

# MERCER COUNTY SHERIFF'S OFFICE



<b>VOLUME:</b> 4	<b>CHAPTER:</b> 12	<b># OF PAGES:</b> 15
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**SUBJECT: Extreme Risk Protective Order**

<b>EFFECTIVE DATE:</b> 9/4/2019	<b>ACCREDITATION STANDARDS:</b> N/A	<b>REVISION DATE</b>	<b>PAGE #</b>
<b>BY THE ORDER OF:</b> Sheriff John A. Kemler			
<b>SUPERSEDES ORDER #:</b> New Policy			

**PURPOSE** The purpose of this general order is to maintain procedures implementing the *Extreme Risk Protective Order Act of 2018* (N.J.S.A. 2C: 58-20 et seq.) and *New Jersey Attorney General Directive #2019-2*.

**POLICY** It is the policy of Mercer County Sheriff's Office to implement the *Extreme Risk Protective Order Act of 2018* (N.J.S.A. 2C: 58-20 et seq.) in accordance with *New Jersey Attorney General Directive #2019-2* and those procedures mandated by the New Jersey Administrative Office of the Court and the Mercer County Prosecutor's Office

The *Extreme Risk Protective Order Act of 2018* provides procedures through which a petitioner may apply for an extreme risk protective order against a respondent who poses a danger of causing bodily injury to self or others by possessing or purchasing a firearm.

This general order does not apply to protective orders filed under the *Prevention of Domestic Violence Act* (N.J.S.A. 2C:25-17 et seq.) or the *Sexual Assault Survivor Protection Act* (N.J.S.A. 2C:14-13 et seq.).

Nothing in this general order, *New Jersey Attorney General Directive 2019-2*, or the *Extreme Risk Protective Order Act of 2018* limits a civilian or an officer to pursue other remedies to address moments of crisis, including through the *Prevention of Domestic Violence Act*, the *Sexual Assault Survivor Protection Act*, a mental evaluation referral, a civil commitment, criminal complaints, investigations, or charges.

The Sheriff or designee shall post information on the agency's website/webpage on how to obtain an *Extreme Risk Protective Order*.

## PROCEDURES

### I. DEFINITIONS

A. For purposes of this general order, the *Extreme Risk Protective Order Act of 2018* (N.J.S.A. 2C: 58-20 et seq.), and *New Jersey Attorney General Directive 2019-2*, the following terms are defined:

1. Ammunition means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm but, does not include any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing or any unloaded, non-metallic shotgun hull or casing not having a primer.
2. Deadly weapon means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury (N.J.S.A. 2C: 11-1(c)).
3. Family or household member means a spouse, domestic partner as defined in N.J.S.A. 26: 8A-3, partner in a civil union couple as defined in N.J.S.A. 37: 1-29, or former spouse, former domestic partner, or former partner in a civil union couple, or any other person who is a present household member or was at any time a household member; a person with whom the respondent has a child in common, or with whom the respondent anticipates having a child in common if one of the parties is pregnant; or a current or former dating partner.
4. Extreme Risk Protective Order factors include but, are not limited to:
  - a. A history of threats or acts of violence directed towards self or others;
  - b. A history of physical force by respondent;
  - c. Whether respondent is the subject of or has violated a temporary or final restraining/protective order issued under the *Prevention of Domestic Violence Act of 1991* or the *Sexual Assault Survivor Protection Act of 2015*;
  - d. Any prior arrests, pending charges, convictions for violent offenses (including disorderly persons and indictable offenses);
  - e. Any stalking or domestic violence offenses;
  - f. Any prior cruelty to animal arrests or a history of animal cruelty;
  - g. Any history of drug or alcohol abuse;
  - h. If respondent recently acquired firearms, ammunition, or other deadly weapons;
  - i. If respondent recklessly used, displayed, or brandished a firearm;

