
Protection Orders and Firearm Relinquishment

310.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for serving and enforcing protection orders, petitioning for extreme risk protection orders, and accounting for the firearms, dangerous weapons, and concealed pistol licenses (CPLs) obtained pursuant to extreme risk protection orders and orders to surrender and prohibit weapons.

Release of surrendered prohibited items is addressed in the Property and Evidence Policy.

310.1.1 DEFINITIONS

Definitions related to this policy include:

Antiharassment protection order – A civil order to protect against unwanted contact or behavior that causes substantial emotional distress (i.e., is seriously alarming, annoying, harassing, or detrimental) and serves no legitimate purpose (RCW 7.105.100).

Criminal domestic violence no-contact order – An order issued in a criminal case, usually after indictment, to protect the victim against future violence or threats of abuse from the defendant. Law enforcement may apply *ex parte* (i.e., in the absence of or without notification to the defendant) for a no-contact order prior to indictment if there is concern for the victim's safety.

Dangerous weapon – An instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death (RCW 9.41.250).

Domestic violence protection order – A civil order to protect against domestic violence or threat of violence by an intimate partner or a family or household members (RCW 7.105.100). See the Domestic Violence Policy for relevant definitions.

Extreme risk protection order (ERPO) – A civil order that temporarily suspends an individual's constitutional right to have custody or control, purchase, possess, access, receive, or attempt to purchase or receive firearms and the privilege of using a CPL (RCW 7.105.100).

Foreign court orders – A protection or non-contact order properly issued by a court of another state, Indian tribe, territory, or nation. An order should be considered properly issued when it reasonably appears that the issuing court has jurisdiction over the parties and reasonable notice and opportunity to respond was given to the party against whom the order was issued (18 USC § 2265).

Minor – A person under the age of 18 (RCW 7.105.010).

Order – A collective term for all of the protection, no-contact, foreign, and extreme risk protection orders described in this policy.

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Other criminal no-contact orders – No-contact orders with firearms prohibitions may be issued by the court if a defendant is arrested for, charged with, or convicted of the following offenses: sexual assault, stalking, promoting prostitution, or human trafficking.

Order to surrender and prohibit weapons (OTSPW) – An order requiring the immediate surrender of all firearms, CPL, and other dangerous weapons in the possession, custody, or control of the respondent. Depending upon the circumstances, an OTSPW must or may accompany civil protection orders and may be issued in criminal domestic violence cases. While an OTSPW is in effect, the restrained person is prohibited from accessing, having in their custody or control, possessing, purchasing, or attempting to purchase or receive any firearms or dangerous weapons, or obtaining or possessing a CPL (RCW 9.41.800).

Sexual assault protection order – A civil order to protect a victim of nonconsensual sexual conduct or penetration (RCW 7.105.100).

Stalking protection order – A civil order to protect against stalking behavior that serves no lawful purpose and has reasonably caused the protected person to feel intimidated, frightened, under duress, significantly disrupted, or threatened (RCW 7.105.100).

Vulnerable adult protection order – A civil order to protect a vulnerable person who has been abandoned, abused, financially exploited, or neglected by the respondent (RCW 7.105.100).

A vulnerable person is a person who meets any of the following criteria (RCW 7.105.010(38)):

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself
- (b) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360
- (c) Who has a developmental disability as defined under RCW 71A.10.020
- (d) Admitted to any facility
- (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW
- (f) Receiving services from a person under contract with the department of social and health services to provide services in the home under chapter 74.09 or 74.39A RCW
- (g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

310.2 POLICY

Civil protection orders coupled with OTSPW and ERPO are designed to reduce gun deaths and mitigate the risk of other harm to victims, families, communities, and members of law enforcement agencies by removing firearms and dangerous weapons from individuals who pose

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a threat to others. Timely entry of protection orders into law enforcement databases facilitates swift intervention and helps prevent the acquisition of additional firearms. It is the policy of the Marysville Police Department to serve protection orders and recover firearms and dangerous weapons ordered to be relinquished as soon as possible in a manner that promotes safety for restrained persons, victims, and law enforcement officers.

