


# Fort Collins Police Services

## Policy Manual

 <b>FORT COLLINS POLICE</b>	<b>POLICY</b>	<b>460</b>
	<b>TITLE</b>	Extreme Risk Protection Orders

### 460.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for serving Extreme Risk Protection Orders (inclusive of Temporary Extreme Risk Protection Orders) (T/ERPO) and the disposition of firearms obtained pursuant to district or county court orders. This policy also provides guidance and standards for when Fort Collins Police Services ("FCPS") may consider petitioning the court for a T/ERPO.

#### 460.1.1 POLICY

FCPS may petition for and/or serve T/ERPO's issued by a Colorado district or county court when an individual poses a significant risk to self or others by having firearms in their custody or control by possessing, purchasing, or receiving a firearm.

#### 460.1.2 DEFINITIONS

##### Antique/Relic Firearm –

- (A) Any firearm (including any firearm with matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured on or before 1898; or
- (B) Any replica of any firearm described in subparagraph (A) if such replica:
  - a. Is not designed or redesigned for using rim-fire or conventional centerfire fixed ammunition; or
  - b. Uses rim-fire 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
- (C) 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. or
- (D) firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof; or
- (E) firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; or
- (F) any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

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**CCW/CHP** - “Carrying Concealed Weapon” permit or “Concealed Handgun Permit” related to a state-issued permit authorizing the permitted party to carry a concealed handgun where permitted by law.

**Extreme Risk Protection Order (ERPO)** - Either a temporary order (TERPO) or a continuing order (ERPO) (T/ERPO when referencing both) (also referred to as a “three-hundred-sixty-four day extreme risk protection order”) granted pursuant to C.R.S. 13-14.5-101 to 114. The order is a civil restraining order prohibiting the named individual (respondent) from controlling, owning, purchasing, possessing, receiving, or otherwise having custody of any firearms.

**ERPO Team** – A cadre of positions within Fort Collins Police Services charged with receiving, evaluating, and executing T/ERPOs. The positions on this team include the Patrol Division Assistant Chief, the Special Operations Division (SOD) Assistant Chief, the Criminal Investigations Division (CID) Assistant Chief, the SOD Tactical Operations Lieutenant, and the SWAT sergeant. This cadre can be accessed via the group email address [erpo-team@fcgov.com](mailto:erpo-team@fcgov.com). Emails addressed to [erpo-team@fcgov.com](mailto:erpo-team@fcgov.com) are also forwarded to our partners within the City Attorney’s Office that will provide legal advice on T/ERPO matters.

**Family/Household Member –**

- (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 with the respondent at any time
- (C) Person who regularly resides or regularly resided with the respondent within the last six (6) months
- (D) Domestic partner of the respondent
- (E) Person who has a biological or legal parent-child relationship with the respondent, including stepparents, stepchildren, grandparents, and grandchildren
- (F) Person who is acting or has acted as the respondent’s legal guardian
- (G) A person in any other relationship, described in C.R.S. 18-6-800.3, to the respondent

**Federal Firearms License (FFL)** - An individual or company who possesses a federal license to sell/transfer firearms.

**Firearm** - Any handgun, automatic, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges as described in C.R.S.18-1-901(3)(h).

**InstaCheck (CBI)** - a process through CBI that verifies personal identifying information provided on an application to purchase a firearm.

**Petitioner** - The person who petitions for an Extreme Risk Protection Order pursuant to the law. A petitioner may be a family or household member of the respondent or a law enforcement officer or agency.

**Respondent** - The person identified as the respondent in a petition filed pursuant to the law, and the subject of the T/ERPO.

**Search Warrant** - A corresponding warrant under C.R.S. 16-3-301.5 authorizing a search of an individual’s residence or property where firearms are stored.

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## **460.2 GENERAL GUIDELINES**

Family, household members, and law enforcement personnel may obtain a T/ERPO where there is evidence that the respondent poses a significant danger, including the danger that is a result of an unstable mental health crisis or violent behavior. A T/ERPO prohibits the respondent from possessing, acquiring, or otherwise controlling firearms. It therefore requires the respondent to surrender any firearms and/or concealed weapons permits that they own or possess.