- j. If respondent is subject to an existing or previous *Extreme Risk Protective Order* or has previously violated an *Extreme Risk Protective Order* or *Temporary Extreme Risk Protective Order*.
- 5. Firearm means any handgun, rifle, shotgun, machinegun, automatic or semiautomatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person (N.J.S.A. 2C: 39-1).
- 6. Good cause means substantial grounds on which to take a certain action.
- 7. Law enforcement agency means a department, division, bureau, commission, board or other authority of this State or of any political subdivision thereof which employs law enforcement officers.
- 8. Law enforcement officer means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.
- 9. Petition means an application to obtain a *Temporary Extreme Risk Protective Order*
  - a. Take over a petition means when a law enforcement officer becomes the sole petitioner. The officer shall designate him/herself as the petitioner in the eCDR system.
  - b. Join a petition means when a law enforcement officer becomes a petitioner along with the original family or household-member petitioner. The officer shall designate both petitioners in the eCDR system.
- 10. Petitioner means a family or household member or law enforcement officer seeking an extreme risk protective order.
- 11. Probable cause **refers to facts or evidence that would make a reasonable person believe that a crime or wrongdoing has been, is being, or will be committed.**
- 12. Recent means within six months prior to the date the petition was filed.
- 13. Respondent means a person against whom an order is sought.

## II. GENERAL PROVISIONS

- A. Only a petitioner (see definitions) can file a petition for an *Extreme Risk Protective Order*.
- B. Although many people who file for a *Temporary Extreme Risk Protective Order* might also be eligible to file for a *Temporary Restraining Order* under the

*Prevention of Domestic Violence Act*, the difference is that the *Extreme Risk Protective Order Act of 2018* does not require an act of domestic violence to have occurred, nor does it require a need to protect the petitioner's wellbeing.

- C. While a law enforcement officer cannot file for a *Temporary Restraining Order* under the *Prevention of Domestic Violence Act* on behalf of a domestic violence victim, the *Extreme Risk Protective Order Act of 2018* expressly allows a law enforcement officer to file a *Temporary Extreme Risk Protective Order* on behalf of anyone.
- D. Neighbors, friends, or anyone else other than a petitioner cannot file a petition for an *Extreme Risk Protective Order*.
- E. If a person expresses to an officer the belief that another person poses an immediate and present danger of causing bodily injury to him/herself or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the officer shall inform the person of the *Extreme Risk Protective Order Act of 2018* and its procedures, including who qualifies as a petitioner.
  - 1. Instances might arise when a person requests to file an *Extreme Risk Protective Order* but, the individual would also qualify for a restraining or protective order pursuant to the *Prevention of Domestic Violence Act* or the *Sexual Assault Survivor Protection Act*.
  - 2. In these cases, the officer should inform the individual of these other options to ensure that the individual is making an informed decision, so he/she can be afforded the maximum protection under the laws of this State.
  - 3. Likewise, if a person presents to an officer with information or a request that could be addressed by an *Extreme Risk Protective Order*, the officer should inform the individual of the procedures in accordance with this general order.

### III. OBTAINING AN EXTREME RISK PROTECTIVE ORDER

- A. A search warrant for any firearms and/or ammunition, which the respondent possesses or owns, can only be issued in conjunction with a *Temporary Extreme Risk Protective Order* when the court determines that probable cause exists to believe that
  - 1. The respondent owns or possesses any firearms or ammunition;
  - 2. The respondent poses an immediate and present danger of bodily injury to him/herself or others by owning or possessing any such firearms or ammunition; and
  - 3. Such firearms and/or ammunition are presently at a specifically described location.
- B. In cases when officers have only good cause but, not probable cause (see definitions), that the respondent poses an immediate and present danger of causing bodily injury to him/herself or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, they may still seek a *Temporary Extreme Risk Protective Order* but, not a search warrant.
- C. A family or household member may file a petition for a *Temporary Extreme Risk Protective Order* at the superior court or at a state, county, or municipal law enforcement agency, where the respondent resides. The petitioner shall not be charged a fee to file the petition.

