


<b>LEESBURG POLICE DEPARTMENT</b> <b>REGULATIONS AND GENERAL ORDERS MANUAL</b>		
General Order Number: 234	Section: OPERATIONS	Effective Date: SEPTEMBER 2022
Title: <div style="text-align: center;"><b>SUBSTANTIAL RISK ORDERS</b></div>		
Accreditation Standards: <div style="text-align: center;">N/A</div>		
Review Date: MAY 2025	Total Pages: 3	Chief of Police: 

## I. PURPOSE

This General Order establishes guidelines for the response to the investigation, issuance, and service of Emergency Substantial Risk Orders and Substantial Risk Orders as established in Code of Virginia §19.2-152.13 and §19.2-152.14.

## II. POLICY

The Code of Virginia provides that when a person poses a substantial risk of personal injury to themselves or others in the near future by such person's possession or acquisition of a firearm, an attorney for the Commonwealth or a law enforcement officer may petition a judge or magistrate for the issuance of an Emergency Substantial Risk Order. The issuance of an Emergency Substantial Risk Order prohibits the person who is subject of the order from purchasing, possessing, or transporting a firearm for the duration of the order. Upon service of the Emergency Substantial Risk Order by law enforcement, the subject of the order shall be given the opportunity to voluntarily relinquish any firearm and receive notice informing them they have a right to a hearing under § 19.2-152.14 and may be represented by counsel.

It is the policy of the Leesburg Police Department to ensure that officers fully comply with the requirements of the Code of Virginia as it relates to Emergency Substantial Risk Orders and Substantial Risk Orders. The following procedures are meant to ensure that these matters are thoroughly assessed, cautiously approached, properly investigated, and appropriately documented.

## III. DEFINITIONS

- A. Emergency Substantial Risk Order (ESRO): An order petitioned for by a police officer or Commonwealth's Attorney and issued by a magistrate or judge 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.
- B. Substantial Risk Order (SRO): An order issued by the Circuit Court that continues to restrict an individual from owning, possessing, or purchasing a firearm, for up to 180 days, unless extended by the court, 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. PROCEDURES

##### A. Initial Response

1. During a call for service when an officer suspects that a person poses a substantial risk of personal injury to themselves or others in the near future by possessing or acquiring a firearm, the officer shall consult with their respective supervisor for guidance concerning the petitioning for an ESRO.
2. Supervisors shall consult with the officer to make a determination if an ESRO is applicable based on the totality of the circumstances, bearing in mind the burden of proving all material facts by clear and convincing evidence, and consult with the Platoon Commander or Duty Officer to make a determination concerning any additional investigative resources.
3. Following the determination that an ESRO will be sought, it is incumbent on the supervisor and consulting commander to determine the officer/detective that will prepare the affidavit and proffer the probable cause in support of the ESRO petition to the magistrate.
4. Request for law enforcement investigations by the Office of the Commonwealth Attorney for the purposes of obtaining an ESRO/SRO will be directed and assigned to the Criminal Investigations Section.

##### B. Issuance and Service

1. When an ESRO is issued the petitioning officer will hand deliver the order to the Emergency Communications Center (ECC) for entry into VCIN.
2. Prior to service of any ESRO/SRO, officers will confer with their respective supervisor to determine the safest method to serve the order. The supervisor shall review the order and consult with command to determine the method of service, to include the appropriate allocation of resources and personnel to ensure the safety of officers, the public, and the subject of the order.
3. An ESRO issued shall be served forthwith and expires at 2359 hours on the fourteenth day following issuance of the order. If the expiration occurs on a day that the Circuit Court is not in session, the order shall be extended until 2359 hours on the next day that the Circuit Court is in session. Expired and unserved ESRO's shall be returned to the Circuit Court.
4. A copy of the ESRO and supporting affidavit will be provided to the subject of the order with notice informing them they have a right to a hearing in Circuit Court at the time of service.
5. The subject will be advised that it is unlawful for them to purchase, possess, or transport firearms while the order is in effect and they shall be given the opportunity to voluntarily relinquish any firearms within their possession to the custody of the police department.
6. When an officer serves the ESRO, the officer must give the subject of the ESRO an opportunity to voluntarily disclose the location of all firearms in their possession. The law-enforcement agency that executes the ESRO must take custody of all firearms that the subject of the ESRO voluntarily relinquishes. A knowing, willful and material false statement or representation to a law-enforcement officer or attorney for the Commonwealth who is in the course of conducting an investigation related to an ESRO is a class 1 misdemeanor per Virginia State Code §19.2-152.16 (False Statements to a Law Enforcement Officer, etc. ; penalty).
7. The mere existence of an ESRO/SRO does not allow officers to search for firearms that are not voluntarily relinquished. Upon a finding that probable cause exist to believe that a person who is subject to an ESRO/SRO possesses a firearm and such firearm is within or upon any place, thing, or person, a law enforcement officer may obtain a search warrant to conduct a subsequent search.

8. If the subject of an ESRO/SRO holds a concealed handgun permit, they shall be notified to relinquish the permit to the Circuit Court.
9. The subject of an ESRO/SRO shall be provided with a written receipt containing the name of the person who is subject to the order and the manufacturer, model, condition and serial number of any firearm(s) relinquished to law enforcement. The officer creating the receipt should take photographs of the firearm(s) to document its condition.
10. The surrender of magazines and ammunition associated with relinquished firearms is not required.
11. Upon service of the ESRO, the date, time of service, and other appropriate information required shall be provided by the serving officer and entered into VCIN by ECC personnel.
12. The law enforcement agency that serves the ESRO shall return the served order to the Circuit Court, which shall be accompanied by a written inventory of all firearms relinquished. Following the service of an ESRO, the Circuit Court of the jurisdiction where the person who is subject to the order resides shall hold a hearing to determine whether a SRO should be entered.

C. Storage and Transfer of Relinquished Firearms

1. Firearms relinquished by the subject of an ESRO/SRO will be secured, packaged, and stored in accordance with General Order 114.
2. The court may order that any relinquished firearms be transferred to another individual or returned to the subject of the ESRO/SRO pursuant to §19.2-152.14. The Property Officer shall run a background check on any proposed transferee to determine if that person is eligible to receive the firearm under the law. If the court enters such an order, the firearms shall be transferred/returned in accordance with the order within 5 days of receipt of the order.
3. The subject of an ESRO/SRO requesting the return of their firearms must provide a written request, a copy of the original receipt provided by the department, and either a court order for the return, or proof that the ESRO/SRO has been dissolved and no longer in effect to the Property Officer.
4. Upon being provided proper documentation, the Property Officer shall return the firearm(s) within 5 days.
5. Prior to returning a firearm, an NCIC/VCIN check of the Risk Order Registry shall be conducted to confirm that the subject of the ESRO/SRO is no longer prohibited by law from possessing a firearm.
6. A firearm taken into custody pursuant to an ESRO/SRO may be disposed of in accordance with the provisions of Virginia State Code § 15.2-1721, if the relinquishing person provides written authorization for such disposal or the firearm remains in the possession of the police department more than 120 days following 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.