With a T/ERPO, there is no separate court order to surrender weapons, although a search warrant may be required to conduct a search absent consent. The order itself is the order to surrender all firearms. The service of T/ERPOs takes precedence over the service of other orders unless the other orders are of similar emergency nature. Due to the nature of these orders, the respondent may be uncooperative and present a significant danger to petitioners and law enforcement.

When FCPS members encounter a person who expresses interest in petitioning for a T/ERPO, information should be provided to the person about what constitutes a T/ERPO and a full T/ERPO order may be obtained at the appropriate district or county court. Agency members should provide the person with a T/ERPO brochure or information on how to find additional resources.

The civil process of T/ERPOs by officers will only occur within city limits.

No fees for filing or service will be charged to a petitioner regarding a T/ERPO.

### **460.2.1 T/ERPO Petition Information**

T/ERPOs are judicial orders issued by district or county courts pursuant to a petition being filed by the following:

- (A) A family or household member
- (B) Persons related by blood, marriage, or adoption
- (C) A person who has a child in common with the respondent
- (D) A person who regularly resides or regularly resided with the respondent within the previous six (6) months
- (E) Domestic partner-spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time
- (F) A person who has a biological or legal parent-child relationship with the respondent including stepparents, stepchildren, grandparents, and grandchildren
- (G) A person who is acting or has acted as a legal guardian, or
- (H) A law enforcement officer or agency

Any petition, and accompanying affidavit for a T/ERPO must include the following information:

- (A) That the respondent poses a significant risk of causing personal injury to self or others; and is in custody or control of a firearm(s), or can purchase, possess, or receive a firearm(s).

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- (B) Outline specific statements, action, or facts that give rise to a reasonable fear of future dangerous acts by the respondent; and
- (C) Identify the number, type(s), and location(s) of any firearm(s) owned, possessed, or controlled by the respondent; and
- (D) Whether the respondent is required to possess or carry a firearm as a condition of employment; and
- (E) Identify any information concerning any existing protection orders involving either the petitioner or the respondent (domestic violence, emergency protection order, etc.); and
- (F) Identify any pending civil action between the petitioner and respondent (dissolution of marriage, lawsuits, etc.); and
- (G) If the petitioner is the agency, a concurrent search warrant pursuant to C.R.S 16-3-301.5 shall be authored and submitted with the petition.

#### **460.2.2 Non-Agency T/ERPO Petition Procedure**

Non-law enforcement individuals seeking to petition for a T/ERPO should be directed to a Colorado district or county court in the jurisdiction in which the respondent lives. The petitioner should be provided a copy of the state T/ERPO information brochure or other public-facing informational document.

If an individual plans to file a T/ERPO petition with the court, staff members should recommend that the individual notify FCPS of the hearing date, in order to allow a representative from the agency to attend the hearing. The City Attorney's Office will be contacted regarding the petition hearing and may attend as the police representative, together with a designee of the Deputy Chief of Police or an Assistant Chief.

A citizen who presents at the agency with a signed and confirmed T/ERPO Order shall meet with an officer for delivery of the Order. The officer will initiate a case number and the process for serving the T/ERPO is detailed in the procedures below.

Fort Collins Police Services' employees will not file a petition for a T/ERPO on behalf of the public.

#### **460.2.3 FCPS T/ERPO Petition Procedure**

During an officer's duty, an officer may have it brought to their attention and/or determine an individual poses a significant risk of personal injury to themselves or others and has access to or possesses firearms. An officer receiving such information shall communicate with a sergeant (or acting sergeant), who will evaluate whether the risk of the subject party causing harm (to themselves or others) rises to the level of an immediate or imminent risk, and determine whether FCPS should file a T/ERPO petition. If the sergeant (or acting sergeant), holds an objective basis to believe the agency should seek a T/ERPO, the sergeant (or acting sergeant), shall make a referral to their immediate lieutenant (or acting lieutenant) to make a final determination and for immediate follow up. The lieutenant (or acting lieutenant) shall contact the City Attorney's Office as soon as practicable for further guidance.

