
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 Cecil County Sheriff's Office to ensure the prompt and effective recording, service and maintenance of Extreme Risk Protective Orders (ERPO).

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.¹

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.²

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;

¹ Annotated Code of Maryland, Public Safety Article, §5-133.1 (a)

² Annotated Code of Maryland, Public Safety Article, §5-101(h) (1 & 2)

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: where 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.³

Petition for emergency evaluation means: where the deputy has personally observed an individual or the individual's behavior, and the deputy 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 deputy may file a petition with the treating facility for an emergency evaluation.⁴

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 firearm and ammunition in the Respondent's possession; and prohibits the Respondent from purchasing or possessing any firearm 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.

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

³ Firearm Surrender Task Force: Law Enforcement Instructional Guide, Failure to Surrender Firearms-Final Protective Orders (2004)

⁴ Annotated Code of Maryland, Health General Article, §10-622

surrender to law enforcement authorities any firearm and ammunition in the Respondent's possession; and prohibits the Respondent from purchasing or possessing any firearm 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 are akin to probable cause. The determination of whether probable cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a given 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 possessing a firearm.⁵

Factors used by the Court or Commissioner in Determining whether the Issuance of an ERPO is Appropriate

a. 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;

b. 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;

c. A description of the number, types, and location of any known firearms believed to be possessed by the Respondent;

⁵ Maryland Judge's Domestic Violence Resource Manual-October 2017
See Reisterstown Lumber Co. v. Royer, 91 Md. App. 746 (1992)

d. Any supporting documents or information regarding:

1. Any unlawful, reckless, or negligent use, display, storage, possession, or brandishing of a firearm by the Respondent;

2. 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;

3. Any violation by the Respondent of a Protective Order under Title 4, Subtitle 5 of the Family Law Article;

4. Any violation by the Respondent of a Peace Order under Title 3, Subtitle 15 of the Courts Article;

5. 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

6. Where disclosure is permitted or not otherwise prohibited by law, any health records or other health information concerning the Respondent.

Law Enforcement Response

a. Emergency Evaluations:

Where a deputy files a petition for an emergency evaluation and the deputy has reasonable grounds to believe that the evaluatee poses an **immediate and present danger** of causing personal injury to himself or other persons by possessing a firearm, the deputy should, in most cases, also file a petition for an ERPO.

b. Domestic and other types of calls for police assistance:

Where a deputy is on a scene and the deputy 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/herself or to other persons by possessing a firearm, the deputy should, in most cases, file a petition for an ERPO.

Where a deputy 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 deputy receives information meeting the criteria stated above, the deputy 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 deputy 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 deputy shall provide the complainant/witness/victim with the ERPO information pamphlet which explains the process for filing of the petition. The deputy 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 deputy shall document this fact. ***It is however, always in the deputy's discretion, even in cases where the complainant/witness/victim is a person eligible for relief, to file the ERPO petition. If the complainant/witness/victim indicates that they will not be pursuing an ERPO, the deputy should determine whether it is appropriate for the deputy to file the petition.***

In those cases, where the deputy does not personally observe the behavior of the individual and the witness/complainant/victim is not a person eligible for relief, the deputy should determine whether it is appropriate for the deputy to file the petition for the ERPO.

c. Deputies who are investigating cases where the issuance of an ERPO may be appropriate should make a good faith effort to secure firearms and ammunition in the Respondent's possession during the original call for service. This action should result in an effort to eliminate the potential harm and the need to secure the weapons and ammunition at a later time should an ERPO be issued. In the event where the ERPO is not issued or the petition is subsequently dismissed, the weapons and ammunition can be returned to the lawful owner if the individual is not barred from possessing the firearms and ammunition by State or Federal law.

Service of ERPO Orders

Interim Orders:

a. On receipt of an Interim Order deputies shall have initiated a computer check to determine whether the Respondent is the registered owner of a regulated firearm;

b. Immediately on receipt of an Interim Order deputies shall attempt to serve the Order on the Respondent;

c. Deputies shall make a good faith effort to secure any firearm(s) and/or ammunition in the Respondent's possession;

d. Deputies shall make a return of service to the Clerk of the Court; and

e. Within 2 hours after service of the Order, the Sheriff's Office shall electronically notify the Department of Public Safety and Correctional Services (DPSCS) of the service.