1. Unlike a temporary restraining order, the petitioner shall not be referred to superior court during regular court hours.
  2. The municipal court judge in the municipality where the respondent resides shall hear the application for the *Temporary Extreme Risk Protective Order*.
- D. When a person appears at this agency to obtain a *Temporary Extreme Risk Protective Order*, officers shall advise the petitioner of the procedure for completing and signing a petition for a *Temporary Extreme Risk Protective Order* and shall assist the family or household member in preparing or filing the petition. Such assistance includes but, is not limited to:
1. Providing information related to the factors set forth in the *Extreme Risk Protective Order Act of 2018*;
  2. Joining in the petition;
  3. Referring the matter to another law enforcement agency for additional assistance; or
  4. Officers filing a petition with the court.
- E. In all instances when a person appears at this agency to obtain a *Temporary Extreme Risk Protective Order*, or when an officer joins or files a petition on his/her own, the following checks shall be made on the respondent. The results will be documented in the *Temporary Extreme Risk Protective Order* being conveyed to the court:
1. *Ill* and *New Jersey Master Name Index for a Criminal Court History, CCH*, paying particular attention to the following:
    - a. History of threats or acts of violence, including use or attempted use of physical force;
    - b. Stalking;
    - c. Animal cruelty;
    - d. Weapons offenses; or
    - e. Domestic violence offenses;
  2. Motor vehicle driver's abstract;
  3. DVCR (search for previously issued TRO/FRO);
  4. *Protective Restraining Order System Environment (PROSE)* (search for previously issued TERPO/FERPO);
  5. Firearms record check in NCIC and in-house firearm files;
  6. Juvenile Registry;
  7. In-house records search through the Master Name Index (looking for allegations of violence or threats of violence, domestic violence, mental health, emotional disturbances, alcohol or drug abuse, etc.).
    - a. Note: all mental health information is confidential and should be treated as such;

- b. The petitioner is not entitled to receive this confidential information; however, the respondent is, and the information should be turned over upon request.
- 8. The results of these queries and a listing of applicable *Extreme Risk Protective Order* factors shall be included in the petition and the corresponding *Investigation Report*.
- F. File the petition in an electronic format on the Judiciary's *Electronic Court Disposition Reporting (eCDR)* system. (NOTE: the Administrative Office or the Courts Guidelines refer to it as the *Protective Restraining Order System Environment (PROSE)*).
- G. If a petitioner seeks to file a petition and no decision has been made for an officer to takeover or join the filing and become the petitioner, the officer must help the petitioner in entering their petition in the eCDR system.
- H. The *Temporary Extreme Risk Protective Order* petition must be filed in the same county where the respondent resides. (Note: refer to section IV if the respondent is a law enforcement officer).
  - 1. If the respondent resides out of state, it must be filed in the same county where the petitioner resides.
  - 2. If an individual attempts to file a *Temporary Extreme Risk Protective Order* at a law enforcement agency located in a different county than where the respondent resides, or than where the petitioner resides if the respondent resides out of state, the officer shall assist the petitioner in calling the local law enforcement agency where the respondent resides, or where the petitioner resides if the respondent resides out of state, and have that agency file the petition on the eCDR system under the petitioner's direction on the telephone.
- I. Although the officer must enter the petition in the eCDR system for the petitioner, it is the officer's discretion concerning what further assistance will be given, such as providing information related to the factors in subsection III.D of this general order (N.J.S.A. 2C: 58-23(f)).

SHALL File a Petition	SHALL Takeover a Petition	MAY File, Takeover, or Join a Petition
<u>Probable cause</u> that respondent poses <u>immediate &amp; present danger</u> of causing bodily injury to self or others by owning, possessing, purchasing, or receiving a firearm.	a) <u>Probable cause</u> that respondent poses immediate & present danger of causing bodily injury to self or others by owning, possessing, purchasing, or receiving a firearm. b) <u>Petition would be best filed by LE</u> (or can only be filed by LE)	<u>Any other circumstances in officer's discretion</u> as long as <u>good cause</u> to believe that respondent poses immediate & present danger of causing bodily injury to self or others by owning, possessing, purchasing, or receiving a firearm.

- J. In the course of his/her own investigation and policing or from information received from a non-family or household member, if an officer has probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to him/herself or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the officer shall file a petition for a *Temporary Extreme Risk Protective Order*.

