




## ARLINGTON COUNTY POLICE DEPARTMENT DIRECTIVE MANUAL

<i>Chapter: 5</i> Procedures	<i>Effective Date:</i> July 1, 2020	<i>Amends/Supersedes:</i> N/A	<b>By Authority of the Chief of Police</b>  Charles A. Penn
<i>Accreditation Standard(s):</i> N/A			

### 538.08 Emergency Substantial Risk Orders

#### I. Policy

The Department will only employ Emergency Substantial Risk Orders to temporarily remove access to guns from individuals who are at an elevated risk of violence towards self or others. The intention of an intervention will at all times be to provide an opportunity for an individual in crisis to access community resources before a tragedy occurs.

#### II. Code Requirements

A. § 19.2-152.13. through § 19.2-152.17.

#### III. Definitions

- A. Substantial Risk Order – An order issued by the Circuit Court that continues to restrict an individual from owning, possessing, or purchasing a firearm, for up to 180 day unless extended by the court, who poses a threat of personal injury to themselves or others.
- B. Emergency Substantial Risk Order (ESRO) – An order issued by a magistrate that allows law enforcement to temporarily prevent an individual from owning, possessing, or purchasing a firearm who poses a threat of personal injury to themselves or others.
- C. Firearm - Any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.
- D. Handgun - Any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

#### IV. Procedure

- A. Issuance of ESRO

1. When an officer has determined that a person poses a substantial risk of personal injury to themselves or others by possessing or acquiring a firearm the officer shall seek an ESRO. If the person refuses to voluntarily relinquish their firearm(s) or the officer has reason to believe that the person has not relinquished all firearms in their possession the officer may obtain a search warrant.

#### B. Service of ESRO

1. The ESRO should be entered into VCIN and an attempt to serve the ESRO will be made immediately afterwards.
2. The copy of the ESRO and supporting affidavit will be provided to the subject together with a notice informing them they have a right to a hearing in Circuit Court.
3. The subject will be advised that it is unlawful for them to purchase, possess, or transport a firearm while the order is in effect and they shall be given the opportunity to voluntarily relinquish any firearm within their custody to the Department.
4. When asked by the officer during their investigation, the subject of an ESRO must fully disclose the location of all firearms owned by them, in their possession, or accessible to them. Failure to do so is considered a false statement under Virginia Code § 19.2-152.16. False statement to law-enforcement officer, etc.; penalty.
5. Additionally, if the person has a concealed handgun permit that must be surrendered also.
6. The subject of the ESRO shall be provided with a written receipt by the officer taking possession of the firearms. The receipt will have the subject's name printed on it and contain a record of the manufacturer, model, condition, and serial number of each firearm surrendered to the Department.
7. If the officer has reason to believe the person subject to the ESRO has not relinquished all of their firearms they may obtain a search warrant.
8. Upon service of the ESRO, the date, time of service, and other appropriate information required shall be entered into VCIN.

#### C. Storage of Relinquished Firearms

1. Firearms relinquished by a person subject to an ESRO will be secured, packaged, and stored in accordance with Manual section *514.07 Property*.
2. The seizure of ammunition and magazines associated with the relinquished firearms is not required.

3. Once the firearms are in the possession of the Department, they will remain in police custody until otherwise directed by the Commonwealth's Attorney even if another party claims ownership.
4. A person who **voluntarily** relinquishes their firearms to law enforcement will be given an opportunity to petition the Circuit Court to have their firearms transferred to an individual of their choosing in accordance with the provisions outlined in § 19.2-152.14.

#### D. Return of Firearms

1. Any firearm taken into custody pursuant to an ESRO/SRO shall be returned to the person from whom the firearm was taken upon issuance of a court order or the expiration or dissolution of an order issued pursuant to § 19.2-152.13 or 19.2-152.14.
2. The Evidence and Inventory Management Unit shall return the firearm within five days of receiving a written request for the return of the firearm by the person from whom the firearm was taken along with a copy of the original receipt provided by the Department to such person.
3. A firearm taken into custody pursuant to an ESRO/SRO shall be released to an individual identified by the Court within five days of the Department receiving a copy of the court's approval of the transfer.
4. Prior to returning a firearm, a NCIC/VCIN check of the Risk Order Registry shall be conducted to confirm that the individual is no longer subject to an ESRO/SRO and is not otherwise prohibited by law from possessing a firearm.
5. A firearm taken into custody pursuant to an ESRO/SRO may be disposed of in accordance with the provisions of § 15.2-1721 if the person from whom the firearm was taken provides written authorization for such disposal to the Department or the firearm remains in the possession of the Department more than 120 days after such person is no longer subject to an ESRO/SRO and they have not submitted a request in writing for the return of the firearm.