

DOUGLAS COUNTY SHERIFF'S OFFICE		Policy and Procedure
Specific Policies		P&P-B-181
Extreme Risk Protection Orders		
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References: 18USC; 27CF; 13-14.5-102, 18-6-800.3, 18-3-602, 24-4.1- 302; 18-9-202, 16-3-303 CRS	Reevaluation Date: Annually	Standards:

I. PURPOSE

To establish guidelines for serving and enforcing extreme risk protection orders issued by the county or district courts.

II. DEFINITIONS

Antique firearm

As defined in [18 USC Sec 921\(a\)\(16\)](#): any firearm (including those with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or any replica of the above if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition.

Curio or relic firearm

As defined in [27 CFR 478.11](#): firearms which are of special interest to collectors because they possess some qualities not ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons. Curio or relic firearms must fall within one of the following categories:

- Firearms manufactured at least 50 years prior to the current date, but not including replicas of them;
- Firearms certified by the curator of a municipal, state, or federal museum which exhibits firearms to be curios or relics of museum interest; and
- Firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, or bizarre or from the fact of their association with some historical figure, period, or event.

Extreme risk protection order (ERPO) and temporary extreme risk protection orders have the same meanings as found in §13-14.5-102 (1), C.R.S. The practical difference between the two is that a temporary order can be issued *ex parte*, that is, without the respondent present in the hearing and it precedes issuance of any permanent order which is the next logical succession in the legal process.

13-14.5-102. Definitions. As used in this article 14.5, unless the context otherwise clearly requires:

- (1) "**Community Member**" means a licensed health- care professional or mental health professional who, through a direct professional relationship, provided care to the respondent or the respondent's child within six months before requesting the protection order or an educator who, through a direct professional relationship, interacted with the respondent or the respondent's child within six months before requesting the protection order.
- (2) "**Educator**" means a teacher employed to instruct students or a school administrator in a school district, private school, charter school institute, or an individual charter school; or a faculty member at an institution of higher education.
- (3) "**Extreme Risk protection order**" means either a temporary order or a continuing order granted pursuant to this article 14.5.
- (4) "**Faculty Member**" means a president, dean, professor, administrator, instructor, or research worker at an institution of higher education.
- (5) "**Family or Household Member**" means, with respect to a respondent, any:
 - (a) person related by blood, marriage, or adoption to the respondent;
 - (b) person who has a child in common with the respondent, regardless of whether such person has been married to the respondent or has lived together with the respondent at any time;
 - (c) person who regularly resides or regularly resided with the respondent within the last six months;
 - (d) Domestic partner of the respondent;
 - (e) person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren; (
 - f) person who is acting or has acted as the respondent's legal guardian; and (
 - g) person in any other relationship described in section 18-6-800.3 (2) with the respondent.
- (6) "**Firearm**" has the same meaning as in section 18-1-901 (3)(h).
- (7) "**Law Enforcement Officer**" means a peace officer that is:
 - (a) employed by a political subdivision of the state and certified by the p.o.s.t board pursuant to section 16-2.5-102;
 - (b) authorized by section 16-2.5-113 when assistance is requested by an individual or entity pursuant to section 24-33.5-412;

(c) authorized by section 16-2.5-114 and who interacted with the respondent in the scope of the law enforcement officer's official duties;

(d) employed by a district attorney, designated by a district attorney, and authorized by section 16-2.5-132 or 16-2.5-133;

(e) employed by the department of law, designated by the attorney general, and authorized by section 16-2.5-128, 16-2.5-129, or 16-2.5-130;

(f) authorized by section 16-2.5-136, 16-2.5-137, or 16-2.5-138; (g) authorized by section 16-2.5-120; or

(g) authorized by section 16-2.5-120; or

(h) authorized by section 16-2.5-149.

(8) ***"Licensed Health-Care Professional"*** means a school nurse who holds a current nursing license through the department of regulatory agencies and who has applied for or holds a special services license from the department of education pursuant to article 60.5 of title 22 or a physician, physician assistant, or advanced practice registered nurse who is a primary provider of health services to a respondent; a psychiatrist; or a licensed emergency room medical care provider, licensed pursuant to title 12.