1. If a family or household member appears to file a *Temporary Extreme Risk Protective Order* petition, officers shall take over the petition if:
    - a. The officer has probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm; and
    - b. The officer believes that there is some reason that the petition would be best filed by a law enforcement officer and not the family or household member (e.g., the petitioner is fragile or unable to proceed, or the family or household unit would be best served by having an officer file the petition).
  2. Officers may otherwise take over or join a petition for a *Temporary Extreme Risk Protective Order* under any other circumstances in the officers' discretion, as long as the officer has good cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
  3. Officers shall designate in the eCDR petition, if they are the petitioner or if they are joining the petition of a family or household member. When an officer joins a petition both the officer and the family or household member will be listed as petitioner within eCDR.
  4. If an officer has only good cause but, not probable cause, that the respondent poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the officer may seek a *Temporary Extreme Risk Protective Order* petition and order but, not a search warrant.
- K. Notwithstanding the provisions of N.J.S.A. 2A:62A-16 et seq. (*Duty to Warn*), the *Extreme Risk Protective Order Act of 2018* provides an additional avenue for officers to use once they have been alerted that a healthcare practitioner duty-to-warn incident has been triggered.
1. In addition to the remedies in N.J.S.A. 2A:62A-16 et seq., if an officer receives information from a healthcare practitioner of a threat pursuant to N.J.S.A. 2A:62A-16, the officer may file a petition for a *Temporary Extreme Risk Protective Order* with a search warrant as long as the officer has probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
  2. NOTE: probable cause is necessary to obtain a search warrant with the *Temporary Extreme Risk Protective Order*. Absent probable cause but, with good cause, the officers can still file a petition for a *Temporary Extreme Risk Protective Order*.
- L. The *Temporary Extreme Risk Protective Order* petition shall allege that the respondent poses an immediate and present danger of bodily injury to him/herself or others by possessing, purchasing, owning, or receiving a firearm.
1. The petition shall also set forth the facts, and the basis of knowledge for these alleged facts, tending to establish that the respondent poses an immediate and present danger of bodily injury to him/herself or others by possessing, purchasing, owning, or receiving a firearm and

the number, types, physical description, and locations of any firearms and ammunition that the petitioner believes to be currently possessed by the respondent.

2. The petition may reference documents relevant to the petition.
  3. The petition shall be sworn and under oath, subject to punishment if any statements are willfully false. Such oath shall be executed in the eCDR system.
- M. Once the *Temporary Extreme Risk Protective Order* is complete within eCDR, officers shall contact the on-call municipal court judge from a recorded telephone line. The municipal court judge may ascertain testimony from the petitioner and will review the *Temporary Extreme Risk Protective Order* within eCDR and issue or deny it.
- N. If a municipal court judge denies a *Temporary Extreme Risk Protective Order* the documentation must be forwarded to superior court indicating the denial.
1. The municipal court judge must advise the victim of, on the record, that victim has the right to an immediate review (*De Novo Hearing*) of the *TERPO*, denial to an on-call superior court judge.
  2. If the victim wishes to exercise this right, the officer shall contact an on-call superior court judge. Whether the victim does or does not want to exercise that right it shall be documented within the *Investigation Report*.
  3. The on-call superior court judge will review the same *TERPO* that was presented to the municipal court judge.
  4. The on-call superior court judge will conduct a hearing on the *TERPO* telephonically and make a decision whether to grant or deny the *TERPO*.
  5. The officer will document the approval or the denial of the *TERPO* in the *Investigation Report*.

#### IV. ERPO PETITION FILED AGAINST A LAW ENFORCEMENT OFFICER

- A. When a petitioner seeks a *Temporary Extreme Risk Protective Order* against a New Jersey law enforcement officer respondent, the petition shall be submitted to the law enforcement agency in which the respondent-officer is employed.
1. Like an ordinary *Temporary Extreme Risk Protective Order*, the agency shall advise the petitioner of the procedure for completing and signing a petition
  2. If the respondent officer is not employed by this agency, the officer shall assist the petitioner in determining the correct agency and then forward the application to the correct agency.
  3. The officer receiving the complaint shall have the individual complete a paper petition for an *Extreme Risk Protective Order*.
  4. The receiving officer shall immediately send a copy of the petition to the Mercer County Prosecutor's Office, First Assistant Prosecutor (609) 989-6351.
    - a. If the respondent officer is not employed by a law enforcement agency in this county, then the officer shall send a copy to the



county prosecutor's office in which the respondent officer is employed.

