firearms seized prior to obtaining and serving an ERPO are not bound to the storage and release requirements outlined in the ERPO.

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- Immediately notify their shift/unit commander, for a determination of whether the subject meets the criteria for petitioning for an ERPO.
NOTE: Even if 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 an ERPO will still be filed when the criteria are met.
- File a petition for an Emergency Evaluation, and transport the subject to the hospital, when current qualifying symptoms of mental illness are observed (Refer to Field Manual, Article 4, Section 8.1.1, Service of Petitions for Emergency Evaluation).
- Explain the appropriate Peace Order or Protective Order procedures, when a subject poses a threat to others, even if an ERPO will be petitioned for by a Department member or other qualified petitioner.
- Explain ERPO procedures and provide a copy of the District Court's Extreme Risk Protective Order Brochure.
NOTE: The member will make every effort to ensure the qualified petitioner follows through with the ERPO application process (e.g., transport the petitioner to the court, etc.), when the shift commander determines that an ERPO petition will be completed by someone other than a Department member.
- Consider if they will need to subpoena the subject's mental health records to support their application for an Interim or Temporary ERPO.
NOTE: Mental health records obtained by way of a subpoena will be delivered under seal to the District Court. Members obtaining mental health records via a subpoena will have to respond to the District Court to review the materials.
- Complete an Incident Report, including:
 1. All information leading the member to believe the subject did or did not meet the criteria for an ERPO;
 2. Name of the shift/unit commander making the final determination regarding petitioning for the ERPO.
 3. Date and time ERPO was obtained and name of issuing commissioner or judge, when an ERPO is issued.
 4. All additional investigation conducted and information received regarding firearms and ammunition the subject may have access to.
 5. Distribution to the precinct commander, precinct domestic violence coordinator, precinct investigative services team, the Mobile Crisis Team, and the Firearm Interdiction Team.

MEMBERS PETITIONING FOR AN EXTREME RISK PROTECTIVE ORDER

- Must be available for, and attend, all scheduled ERPO court hearings.
NOTE: For an Interim ERPO, the hearing will be held on the first or second business day after service. For a Temporary ERPO, the hearing will be held no later than seven days after service.
- Immediately complete a Form DC-ERPO-001, and a Form DC-ERPO-001A, including all known information available to the officer (e.g., from observation of the subject, information provided by witnesses, from record checks and further investigation, etc.), and have the documents reviewed and approved by the shift/commander.
- Report directly to the District Court to file for the ERPO, upon completion and approval of the aforementioned forms.
NOTE: Members will write "Extreme Risk Protective Order" next to their name when they sign into the court.
- Attempt to ensure witnesses appear at the Temporary or Final ERPO hearings (i.e., by making phone contact, obtaining a summons, etc.).
- Consider if they will need to subpoena the subject's mental health records to be used at an ERPO hearing.
- Notify the Legal Section of all appeals.

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MEMBERS RECEIVING AN EXTREME RISK PROTECTIVE ORDER

- In person, from an other jurisdiction, or upon being called to the court, will immediately:
 1. Indicate the date and time the order was received in the lower right corner of the order.
 2. Determine the affected precinct and immediately notify the affected precinct shift commander that an ERPO has been issued.
 3. Relay the order to the affected precinct for immediate:
 - a. Processing by the desk officer.
 - b. Assignment by the shift commander.

