



**CHEVY CHASE
VILLAGE
POLICE
DEPARTMENT**

GENERAL ORDER: 5-24.3; EXTREME RISK PROTECTIVE ORDERS

DATE: 10/9/2018 Pages: 4 ♦ New ◇ Amended

DISTRIBUTION: **Sworn Personnel**

Police Chief: John Fitzgerald

I. PURPOSE

Extreme Risk Protective Orders (ERPO) are meant to prohibit a person from possessing a firearm where there is sufficient information to believe that the person poses an *immediate and present danger* of causing personal injury to themselves or others by possessing a firearm. The purpose of this general order is to provide guidance to officers in dealing with situations in which an ERPO would apply.

II. POLICY

The ERPO law (§5-601 to 5-618) states that a petitioner who files a petition for an ERPO in good faith is not criminally or civilly liable for doing so. It is the policy of the Chevy Chase Village Police Department that, whenever an officer is on a scene in which they believe that the standard for an ERPO has been met, the officer shall submit (or ensure that another law enforcement officer submits) a petition for an ERPO without delay. The responsibility for filing/submitting the petition will not be delegated to a member of the public without express supervisory approval.

III. DEFINITIONS

- A. **Extreme Risk Protective Order (ERPO):** 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.
- B. **Ammunition:** a cartridge, shell, or any other device containing explosive or incendiary material designed and intended for use in a firearm. [Annotated Code of Maryland, Public Safety Article, §5-133.1 (a)]
- C. **Firearm:** 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. [Annotated Code of Maryland, Public Safety Article, §5-101(h) (1 & 2)]

D. **Petitioner:** 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.

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

F. **Possessing a firearm and ammunition:** 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. [Firearm Surrender Task Force: Law Enforcement Instructional Guide, Failure to Surrender Firearms-Final Protective Orders (2004)]

- G. **Petition for emergency evaluation:** 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. [Annotated Code of Maryland, Health General Article, §10-622]
- H. **Interim ERPO:** An ex parte order of very short duration issued by a District Court commissioner when the court is closed; remains **in effect 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. 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.
- I. **Temporary ERPO:** An order issued by a District Court judge following a hearing (with the Respondent present, or ex parte) within 2 court business days of service of an Interim ERPO. If a judge finds probable cause that the Respondent should have an emergency evaluation, the court **shall** refer the Respondent for an emergency evaluation. **A Temporary ERPO shall be effective for not more than seven (7) days** after service of the order unless extended by a judge for good cause.
- J. **Final ERPO:** An order issued by a District Court judge following a hearing (with the Respondent present, or ex parte if the Respondent has been given notice) within 7 days of service of a Temporary ERPO. If a judge finds probable cause that the Respondent should have an emergency evaluation, the court **may** refer the Respondent for an emergency evaluation. **A final ERPO shall be valid for up to one year;** the order may be extended for an additional 6 months after another court hearing.
- K. **Reasonable grounds:** 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. [Maryland Judge's Domestic Violence Resource Manual-October 2017
See Reisterstown Lumber Co. v. Royer, 91 Md. App. 746 (1992)]

IV. LAW ENFORCEMENT RESPONSE

A. ERPOs and Emergency Evaluations:

1. **If ERPO applies, consider EEP.** If an officer believes that an ERPO is appropriate in a given situation (reasonable grounds to believe the person poses an immediate and present danger of injury to self or others due to the possession of one or more firearms), then the officer should always consider whether an Emergency Evaluation Petition would be appropriate, as well.
2. **If an EEP applies, consider ERPO.** If an officer believes that an EEP is appropriate in a given situation, the officer should always consider whether and ERPO would be appropriate, as well if the person possesses any firearms.
3. Whenever an officer takes a person into custody for an emergency evaluation, **the officer will immediately contact the Gun Center (1-855-677-6486 / 1-855-MSP-MGUN)** to determine if the person owns a regulated firearm.

B. Supervisors shall respond to the scene

1. The primary Village officer on the scene of a call involving a possible ERPO shall notify on-duty Village supervisors as soon as practical. The highest-ranking on-duty Village supervisor shall respond to the scene.
2. If no Village supervisor is on duty, the primary Village officer shall request that a Montgomery County supervisor respond to the scene.