- b. If the respondent officer is a member of the New Jersey State Police, Division of Criminal Justice, State Department of Corrections, any other State of New Jersey law enforcement agency, or out-of-state or federal law enforcement agency, the officer shall direct the petitioner to that agency.
5. The officer shall not enter or file a petition in the eCDR system at this time.
  6. If the respondent officer is a member of this Office, the receiving officer shall forward the petition and the appropriate investigative report to the Sheriff or administrator in charge of internal affairs.
- B. The Sheriff or internal affairs commander shall initiate an immediate internal affairs investigation in accordance with this agency's general order on *Internal Affairs*, which must be completed within 48 hours, with exceptions noted below.
1. This *Temporary Extreme Risk Protective Order* internal affairs investigation shall be an expedited process that requires but, is not limited to a review of the application for a petition, an in-person or telephone interview of the petitioner, a review of any internal agency files on the respondent-officer, and a consideration of the *Temporary Extreme Risk Protective Order* factors,
  2. The *Temporary Extreme Risk Protective Order* internal affairs investigation can also consist of any other action the agency deems appropriate, including an interview of the respondent-officer, as long as it is completed in 48 hours.
  3. The Sheriff or designee may request from the county prosecutor's office or the Division of Criminal Justice an extension of time to complete the *Temporary Extreme Risk Protective Order* internal affairs investigation, which may be granted upon a showing of good cause.
  4. This *Temporary Extreme Risk Protective Order* internal affairs investigation does not replace any other internal affairs investigation the Sheriff or designee deems appropriate based on any information that is learned prior to, during, or after the course of the investigation.
  5. Likewise, these *Temporary Extreme Risk Protective Order* procedures do not this agency's general order regarding domestic violence incidents involving law enforcement officers.
  6. If this agency is unable to conduct the *Temporary Extreme Risk Protective Order* internal affairs investigation (e.g., conflict of interest, Sheriff involvement, etc.), the Sheriff or designee may request on a case-by-case basis that the Mercer County Prosecutor's Office conduct the *Temporary Extreme Risk Protective Order* internal affairs investigation. Such a request shall be made immediately upon receiving the application for a petition.
  7. At the conclusion of the *Temporary Extreme Risk Protective Order* internal affairs investigation, the Sheriff or designee shall immediately forward its findings and any conclusions to the Mercer County Prosecutor's Office.

8. In making its findings to the Mercer County Prosecutor's Office, the Sheriff or designee shall consider the *Extreme Risk Protective Order* factors and whether there is probable cause to believe that the respondent-officer poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
- C. If the first officer or supervisor responding to or handling the *Temporary Extreme Risk Protective Order* internal affairs investigation has probable cause to believe that the presence of weapons would expose the respondent or others to a risk of bodily injury, the Sheriff, internal affairs commander or their designees shall immediately seize all weapons the respondent-officer possesses, both agency-issued and personal.
1. See [Attorney General Directives Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers and from All State Law Enforcement Officers Involved in Domestic Violence Incidents \[Directives 2000-3 and 2000-4 dated September 1, 2000\]](#).
  2. If there are extenuating or exigent circumstances rendering officers unable to seize the respondent-officer's firearms and ammunition, the officer may request that the local law enforcement agency where the respondent officer resides, if a different agency, assist.
  3. Any agency-issued weapon that is seized or surrendered in connection with an *Extreme Risk Protective Order* is to be returned to the custody and control of the department that issued that weapon. If this agency owns the weapon, surrender the weapon to the internal affairs commander or his/her designee.
  4. All other weapons owned, possessed, or controlled by the respondent-officer that are seized or surrendered are to be promptly forwarded to the Mercer County Prosecutor's Office (if the respondent officer is employed by this agency), the county prosecutor's officer in the county in which the law enforcement agency conducting the *Extreme Risk Protective Order* internal affairs investigation is located (if the respondent-officer is not a member of this agency), or for state/federal agencies, where the respondent-officer resides.
- D. Within one day of receiving the final *Temporary Extreme Risk Protective Order* internal affairs investigation, the Mercer County Prosecutor shall make a determination whether to file the *Temporary Extreme Risk Protective Order* petition in the Superior Court.
1. If the prosecutor determines to file the petition in the superior court, a prosecutor's detective will be the petitioner in eCDR.
    - a. The Mercer County Prosecutor's Office is responsible for providing the information to the court.
    - b. The prosecutor shall also immediately notify the family or household member petitioner that originally filed the *Temporary Extreme Risk Protective Order* petition, in order for the family or household-member to be able to be present at the *Temporary Extreme Risk Protective Order* hearing.
  2. If the prosecutor determines not to file the *Temporary Extreme Risk Protective Order* petition in the court, the prosecutor shall immediately send a notice in writing to the family or household member petitioner