SHIFT/UNIT COMMANDER

- Makes the final determination, based on the officer's investigation and known facts of the incident, regarding whether the subject likely poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm and if:
 1. The Department will pursue an ERPO.
 2. An otherwise qualified petitioner will pursue an ERPO.
NOTE: If there is doubt regarding the potential petitioner's knowledge of the incident or ability to follow through with obtaining the ERPO or appearing in court, or the ERPO is being pursued due to the potential of harm to others, the Department will pursue the ERPO.
 3. An ERPO is not needed.
- Documents the reasons, in an Incident Supplement, if the determination is made that an ERPO will not be pursued by a Department member.
- Assigns a member to serve as the petitioner, if the determination is made that an ERPO will be pursued by the Department.
NOTE: Consideration will be given to schedule availability (i.e., member does not have upcoming vacation or trainings, etc.) to ensure the petitioner will be available to appear in court.
- Reviews the ERPO and ensures it is immediately assigned for service, upon receipt.
- Determines the method of service (i.e., number of officers needed, etc.) and number of additional service attempts that will be made during their shift.
NOTE: As part of this determination, the shift/unit commander will decide if/when specialized units or a precinct investigative services team should be used to serve the ERPO, and when additional investigation is needed to attempt to locate the respondent.
- Ensures the petitioner's residence is secured, and an application for a Search and Seizure Warrant completed, when firearms and ammunition are believed to be at the location and have not been previously seized or surrendered pursuant to an ERPO.
- Determines if a third-party location will be secured and an application for a Search and Seizure Warrant completed to obtain firearms and ammunition pursuant to an ERPO.
- Notifies and provides the oncoming shift/unit commander with the ERPO, when the order was unable to be served.
- Considers if a selective enforcement should be conducted to protect a petitioner, potential victims, and/or target locations.
- Ensures that unserved court orders are returned to the issuing court, upon reaching the hearing date.
NOTE: The order will be signed out of the Civil Order Record Book. If an extension is granted and a new ERPO is issued, it will be re-entered into the Civil Order Record Book.

DESK OFFICER

- Logs received ERPOs in the Civil Order Record Book.
- Performs record and firearm checks, to include any outstanding warrants, summonses, peace or protective orders, etc. and attaches copies of those record checks to the existing documents.

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- Contacts the petitioner to gather additional information regarding the type and current location of firearms and ammunition, and additional information regarding the location of the respondent, whether or not the respondent is in current possession of the firearms, etc., prior to assignment of the ERPO for service.
NOTE: The purpose of this contact is for officer safety. If contact is unable to be made, or additional information is unavailable, the Desk Officer will not delay the delivery of the ERPO to the shift commander for assignment.
- Faxes a copy of all ERPOs to the Information & Records Management Section.
- Completes a Form 132, and attaches it to the front of the ERPO.
- Immediately gives the ERPO to the shift commander for assignment.
- Verifies an existing ERPO, when a copy is not available at the scene for the investigating officer to review.

MEMBERS SERVING AN EXTREME RISK PROTECTIVE ORDER

- Attempt service immediately upon receipt, in the manner identified by their shift/unit commander.
- Make additional attempts to serve the order, as directed by the shift/unit commander.
- Upon making contact with the respondent:
 1. Read the order to the respondent and have the respondent sign.
NOTE: A copy will be provided to the respondent.
 2. Note the date, time, and place of service in the "Result" block of the Form 132.
 3. Notify the subject that they must immediately surrender firearms and ammunition in their possession, pursuant to the order.
NOTE: If the respondent is able and refuses to surrender firearms or ammunition in their possession in violation of the order, members will secure the scene, and complete an application for a Search and Seizure Warrant. An arrest will be made upon determination that the respondent violated the order. If the respondent is unable to surrender firearms or ammunition (e.g., when the subject is hospitalized pursuant to an Emergency Evaluation, etc.) and the respondent possesses firearms or ammunition in violation of the order, members will ask the respondent for consent to gain access to the firearms or ammunition with the help of the petitioner, property owner, roommate, family member, spouse, or other interested party, etc. If the respondent will not, or cannot assist in surrendering the firearms or ammunition, an application for a Search and Seizure Warrant will be completed.
 4. Attempt to determine if there are additional firearms or ammunition at the respondent's residence. When a determination is made that there are additional firearms or ammunition at the respondent's residence, the member will:
 - a. Contact the owner of the firearms and ammunition and request the owner surrender the items to the Department for safekeeping;
 - b. Notify the shift commander, secure the residence, and complete an application for a Search and Seizure Warrant, if the request is denied.
 5. Attempt to determine if there are additional firearms or ammunition at a third-party location that the respondent has access to. When a determination is made that there are additional firearms or ammunition at a third-party location that the respondent has access to, the member will:
 - a. Contact the owner of the firearms and ammunition and request the owner surrender the items to the Department for safekeeping;
 - b. Notify the shift commander for a determination of whether the location will be secured, and an application for a Search and Seizure Warrant completed, if the request is denied.
 6. Provide the respondent a copy of the Extreme Risk Protective Order – Notice to Surrender Firearms and Ammunition.
NOTE: If the respondent is a juvenile, a copy of the Extreme Risk Protective Order - Notification to Parent/Guardian Letter will be provided to a parent/guardian.