(9) ***"Mental Health Professional"*** means a psychologist, licensed professional social worker, marriage and family therapist, licensed professional counselor, or addiction counselor licensed, registered, or certified pursuant to article 245 of title 12; a psychologist candidate, clinical social worker candidate, marriage and family therapist candidate, licensed professional counselor candidate, or addiction counselor candidate registered pursuant to section 12-245-304 (3), 12-245-404 (4), 12-245-504 (4), 12-245-604 (4), or 12-245-804 (3.7), respectively; a school counselor who holds a special services provider license with a school counselor endorsement issued pursuant to article 60.5 of title 22 or who is otherwise endorsed or accredited by a national association to provide school counseling services; school psychologist licensed pursuant to section 22-60.5-210; school social worker who has obtained the special services license with social work endorsement issued pursuant to article 60.5 of title 22; or an unlicensed psychotherapist registered pursuant to section 12-245-703.

(10) ***"Petitioner"*** means the person who petitions for an extreme risk protection order pursuant to this article 14.5.

(11) ***"Respondent"*** means the person who is identified as the respondent in a petition filed pursuant to this article 14.5.

13-14.5-103. Temporary extreme risk protection orders.

(1) (a) A family or household member of the respondent, a community member, or a law enforcement officer or agency may request a temporary extreme risk protection order without notice to the respondent by including in the petition for the extreme risk protection order an affidavit, signed under oath and penalty of perjury, supporting the

issuance of a temporary extreme risk protection order that sets forth the facts tending to establish the grounds of the petition or the reason for believing they exist and, if the petitioner is a family or household member or community member, attesting that the petitioner is a family or household member or community member. The petition must comply with the requirements of section 13-14.5-104 (3). If the petitioner is a law enforcement officer or law enforcement agency, the law enforcement officer or law enforcement agency shall concurrently file a sworn affidavit for a search warrant pursuant to section 16-3-301.5 to search for any firearms in the possession or control of the respondent at a location or locations to be named in the warrant. If a petition filed pursuant to section 27-65-106 is also filed against the respondent, a court of competent jurisdiction may hear that petition at the same time as the hearing for a temporary extreme risk protection order or the hearing for a continuing extreme risk protection order.

(b) Notwithstanding any provision of law to the contrary, a licensed health-care professional or mental health professional authorized to file a petition for a temporary extreme risk protection order, upon filing the petition for a temporary extreme risk protection order, is authorized to disclose protected health information, of the respondent as necessary for the full investigation and disposition of the request for a temporary extreme risk protection order. When disclosing protected health information, the licensed health-care professional or mental health professional shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the petition. Upon receipt of a petition by a licensed health-care professional or mental health professional, and for good cause shown, the court may issue orders to obtain any records or documents relating to diagnosis, prognosis, or treatment, and clinical records, of the respondent as necessary for the full investigation and disposition of the petition for a temporary extreme risk protection order. When protected health information is disclosed or when the court page 5-senate bill 23-170 receives any records or documents related to diagnosis, prognosis, or treatment or clinical records, the court shall order that the parties are prohibited from using or disclosing the protected health information for any purpose other than the proceedings for a petition for a temporary extreme risk protection order and shall order the return to the covered entity or destroy the protected health information, including all copies made, at the end of the litigation or proceeding. The court shall seal all records and other health information received that contain protected health information. The decision of a licensed health-care professional or mental health professional to disclose or not to disclose records or documents relating to the diagnosis, prognosis, or treatment, and clinical records of a respondent, when made reasonably and in good faith, shall not be the basis for any civil, administrative, or criminal liability with respect to the licensed health-care professional or licensed mental health professional.

(c) (I) Venue for filing a petition pursuant to this section if the petitioner is a family or household member is proper in any county where the acts that are the subject of the petition occur, in any county where one of the parties resides, or in any county where one

of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

(II) A petition for an extreme risk protection order by a petitioner who is not a family or household member must be filed in the county where the respondent resides.

III. POLICY

It is the Policy of the Douglas County Sheriff's Office to safeguard the community from the potential risk of imminent harm created by significantly mentally ill people who have access to firearms and have exhibited behaviors that cause a public safety concern. Officers can seek extreme risk protection orders when necessary and will comply with the legal requirements imposed upon law enforcement by Colorado law.

IV. PROCEDURES

A. Extreme risk protection orders, whether temporary or permanent, are judicial orders issued by county or district courts pursuant to a petition having been filed by either:

B.