that originally filed the application for the *Temporary Extreme Risk Protective Order* petition, detailing the conclusion and summary of reasoning.

- a. A copy of the notice shall also be sent to the Sheriff or designee.
- b. The Sheriff, the internal affairs commander, or their designees shall return any firearms and/or ammunition seized from the respondent officer as soon as practicable, unless there is another pending investigation or other compelling safety interests that would warrant not returning the weapons and/or ammunition.
- c. No weapons are to be returned to the respondent officer without written notice of the prosecutor or a court order.

**V. ISSUING THE *TEMPORARY EXTREME RISK PROTECTIVE ORDER* AND *FINAL EXTREME RISK PROTECTIVE ORDER*, SERVING THE *TEMPORARY EXTREME RISK PROTECTIVE ORDER*, AND EXECUTING A SEARCH WARRANT**

- A. If at the *Temporary Extreme Risk Protective Order* hearing, the court finds good cause to believe that the respondent poses an immediate and present danger of bodily injury to him/herself or others by possessing, purchasing, owning, or receiving a firearm, the court shall order the *Temporary Extreme Risk Protective Order*. The *Temporary Extreme Risk Protective Order* will also state the time, date, and place of the hearing for the *Final Extreme Risk Protective Order*
- B. If at the *Final Extreme Risk Protective Order* hearing the court finds by a preponderance of evidence that the respondent poses a significant danger of bodily injury to self or others by owning, possessing, purchasing, or receiving a firearm, the court shall order the *Final Extreme Risk Protective Order*.
- C. The *Temporary Extreme Risk Protective Order* or the *Final Extreme Risk Protective Order* shall:
  1. Prohibit the respondent from possessing, purchasing, owning, or receiving firearms or ammunition, or from securing or holding a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.A. 2C: 58-3, or a permit to carry a handgun pursuant to N.J.S.A. 2C: 58-4 during the period the order is in effect; and
  2. Order the respondent to surrender to law enforcement any firearms, ammunition, firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun possessed, owned, or held by the respondent. Any such card or permit issued to the respondent shall be immediately revoked pursuant to N.J.S.A. 2C:58-3(f).
- D. The *Temporary Extreme Risk Protective Order* (or the *Final Extreme Risk Protective Order*) also classifies the respondent as a 'certain person' under N.J.S.A. 2C:39-7(b)(4), and such certain persons are prohibited from purchasing, acquiring, owning, possessing, or controlling a firearm or ammunition, subject to a 3<sup>rd</sup> degree crime (N.J.S.A. 2C:39-7(b)(4)).
- E. Once issued, the court will immediately forward a copy of the *Temporary Extreme Risk Protective Order* to both the Mercer County Prosecutor's Office and this agency. Upon receipt of this *Temporary Extreme Risk Protective*

*Order*, officers shall immediately or as soon as practicable serve this order upon the respondent.