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7. Observe and evaluate the subject to determine if an Emergency Evaluation is required, when a referral is included in an Interim ERPO.
 8. Serve the Emergency Evaluation on the respondent, when an Emergency Evaluation has been issued by a judge in addition to a Temporary ERPO.
- Contact the petitioner to obtain additional information if they believe that all of the firearms or ammunition in the respondent's possession have not been surrendered.
 - Document all service attempts on the Form 132.
 - Complete the Return of Service and ensure it is returned to the issuing court.
 - Within two hours of service, electronically notify the Department of Public Safety and Correctional Services (DPSCS) of the service (i.e., VINE).
 - Distribute the ERPO as follows:
 1. Original – forward to issuing court.
 2. First copy – to the respondent.
 3. Second copy – to the Information & Records Management Section for scanning.
 4. Third copy – to the Precinct Domestic Violence Coordinator.
 - Complete an Incident Report:
 1. Using the departmental approved incident template for protective order service. The following information will be included in the narrative:
 - a. ERPO type (i.e., Interim or Temporary).
 - b. ERPO number.
 - c. Date, time, and place of service.
 - d. Respondent's name and date of birth.
NOTE: The respondent will be listed in the *Other Person* tab with the *Involvement* field marked "Served."
 - e. Location where the order was obtained.
 - f. Name of the issuing judge/commissioner.
 - g. Date and time of the ERPO hearing.
 - h. Court location where the completed Return of Service form was returned.
 - i. Method of returning the Return of Service form to the court (i.e., via fax or hand delivered).
 - j. All additional investigations conducted in regard to determining firearms and ammunition the subject may have access to.
 2. Using the offense code "Protective Order Service" and any additional offense codes that may apply.
NOTE: If weapons are surrendered during the service of the ERPO the offense code "Weapon Other" will also be used. Surrendered firearms will be listed in the *Property* tab of the Incident Report, using "Safekeeping" in the *Action Type* field.
 3. Distributing copies of the report to the precinct commander, precinct domestic violence coordinator, precinct investigative services team, the Mobile Crisis Team, and the Firearm Interdiction Team.
 - If unable to make contact with the respondent, return the order to the shift/unit commander, prior to the end of their tour-of-duty, so it may be immediately reassigned for service by the oncoming shift.

MEMBERS OBTAINING FIREARMS/AMMUNITION PURSUANT TO THE SERVICE OF AN EXTREME RISK PROTECTIVE ORDER

- Provide the respondent a copy of the Form 15, which will serve as a receipt.
NOTE: The Form 15 must include the make, model, and serial number of the firearms/ammunition.
- Verify that firearms and ammunition received are consistent with:
 1. Firearms registered to the respondent.
 2. Firearms and ammunition listed on the order as being in the possession of the respondent.
NOTE: Members will contact the petitioner to obtain additional information if they believe that all of the firearms or ammunition have not been surrendered.

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- Apply for a Search and Seizure Warrant when the respondent is in possession of firearms or ammunition not surrendered to police.
- Ensure photographs of all firearms and ammunition are taken using the Axon Capture feature of a Body Worn Camera.
NOTE: Photographs will be used to document the overall condition of the items and any damage at the time they are obtained by the Department.
- Transport and store firearms in a method intended to prevent damage. When a protective case is provided by the owner, the member will:
 1. Package the firearm per existing Department procedures;
 2. Place the firearm inside the protective case for transport; and
 3. Complete a Form 128D, Disposal/Destruction of Property/Evidence, for return of the case to the owner, upon delivery of the firearm to the EMU.**NOTE:** Members may not place any mark on a surrendered firearm for identification or other purposes.
- Submit firearms to the Evidence Management Unit in accordance with current Department procedures.