- A family or household member of the respondent.
- A Community Member
- A law enforcement officer or agency and demonstrating to the court relevant evidence included but not limited to any of the following:
 - (a) A recent act or credible threat of violence by the respondent against self or others, whether or not such violence or credible threat of violence involves a firearm;
 - (b) A pattern of acts or credible threats of violence by the respondent within the past year, including but not limited to acts or credible threats of violence by the respondent against self or others;
 - (c) A violation by the respondent of a civil protection order issued pursuant to article 14 of this title 13;
 - (d) A previous or existing extreme risk protection order issued against the respondent and a violation of a previous or existing extreme risk protection order;
 - (e) A conviction of the respondent for a crime that included an underlying factual basis of domestic violence as defined in section 18-6-800.3 (1);
 - (f) The respondent's ownership, access to, or intent to possess a firearm;
 - (g) A credible threat of or the unlawful or reckless use of a firearm by the respondent;
 - (h) The history of use, attempted use, or threatened use of unlawful physical force by the respondent against another person, or the respondent's history of stalking another person, as page 13-senate bill 23-170 described in section 18-3-602;
 - (i) Any prior arrest of the respondent for a crime listed in section 24-4.1-302 (1) or section 18-9-202;
 - (j) Evidence of the respondent's abuse of controlled substances or alcohol;
 - (k) Whether the respondent is required to possess, carry, or use a firearm as a condition of the respondent's current employment; and
 - (l) Evidence of recent acquisition of a firearm or ammunition by the respondent.

- C. An ERPO prohibits the respondent from possessing, acquiring, or otherwise controlling firearms. It therefore requires him to surrender any firearms he owns or possesses.
- D. The Office's responsibilities may vary depending upon whether the petitioner is a private citizen or law enforcement. The Office is not compelled to participate in every private process, and this policy does not imply that the Office will become involved when it's not in the public's best interests for it to do so. When the Office accepts or generates an ERPO case, the case shall be tracked by Civil and Warrants, using the SoftCode database.

E. *Law Enforcement Petitioner*

A deputy may petition for an extreme risk protection order if he or she reasonably believes a person poses a significant risk of causing personal injury to self or others by having in his or her custody or control a firearm or by purchasing, possessing, or receiving a firearm. Deputies petitioning the court shall do so by completing the forms provided by the administrative office of the court.

- 1. A deputy shall use the Office address for all matters pertaining to the petition.
- 2. A deputy shall seek approval through his chain of command up to the Sheriff or his designee prior to filing a petition for an extreme risk protection order, and the county attorney's review and approval of the role and obligations created by the petition.
- 3. The petition shall:
 - a. allege that the respondent poses a significant risk of causing personal injury to self or others by having in his or her custody or control a firearm or by purchasing, possessing, or receiving a firearm;
 - b. be accompanied by an affidavit, signed under oath and penalty of perjury, stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent;
 - c. identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, or control;
 - d. identify whether the respondent is required to possess, carry, or use firearms as a condition of the respondent's current employment; and
 - e. identify whether there is a known existing domestic abuse protection order or emergency protection order governing the petitioner or respondent; and
 - f. identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition.
- 4. The deputy may seek an *ex parte* extreme risk protection order, without notice to the respondent, by including in the petition an affidavit, based on personal knowledge, that the person poses a significant danger of causing personal injury to him or herself or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm and relying on the facts related in Paragraph c above.
- 5. The deputy shall make a good-faith effort to provide notice of the order to a member of the respondent's household or another family member and to any

known third party who may be at direct risk of violence. He shall also provide referrals to appropriate resources, including domestic violence, behavioral health, and counseling resources. Such notifications might best be delivered by victim advocates. The deputy shall consider using victim advocates and coordinate message delivery with the Victim Assistance supervisor.

F. *Concurrent Search Warrant Application*

If the Douglas County Sheriff's Office is the petitioner, the law requires a deputy to also seek a search warrant to seize any firearm in the respondent's possession. As with other search warrant applications, the affiant shall submit the warrant application to the district attorney for legal review before tendering the application to the court.

1. The search warrant application shall:
 - a. Comply with all provisions of 16-3-303 C.R.S., and provide facts to establish by probable cause:
 - b. that the named person is a named respondent in an extreme risk protection order; and
 - c. that the named person is in possession of one or more firearms; and
 - d. identify the location of such firearms; and
 - e. include any other information relied upon by the applicant and why the applicant considers such information credible and reliable.
2. In most cases the affiant and applicant shall be a detective with experience drafting search warrant applications and who is assigned to the Investigations Division.
3. Once the warrant has been signed by a court of jurisdiction, firearms and other items named in the warrant become contraband and law enforcement officers are authorized to execute the warrant and seize the identified contraband.

G. *Non-Law Enforcement Petitioner—Office Participation in ERPO hearing*

The Office may participate in a hearing to determine whether the respondent poses a significant risk of personal injury to himself or others by possessing a firearm. The Office has designated the Civil and Warrants sergeant or lieutenant as the personnel in the Douglas County Sheriff's Office to be alerted about and attend these court proceedings.