1. At no time shall the family or household member petitioner be asked to serve any *Temporary Extreme Risk Protective Order* upon the respondent.
  2. Officers shall not charge a fee or seek reimbursement from the petitioner for service of the order.
- F. Any *Temporary Extreme Risk Protective Order* issued shall remain in effect throughout the State until a court issues a further order and shall be enforced by all law enforcement officers.
- G. Based upon consideration of information provided in the *Temporary Extreme Risk Protective Order* petition and during the *Temporary Extreme Risk Protective Order* or *Final Extreme Risk Protective Order* hearing, if the court determines that probable cause exists to believe that:
1. The respondent owns or possesses any firearms or ammunition; and
  2. The respondent poses an immediate and present danger of bodily injury to him/herself or others by owning or possessing any such firearms or ammunition; and
  3. Such firearms or ammunition are presently at a specifically described location;
  4. The court, in conjunction with the *Temporary Extreme Risk Protective Order* or the *Final Extreme Risk Protective Order*, shall issue a search warrant for any firearms and ammunition which the respondent possesses, owns, controls or has custody of at that specified location.
    - a. Officers shall immediately or as soon as possible execute the search warrant and seize all firearms, ammunition, firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun within the possession, custody, or control of the respondent, or that could be in the respondent's possession.
    - b. Follow the search warrant execution procedures in this agency's general order on *Search Procedures*.
    - c. When executing a search warrant to seize a respondent's firearms or ammunition, firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun, it shall be within the highest-ranking officer's discretion on the scene to determine whether a respondent can surrender the firearms, ammunition, firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun and how he/she may do so.
    - d. Officers have the right to remain literally at the respondent's side at all times and such action is reasonable under the 4<sup>th</sup> Amendment of the United States Constitution and Article 1, paragraph 7 of the New Jersey Constitution. DO NOT permit a respondent to enter into any area of his/her residence or other place unaccompanied.

- e. NOTE: During the execution of the search warrant, if officers find evidence of criminality in accordance with the plain view exception, or any other legally permissible basis, officers shall seize any evidence of criminal conduct including contraband that is inadvertently discovered in plain view during the search
  - 1) (Example: while searching for weapons, ammunition, firearms identification card, permits to purchase, or permits to carry, CDS is discovered.
  - 2) The inadvertently discovered CDS can be confiscated as a plain view seizure, but no further search for CDS can be conducted once the object of the search is seized without first amending the search warrant.)
- 5. Nothing in this general order, the *Extreme Risk Protective Order Act of 2018* (N.J.S.A. 2C: 58-20 et seq.), and *New Jersey Attorney General Directive #2019-2* shall be interpreted as limiting any other lawful procedure done by officers to ensure officer safety, the safety of others, or the integrity of the process. Such procedures and processes include but, are not limited to:
  - a. Protective sweeps;
  - b. Protective frisks;
  - c. No knock entry (when supported by articulable facts and circumstances; see this agency's general order on *Search Procedures*, specifically the section on no knock search warrants.
- 6. If a person other than the respondent claims title to any firearm or ammunition, officers shall direct the person claiming title to request a return of the weapons to the agency pursuant to N.J.S.A. 2C:58-26(e). If the agency determines that the person claiming title is the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to that person (N.J.S.A. 2C:58- 26(e)). However, nothing in this general order shall affect the authority of the prosecutor or the agency to maintain possession of any firearm as otherwise authorized by law.

## VI. **STORING, SELLING, AND TRANSFER OF FIREARMS**

- A. Upon surrender or seizure of any firearms and ammunition, this agency shall store the firearms or ammunition. The property/evidence custodian shall notify the Mercer County Prosecutor's Office that this agency has such custody.
- B. If a person other than the respondent claims title to any firearm or ammunition surrendered, and the agency confirms that the person is the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to that person (N.J.S.A. 2C:58-26(e)).
- C. The respondent can also request that the firearm or ammunition be sold, or the title of the firearm or ammunition be transferred, to a federally licensed firearms dealer, even if he/she is no longer eligible to own or possess a firearm or ammunition (N.J.S.A. 2C:58-27).
- D. Neither the *Extreme Risk Protective Order Act of 2018* nor the Administrative Office of the Courts Guidelines require the law enforcement agency to store the

firearm or ammunition indefinitely. It does not affect the authority of the county prosecutor to file an action to forfeit a respondent's firearm as authorized by law or prevent a respondent that owned a firearm prior to the issuance of an *Extreme Risk Protective Order* from entering into an agreement, as approved by the prosecutor, to sell that firearm to a licensed dealer or transfer the firearm to a third party authorized to own or possess a firearm (N.J.S.A. 2C:58-23(d))