Temporary Orders:

a. On receipt of a Temporary Order deputies shall have initiated a computer check to determine whether the Respondent is the registered owner of a regulated firearm;

b. Immediately on receipt of a Temporary Order deputies shall attempt to serve the Order on the Respondent;

c. Deputies shall make a good faith effort to secure any firearm(s) and/or ammunition in the Respondent's possession;

d. Deputies shall make a return of service to the Clerk of the Court; and

e. Within 2 hours after service of the Order, the Sheriff's Office shall electronically notify the Department of Public Safety and Correctional Services (DPSCS) of the service.

Final Orders:

a. On receipt of a Final Order deputies shall have initiated a computer check to determine whether the Respondent is the registered owner of a regulated firearm;

b. Immediately on receipt of a Final Order deputies shall attempt to serve the Order on the Respondent;

c. Deputies shall make a good faith effort to secure any firearm(s) and/or ammunition in the Respondent's possession;

d. Deputies shall make a return of service to the Clerk of the Court; and

e. Within 2 hours after service of the Order, the Sheriff's Office shall electronically notify the Department of Public Safety and Correctional Services (DPSCS) of the service.

Obtaining Firearms and Ammunition in the Possession of the Respondent

Upon serving an Interim, Temporary, or Final ERPO, deputies shall make a good faith effort to secure all firearms and ammunitions in the possession of the Respondent.

a. Consent Search: Although every situation is different, when an ERPO has been issued, deputies 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 deputies and allow deputies access into the home or other locations to secure any firearms and/or ammunition. The Respondent may also have the legal authority to give deputies consent to search the home or other location.

b. Search Warrant: Deputies, during their investigations, 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.

c. Where deputies 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, deputies shall arrest the Respondent for violating the ERPO.

Law Enforcement Responsibility upon Taking Possession of Firearms and/or Ammunition

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

a. Issue a receipt to the Respondent identifying the make, model, and serial number of all firearms and ammunition seized or surrendered as a result of an ERPO utilizing CCSO Form #SO-044 Receipt of Seized Firearms/Ammunition;

b. Provide a copy of the receipt (#SO-044) to the Respondent;

c. Retain a copy of the receipt (#SO-044) for the Sheriff's Office records;

d. Provide information to the Respondent on the process for retaking possession of the firearm(s) and/or ammunition on the expiration or termination of the Order; and

e. Transport and store any firearms (in a protective case if available) or ammunition surrendered or seized in accordance with the ERPO. Storage of the firearms shall be in a manner intended to prevent damage to the firearms while the Order is in effect and deputies or other personnel shall not place any mark on the firearms for identification or other purposes.

Court Attendance

Deputies who apply for Interim, Temporary, or Final ERPO will be required to attend the court proceeding(s). Where the deputy is the petitioner in a Temporary ERPO hearing, the deputy may have to contact witnesses ahead of the scheduled hearing and request they attend (**NOTE: Time constraints may not allow sufficient time to subpoena witnesses**). If a Temporary ERPO is issued, the deputy should make reasonable efforts to assure that witnesses in the Final Hearing are subpoenaed.

Law Enforcement Responsibility upon Expiration of ERPO

Upon the expiration or termination of an ERPO, the Sheriff's Office shall:

a. Notify the Respondent that the Respondent may request the return of the firearms and/or ammunition;

b. Before releasing firearms and/or ammunition to the Respondent, verify that the Respondent is not otherwise prohibited from possessing firearms and/or ammunition.

c. On request of the Respondent who is not otherwise prohibited from possessing firearms and/or ammunition, the Sheriff's Office shall return the firearms and/or ammunition to the Respondent no later than:

1. 14 days after the expiration of an Interim or Temporary Order;
2. 14 days after the court terminates a Final Order; or
3. 48 hours after the expiration of the Final Order.

d. 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:

1. 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);

2. 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

2. Request the Agency destroy the firearms and/or ammunition.

e. 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:

1. The individual provides proof of ownership of the firearm and/or ammunition; and
2. The Sheriff's Office determines the individual is not otherwise prohibited from possessing the firearm and/or ammunition.

f. In the event a firearm and/or ammunition is not reclaimed within 6 months after the notice to a Respondent as required in Paragraph 7(c), 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.

Violations of an ERPO

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