1. When a family or household member petitions the court to remove firearms, the petitioner is expected to notify the law enforcement agency where the respondent lives of the upcoming hearing date and time (i.e., for DCSO, Civil and Warrants).
2. When practicable, and upon adequate advance notice by the petitioner, the sergeant or lieutenant shall attend the hearing and collect any information that is noteworthy and affects the agency's role in serving or enforcing the provisions of the ERPO.
3. If time permits, the sergeant or lieutenant should notify the assigned assistant county attorney about the hearing, so he or she can attend if necessary.

H. *Serving the ERPO*

If the ERPO is granted, the courts will forward to the Civil and Warrants Section a copy of the order. Except when the respondent was present in the courtroom when the

order was issued, the order must be personally served on the respondent and must be served within five days, unless the court extends the deadline for service. Service of extreme risk protection orders, related notices, and search warrants take precedence over service of other documents, unless the other documents are of a similar emergency nature.

1. The conditions under which an ERPO is issued generate a heightened safety concern. Prior to any attempt to serve an ERPO the deputy or supervisor planning the service should collect and evaluate enough background information to safely execute it.
2. Whenever possible an effort shall be made to serve the documents on the respondent while he or she is present in the courtroom.
3. The intelligence officer or other qualified person should be consulted, and an immediate threat assessment conducted.
4. The Critical Response Team (CRT) should be consulted. Frequently a respondent of an ERPO has a history of mental illness and the CRT may possess or have access to information useful to the planning and execution of its service.
5. Members should take every precaution to ensure that the order is planned and executed in as peaceful and orderly a manner as is practical. It is appropriate for Patrol Division to assist in the service of these orders. Other resources should be considered if circumstances warrant.
 - a. When tactically feasible, and to reduce opportunities for violence or protracted events, deputies should learn about the respondent's habits, patterns and propensities and choose a service location that mitigates risks to the respondent, other citizens, and members. For example, if the respondent is thought to have a cache of firearms at his home and the order can be served while he is away from the home running errands or visiting other locations, plans should account for that option.
6. If the order cannot be served within the five-day statutory period, the Civil sergeant shall notify the petitioner and inquire as to the current whereabouts of the respondent. If necessary, the Office may seek additional time to execute the order.
7. The deputy serving the order shall:
 - a. Ask the respondent to surrender any firearms in his possession or control and any concealed handgun permit issued to him;
 - i.) An ERPO requires the respondent to surrender all firearms by one of three ways. The respondent may elect to:
 - a.) Sell the firearms to a licensed firearms dealer,
 - b.) Arrange for storage at the Sheriff's Office, or
 - c.) In the case of antique, curio, or relic firearms he may transfer the firearm to a relative who does not live with him.
 - b. Seize any firearms found in plain view or pursuant to consent or any other lawful search;
 - c. Determine, to the best of his ability, ownership and title to any firearms located during his investigation;
 - i.) The order authorizes the Office to seize those firearms in the respondent's possession and control. Deputies should exercise discretion

to avoid seizing firearms that belong to someone else if those firearms can be secured away from the respondent's access to them.

- d. Issue a receipt for any concealed handgun permit or firearms collected pursuant to the order;
 - i.) A copy of the same receipt shall be submitted with the deputy's offense or incident report and retained in the case file. Its original receipt shall be filed with the court issuing the ERPO within 72 hours.
- e. File a return of service with the issuing court according to applicable rules.

I. *Renewing Emergency Protection Orders*

If the respondent continues to be a threat, extreme risk protection orders can be extended beyond their initial period of issue. The Investigations Division Persons Crimes Sergeant shall review all extreme risk protection orders obtained by the Office to determine if renewal is appropriate. If he determines that the order should be renewed, he will confer with the original affiants and determine who will file the renewal paperwork. The request must be filed with the court within 63 days before the original order's expiration date.

1. The Office shall solicit participation and advice from the affected county attorney who shall review and approve the process in advance of such request being filed with the court.

J. *Disposition of Firearms and Concealed Handgun Permits*

Firearms and concealed handgun permits seized pursuant to an emergency protection order shall be handled, stored, and when appropriate and lawful, returned to the owner consistent with Office evidence handling procedures.

1. Firearms and concealed handgun permits that were seized or surrendered pursuant to an extreme risk protection order should be returned to the respondent if the order is terminated or expires without renewal. Before release, the office must confirm with the court that the extreme risk protection order is terminated or expired.

By Order of the Sheriff