**VII. RELEASE OF *EXTREME RISK PROTECTIVE ORDER* RECORDS TO NON-LAW ENFORCEMENT PERSONS OR AGENCIES**

- A. *Extreme Risk Protective Order* petitions, supporting documentation, and *Extreme Risk Protective Order* internal affairs records contain sensitive and confidential information, including criminal and mental health records that raise privacy concerns.
1. Any records created or submitted pursuant to the *Extreme Risk Protective Order Act of 2018*, *New Jersey Attorney General Directive 2019-2*, and this general order are confidential and not subject to public disclosure.
  2. Information provided by law enforcement for the *Extreme Risk Protective Order* is only for the court's consideration, not other parties' inspection, and only the respondent has the right to this information.
  3. The petitioner does not have an automatic right to see the information provided by the prosecutor or his/her designee and can only request that the court order that they may see it, on good cause shown.
  4. When the respondent is a law enforcement officer, the *Extreme Risk Protective Order* internal affairs investigation and any other internal affairs or personnel records are confidential and not subject to public disclosure.
- B. Any *Extreme Risk Protective Order* records that pertain to an event or encounter that involves an investigation of a criminal offense are considered a criminal investigatory record exempt from disclosure under the *Open Public Records Act* (N.J.S.A. 47: 1A-1 et seq.).
- C. Except as otherwise provided in this *New Jersey Attorney General Directive 2019-2* and this general order, *Extreme Risk Protective Order* records or documents shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, the United States or New Jersey Constitutions or statutes, or by a court order.
- D. Neither *New Jersey Attorney General Directive 2019-2* and this general order, nor the release of any document or information pursuant to *New Jersey Attorney General Directive 2019-2* and this general order, shall constitute a waiver of any privilege to maintain the confidentiality of a record that a law enforcement agency may have under the *Open Public Records Act*, any other statute, or the common law right of access. Nothing in *New Jersey Attorney General Directive 2019-2* or this general order shall be construed to create any promises or any rights beyond those established under the Constitution, statutes, regulations, and decisional law of New Jersey. *New Jersey Attorney General Directive 2019-2* and this general order create no promises or rights that other persons or entities may enforce.

## VIII. TERMINATION OF FINAL EXTREME RISK PROTECTIVE ORDERS

- A. The superior court may terminate a *Final Extreme Risk Protective Order* if the opposing party has received notice, if the appropriate law enforcement agency and county prosecutor have been notified, and if a hearing has been held by the court. It is in the prosecutor's discretion whether to object to a termination of a *Final Extreme Risk Protective Order*. If the prosecutor is not involved, then it is in this agency's discretion.
- B. In determining whether to object, the agency or county prosecutor should consider the *Extreme Risk Protective Order* factors, as well as any other relevant evidence including but, not limited to, whether the respondent has received, or is receiving, mental health treatment, and the petitioner's opinion as to termination.
- C. If the respondent petitioned for termination, the respondent shall bear the burden at the termination hearing of proving by a preponderance of the evidence that he/she no longer poses a significant danger of causing bodily injury to the him/herself or to other by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
- D. Upon the termination of an *Extreme Risk Protective Order*, the respondent may petition the agency to return his/her firearms or ammunition (N.J.S.A. 2C: 58-26(d)). Such action shall be done within 30 days unless the firearm or ammunition has been reported as stolen or the respondent is prohibited from possessing a firearm or ammunition under state or federal law.
- E. The *Extreme Risk Protective Order Act of 2018* also provides that after one year after the *Extreme Risk Protective Order* is terminated, the agency may destroy the firearm or ammunition in accordance with its general order for destruction of firearms or ammunition (N.J.S.A. 2C: 58-28). The agency or prosecutor shall give notice to the former respondent prior to destruction of the firearms or ammunition.

## IX. REFERENCES

V4C12.a1 ERPO Reference Card  
V4C12.a2 ERPO Reference Card (NJ LEO is respondent)  
V4C12.a3 Extreme Risk Protective Order Petition  
AOC Directive 19-19  
New Jersey Attorney General Directive 19-02  
NJ Attorney General Directives 2000-3, 2000-4

## X. REPORTS

Investigation Reports  
Extreme Risk Protective Order Paper Petition  
CAD Entries