If the lieutenant (or acting lieutenant) concludes that the Agency should file a petition meeting the criteria established above, the case shall proceed as follows:

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- (A) Ensure that a thorough and complete investigation has occurred.
  - a. If the respondent is **cooperative**, the assigned officer will complete a report and FCPS will request consensual surrender of firearms for safe-keeping. If the petitioner/victim/person who may have compromised security has legal access to the respondent's firearms and the respondent doesn't deny the consent to search due to being absent from the property, the firearm(s) will be seized for T/ERPO immediately. The T/ERPO process begins the first morning the court is in session and assigned to the appropriate personnel. If the respondent is cooperative, but consent cannot be achieved for any reason, the Agency member shall seek a concurrent search warrant pursuant to C.R.S. 16-3-301.5 to facilitate the seizure of firearms.
  - b. If the respondent is **uncooperative**, or the respondent's level of cooperation is unknown, the assigned officer will complete a report and required T/ERPO paperwork to be submitted to the City Attorney's Office for filing. The assigned officer shall seek a concurrent search warrant pursuant to C.R.S. 16-3-301.5.
- (B) The assigned officer may seek assistance from or work with any unit of FCPS to gather intelligence and ensure the appropriate T/ERPO documentation is completed, including any relevant reports, the petition, a sworn affidavit for a concurrent search warrant pursuant to C.R.S. 16-3-301.5, the SWAT Assessment Matrix, and a respondent intelligence workup sheet.
- (C) After the T/ERPO case is approved by a lieutenant (or acting lieutenant) and the City Attorney's Office, the case will be filed with the district or county court in which the respondent resides and the City Attorney's Office will provide legal services associated with the case.
- (D) A concurrent search warrant application will be submitted to the court, together with the T/ERPO petition, and must:
  - a. Comply with all provisions of C.R.S. 16-3-303, and provide facts to establish probable cause; and
  - b. Ensure the named person is a named respondent in an extreme risk protection order; and
  - c. Ensure the named person is in possession of one or more firearms; and
  - d. Identify the location of such firearms; and
  - e. Include other information relied upon by the applicant and supporting why the applicant considers such information credible and reliable.
- (E) Officers may consider filing a petition pursuant to C.R.S. 27-65-106 (Court-ordered evaluation for persons with mental health disorders) concurrently with the T/ERPO petition and search warrant application.

#### **460.3 T/ERPO RECEIPT**

FCPS will typically receive notification of a T/ERPO in two ways:

- (A) If FCPS is the petitioner, then they will receive the signed orders from the reviewing court.
- (B) If the petitioner is an individual, then FCPS may be notified by an email sent from the courts to the ERPO Team at FCPS via the email [erpo-team@fcgov.com](mailto:erpo-team@fcgov.com).

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Once a T/ERPO order is received by FCPS, regardless of the method of delivery, service of the T/ERPO will commence.

#### **460.4 T/ERPO SERVICE**

Upon issuance of a T/ERPO by a district or county court, the following steps should be followed for the service of a T/ERPO:

- (A) The ERPO team, and the City Attorney's Office will begin the process of serving the court order. FCPS will serve the order within five (5) days of receiving the T/ERPO.
  - a. If FCPS is unable to serve the order within five (5) days, it must notify the petitioner and request additional information regarding the location of the respondent.
  - b. FCPS may request additional time to allow for the proper and safe planning and execution of the T/ERPO.
- (B) After the ERPO Team, and the City Attorney's Office review the T/ERPO, an operational plan will be created for the service of the T/ERPO. The Tactical Operations lieutenant or designee will prepare the operational plan that shall include intelligence information regarding the respondent and the location where service is to occur.
- (C) The Tactical Operations lieutenant or designee shall seek a concurrent search warrant application pursuant to C.R.S. 16-3-301.5 to facilitate the seizure of firearms in all cases where FCPS is not a petitioner. When FCPS is a petitioner, it may seek voluntary and consensual recovery of firearms when the respondent is cooperative.
- (D) No service shall occur until a concurrent search warrant application pursuant to CRS 16-3-301.5 has been granted and the Tactical Operations lieutenant or designee has determined that service may be served in such a manner as to attempt to minimize all safety risks. If the Tactical Operations lieutenant or designee requires additional time for safe planning, he/she shall so inform a representative from the City Attorney's Office.
- (E) During service, the Tactical Operations lieutenant or designee shall complete the following steps:
  - a. Provide the respondent with the T/ERPO and concurrent notice of the hearing (location, date and time). The respondent may also be presented with referrals to domestic violence, behavioral health, and counseling resources.
  - b. Request the respondent surrender any firearms in their possession as is required by the order. Seize any firearms that are found in plain view, pursuant to any consensual search or lawful search per a search warrant acquired under C.R.S. 16-3-301.5.
  - c. Once the firearms are in the possession of FCPS, the respondent may elect to:
    - i. Sell/transfer the firearms to an agreeable federally licensed firearms dealer ("FFL")
    - ii. Arrange for storage at FCPS
    - iii. If the firearm is an antique, curio, or relic firearm, it may be transferred to a relative who does not reside with the respondent.
  - d. Any concealed handgun permit must be surrendered. If the Tactical Operations lieutenant or designee is unable to retrieve or determine whether the respondent possesses a permit, he/she must notify the sheriff's office in the appropriate jurisdiction to cancel the permit.

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- e. Ammunition and magazines are not to be seized.
- (F) If the respondent appeared personally at court on the TERPO, personal service is not required. Respondent has twenty-four (24) hours after being served or after the initial hearing to surrender all firearms and concealed carry permit.

#### **460.5 SURRENDER, STORAGE AND RETURN OF FIREARM(S)/CCW**

In compliance with orders set by the court in the TERPO, the respondent has twenty-four (24) hours to surrender all firearm(s)/CCW listed in the court order, or in their control or possession. If the respondent indicates no preference regarding the manner of disposition of the firearms, the Tactical Operations lieutenant or designee will take custody of the firearms for storage in the Agency's Property and Evidence section. Property and Evidence must issue an inventory sheet accounting for every firearm surrendered, including the concealed carry permit. The original copy of the inventory must be filed with the court within seventy-two (72) hours.

##### **460.5.1 Voluntary Surrender**

Firearms surrender, outside of the collection of firearms at the respondent's location, may take place by appointment or walk-in at the agency. The following procedures shall govern:

- (A) The respondent will report to the Records Unit at FCPS, leaving the unloaded weapon(s) out of view and in a locked vehicle.
- (B) Records personnel shall inform dispatch personnel that two (2) full-duty officers are needed to obtain a valid identification, clear the party for warrants, and collect the firearms. Records will provide an information sheet for the respondent to read. Responding officers will check off the type of firearm and number of firearms the respondent is relinquishing on the paperwork.
- (C) Responding officers shall advise the respondent not to touch or handle the firearms. Responding officers will facilitate delivery of the firearms to the Property and Evidence Unit in a manner that is consistent with officer safety. The responding officers will collect the CCW, if applicable.
- (D) The responding officers will take the firearms and CCW, if applicable, to the Property and Evidence Unit workspace to complete paperwork. The firearms, and CCW if applicable, will be secured in the lockers or turned over to Property and Evidence Unit personnel.
  - a. The original case number from the T/ERPO case will be used.
  - b. The staff member will copy the property invoice, apply the appropriate stamp, and provide the copy to the respondent to identify all items that were collected by the Property and Evidence Unit.
- (E) Photographs of the firearms will be taken and uploaded to the appropriate database.

##### **460.5.2 Firearm Seizure**

The search warrant obtained pursuant to a T/ERPO will be served by the agency. After the respondent is properly served, the members shall take custody of the respondent's firearm(s) pursuant to the previously obtained search warrant or another lawful search. If applicable, or named in the warrant, the officer will also seize the respondent's CCW. As with the voluntary

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surrender of weapons, members will not seize any ammunition or magazines associated with the firearm(s).