C. Officers as petitioner

1. Where an officer is on a scene and the officer 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 should, in most circumstances, file a petition for an ERPO.
2. If circumstances exist that would suggest that the petition would best be filed by a petitioner other than an officer, the Village officer shall obtain supervisory (Village or MCP as appropriate) approval for that decision.

D. Securing firearms by consent.

1. Officers who are investigating cases where the issuance of an ERPO may be appropriate should make a good faith effort to seek consent to secure firearms and ammunition in the Respondent's possession during the original call for service. If the

firearms are removed prior to obtaining an ERPO, it will eliminate the immediate threat of harm.

2. Even if firearms are relinquished by consent, officers must still file a petition to obtain an ERPO to prevent the firearms from being returned to the individual before the crisis has ended.
3. 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.

V. SERVICE OF ERPO ORDERS

- A. Upon receiving an issued ERPO, officers shall contact the Maryland State Police Gun Center at 855-677-6486 to determine the number of regulated firearms registered to the Respondent.
- B. Immediately on receipt of an ERPO, 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. Officers shall make a return of service to the Clerk of the Court; and
- E. The ERPO law requires that, **within 2 hours** after service of an ERPO, officers shall electronically **notify the Department of Public Safety and Correctional Services. To accomplish this, officers shall call the Montgomery County Sheriff's Office (MCSO) at 240-777-7016**; this is a 24-hour number, and staff at the MCSO will update METERS right away. (In Montgomery County, the MCSO is responsible for entering newly-issued ERPOs into METERS and for updating METERS when an ERPO is served.)

VI. SEIZING FIREARMS AND AMMUNITION; SEARCH WARRANT AND ARREST FOR NON-COMPLIANCE

- A. **Consent search:** An ERPO is not a search warrant, and it does not give an officer authority to enter any premises. Officers must obtain consent to enter from a person with authority; that person could be the Respondent, their spouse or family member, or any other person with authority to grant consent to enter.

B. **Search Warrant:** If an officer has probable cause to believe:

1. That an ERPO has been served on the Respondent and is currently in effect, and
2. The Respondent possesses a firearm(s) and has failed to surrender it, the officer shall notify a supervisor (Village or MCPD as appropriate) in order to determine which officer or unit will apply for a search warrant, and to determine whether additional resources may be needed to impound the Respondent's property or to take other steps while the search warrant is sought.

C. **Mandatory warrantless arrest for noncompliance.**

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

VII. LAW ENFORCEMENT RESPONSIBILITY 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:

- A. Issue a receipt to the Respondent using CCV520—Firearms-Ammunition Receipt which includes (on the reverse side) information about the process for retaking possession when the ERPO ends;
- B. Provide a copy of the receipt to the Respondent and retain a copy of the receipt for Department records;
- C. Complete an Evidence/Property Custody Receipt (CCV 511);
- D. Complete an Incident Report; and
- E. Submit the seized firearms and ammunition to the Department's Property/Evidence Custodian during business hours; after hours, place the items in TESL per our general orders.

VIII. COURT ATTENDANCE

- A. Officers who apply for an ERPO will be required to attend the court proceeding(s).
- B. Where the officer is the petitioner, they may have to contact witnesses right away to make sure that they attend; remember, a Temporary ERPO hearing will take place about 2 days after an Interim order is issued, and a Final ERPO hearing will take place 7 days after a Temporary order is issued. This leaves

very little time to notify witnesses.

IX. LAW ENFORCEMENT RESPONSIBILITY UPON EXPIRATION OF ERPO

Upon the expiration or termination of an ERPO, the Property/Evidence Custodian shall:

- A. Notify the Respondent by certified mail that the Respondent may request the return of the firearms and/or ammunition;
- B. Before releasing firearms and/or ammunition to the Respondent, the Property/Evidence Custodian shall verify that the Respondent is not otherwise prohibited from possessing firearms and/or ammunition and that the firearms are not stolen.
- C. 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:
 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
 3. Request the Department 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

items shall be released only if:

1. The individual provides proof of ownership of the firearm and/or ammunition; and
 2. 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 certified letter is sent to the Respondent, no party shall have the right to assert ownership of the firearm or ammunition and the Department may destroy the firearm and/or the ammunition.

X. MANDATORY WARRANTLESS ARREST FOR 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.