VIOLATIONS OF AN EXTREME RISK PROTECTIVE ORDER

- If the respondent fails to comply with the order to surrender all firearms and ammunition, and the respondent possesses firearms or ammunition, an arrest will be made.
- If an arrest is not physically possible because the respondent is not present, a warrant/summons will be sought.
- If the respondent possesses firearms or ammunition and refuses to surrender them, the assigned officer, with the assistance of the precinct Investigative Services Team, will:
 1. Obtain a valid consent to search, or;
 2. Apply for a Search and Seizure Warrant per current Department policy.

PRECINCT DOMESTIC VIOLENCE COORDINATORS

- Track ERPOs for terminations, extensions, expirations, etc.
- Upon receiving the Final ERPO from the Information & Records Management Unit (IRMU), conduct follow-up with the respondent (e.g., by telephone, home visit, etc.) to ensure compliance with the ERPO.
- Review served Interim and Temporary ERPOs, and notify respondents that they may be eligible to reclaim their firearms, immediately upon termination or expiration of an ERPO.
- Notify the respondent, via a Form 342, that they may request the return of firearms and ammunition held by the Department, upon termination or expiration of an ERPO.
NOTE: If the respondent is a juvenile, notification will be sent to the parent/guardian.
- Conduct necessary record checks on the claimant who is requesting possession of the firearm and completes required paperwork.
NOTE: The Form 128D, or Form 128R, Retention of Property/Evidence, will require the approval of a lieutenant or higher.
- Coordinate with the EMU, and ensure additional paperwork and record checks are completed when a firearm will be released to a person other than the respondent, or to a Federal Firearms Licensed (FFL) Dealer.
NOTE: A copy of the Form 15 will be provided to the respondent, as a receipt.
- Submit returned Forms 342 to the IRMU for scanning into the Records Management System.

FIREARM INTERDICTION TEAM

- Serves as the liaison to the Maryland State Police for mental health issues pertaining to firearms ownership.

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MOBILE CRISIS TEAM

- In the absence of a court or doctor ordered emergency petition, assists with an on scene mental health assessment and Emergency Evaluation, when warranted based upon clinical finding.
- Assists respondents with referrals to mental health services through the Baltimore County Crisis Response System (BCCRS) (e.g., Crisis Hotline, etc.).

PRECINCT INVESTIGATIVE SERVICES TEAM

- When needed, assists in the:
 1. Service of an ERPO.
 2. Obtaining mental health records via a subpoena.
 3. Application for and service of Search and Seizure Warrants in reference to ERPOs.

LEGAL SECTION

- Provides legal advice regarding an ERPO, when needed.

EVIDENCE MANAGEMENT UNIT

- Transports and stores firearms submitted pursuant to an ERPO in a method intended to prevent damage.
- Coordinates, upon expiration of an ERPO and request by the respondent, the:
 1. Release of firearms to:
 - a. The respondent,
 - b. An otherwise qualified person, or
 - c. A FFL Dealer, requested by the respondent; or

NOTE: The EMU will not release firearms until the Department has determined that the individual the firearms are being released to is eligible to possess the firearms.

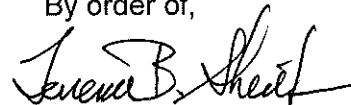
 2. Destruction of the firearms and ammunition.

BODY WORN CAMERA (BWC) CATEGORIES AND RETENTION

- Members uploading BWC data to the digital evidence management system will select a category that ensures a retention period of no less than three years. (i.e., Misdemeanors and Serious Traffic, Felony Miscellaneous, Felony Specified, Administrative Investigations, or CEW Compliance).

IMPLEMENTATION: This Special Order will be distributed electronically to all Department members. Shift/Unit supervisors will be responsible for the referencing of this Special Order.

By order of,



Terrence B. Sheridan
Chief of Police