The respondent may indicate a preference regarding the manner of disposition of their firearms. The respondent can elect to transfer the firearms to a Federal Firearms Dealer (FFL) or FCPS custody. If the respondent indicates no preference, the firearms will remain in police custody. Upon completion of the search, an inventory sheet shall be issued to the respondent identifying all items seized. The original inventory sheet will be filed with the court, and a copy will be maintained by the law enforcement agency. The original inventory sheet must be filed with the court within 72 hours of surrender.

#### **460.5.3 Release to a 3<sup>rd</sup> party**

Firearms may be released to a 3<sup>rd</sup> party upon the notarized request of the respondent or upon presentation of a finding of ownership as determined by a court. Additionally, the firearms will be released to a 3<sup>rd</sup> party only upon a finding of the following:

- (A) Confirmation that the individual is eligible to possess firearm(s) via a criminal records background check and CBI InstaCheck. This transaction must be documented, and notification made to the court.
- (B) A notarized affidavit that the firearm is removed from the respondent's custody, control, or possession, and the lawful owner agrees to store the firearm in such a manner that prevents access to or control of the firearm by the respondent.

#### **460.5.4 Storage of Firearms**

Once the firearms are in the control and care of the Agency, the firearms will be stored in a substantially similar condition as they were in when surrendered.

- (A) If the respondent makes no choice pertaining to the firearm's disposition, the Property/Evidence Unit will store the firearm in a similar manner as if the firearm(s) were surrendered.
- (B) If the respondent elects for the storage of the weapons with a registered Federal Firearms Dealer (FFL), the Agency will contact a dealer requesting storage on the respondent's behalf and facilitate the transfer. The FFL may refuse acceptance of the firearms.
- (C) Storage via a FFL requires the following:
  - a. A letter of authorization from the owner to transfer to a licensed firearms dealer and authorizing storage of the firearms
  - b. Licensed firearms dealer must provide the agency with a receipt for the weapons
  - c. Copies provided to the court
- (D) Property and Evidence professional staff members will run firearm serial numbers through the CCIC/NCIC database in an effort to clear each firearm and may submit the firearms to the lab for testing and identification through operation Hot Brass or any other similar program if the circumstances permit.



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#### **460.5.5 Return of Firearms**

If the T/ERPO is terminated or expires without renewal, the Agency has three (3) days in which to return the firearm(s) and CCW to the respondent, upon respondent's request. The three (3) day window for the return of the firearm(s) begins upon the completion of a criminal background check, or InstaCheck by the Colorado Bureau of Investigation ("CBI"). The Department will be notified of the termination by order of the court and will facilitate the return as directed by policy – See Policy 804 and SOP 306. Additionally:

- (A) If the firearm(s) are in the care and custody of a Federal Firearms Dealer, they too have the same three (3) day deadline in which to return the firearm(s) to the respondent. The three (3) day window for the return of the firearms will begin upon the completion of a criminal background check and InstaCheck by CBI.
- (B) If the firearm(s) were classified as an antique or relic and transferred to the care and control of a relative, they are also required to return care and custody of the firearm(s) to the respondent within three (3) days. The three (3) day window for the return of the firearm(s) will begin upon the completion of the criminal background check and InstaCheck by CBI.
- (C) If applicable, the respondent's CCW will be returned with the firearm(s).
- (D) Any firearm(s) surrendered by the respondent, or taken into custody as the result of a search warrant, that remain unclaimed by the respondent or lawful owner at least one (1) year from the date the T/ERPO expired or was terminated, whichever is later, becomes the property of the Agency. The firearm(s) will be disposed of in accordance with policy. Full documentation of the disposition of the firearm(s) must be submitted to the respondent and the court and maintained by the Property/Evidence Unit.

#### **460.8 TERMINATION/EXPIRATION OF T/ERPO**

If a T/ERPO is terminated before the expiration date, the court clerk will forward a copy of the termination order to CBI and the Agency, and the Agency must promptly remove the order from any computer-based system the order was entered into.

When a T/ERPO is terminated or expired, the Agency must return the firearm(s) within three (3) days of the respondent's request. Before returning the firearm(s), the Property/Evidence Unit must confirm that the respondent is eligible to possess a firearm and confirm with the court that the order is terminated or expired.