310.3 PROTECTION ORDER COORDINATOR

The Chief of Police should designate a protection order coordinator. The responsibilities of the coordinator include:

- (a) Developing and maintaining procedures for the receipt and service of orders consistent with the requirements of RCW 7.105.150 and RCW 7.105.155. Procedures should include:
 - 1. Methods of authorized service (e.g., service by electronic means, personal service) including mechanisms and verification options for electronic service and electronic returns of service (RCW 7.105.175).
 - 2. Evaluation of orders to determine the appropriate method of service and necessary precautions (see the Warrant Service Policy and the Operations Planning and Deconfliction Policy).
 - 3. Forwarding orders to the operations director or the authorized designee for evaluation.
 - 4. Forwarding orders to the Administrative Services Division for recording in appropriate databases and submitting required notice to the court, as applicable.
 - 5. Preparing or obtaining a search warrant prior to attempting service of an OTSPW or ERPO when appropriate.
- (b) Developing procedures that facilitate relinquishment of prohibited items voluntarily or as soon as possible after court appearances and service of orders.
 - 1. Procedures should include preparing a receipt identifying all surrendered items and providing it to the restrained person.
- (c) Providing written instructions regarding relinquishment of prohibited items to appropriate courts to distribute to restrained persons who are ordered to immediately surrender such items.

310.3.1 COORDINATOR RESPONSIBILITIES: EXTREME RISK PROTECTION ORDERS

The responsibilities of the coordinator regarding ERPOs include:

- (a) Developing and maintaining procedures for the filing of a petition for an ERPO or a renewal of an ERPO by department members (RCW 7.105.100; RCW 7.105.105; RCW 7.105.110).
 - 1. This includes development of procedures to provide notice of an ERPO to persons who may be at risk of violence (RCW 7.105.110).

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- (b) Coordinating with the Office of Professional Standards Commander to provide training for officers who may be involved in petitioning for an ERPO. Training should include determining when a petition is appropriate, the court process, and required notification.
- (c) Reviewing each petition and any associated evidence and court documents prepared by members for compliance with this policy, department procedures, and state law.
- (d) Assisting officers to schedule required court appearances.

310.4 PETITIONS FOR EXTREME RISK PROTECTION ORDERS

An officer who reasonably believes a person, including a minor, is a significant danger to themselves or another person by having in their custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive a firearm may request permission from the officer's supervisor to petition the court for an ERPO (RCW 7.105.100).

Officers should consider and research the following factors when assessing whether to seek an ERPO:

- (a) Whether threats of violence have been made, and if so, whether the threats are credible and specific.
- (b) Whether the person has committed an act of violence toward themselves or another person.
- (c) Whether the threats or acts of violence involved the use of a firearm.
- (d) Whether there is a pattern to the threats or acts of violence.
- (e) Whether the person is exhibiting behaviors that present an imminent threat of harm to self or others.
- (f) The person's history of using or attempting to use physical force against another person.
- (g) Whether the person has a history of stalking behavior.
- (h) Previous protection orders and violations of those orders.
- (i) Whether the potential victim is within close proximity of the person.
- (j) Whether the person has expressed suicidal tendencies.
- (k) Whether the person has access to firearms.
- (l) Whether the person has recently purchased any firearms.
- (m) The unlawful or reckless use, display, or brandishing of a firearm by the person.
- (n) The criminal history of the person, in particular any convictions for domestic violence or hate crimes and arrests for felony offenses or violent crimes, including whether the person is currently on parole, probation, or monitored release.
- (o) The mental health history of the person, in particular whether the person has any history of mental illness or has ever been detained for posing a danger to themselves or others.

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- (p) Any known upcoming holidays, anniversaries, or other dates of significance that may serve as a trigger for the person, such as the death of a family member.
- (q) Whether the person has a history of drug or alcohol abuse.

310.4.1 REQUIREMENTS OF PETITION

A petition for an ERPO should be prepared consistent with state law and the procedures developed by the ERPO coordinator (RCW 7.105.100; RCW 7.105.105; RCW 7.105.110).

Officers petitioning the court shall use any standard petition, order, and confidential party information forms created by the administrative office of the courts (RCW 7.105.105).

The petition shall (RCW 7.105.100; RCW 7.105.105; RCW 7.105.110):

- (a) Allege that the person poses a significant danger of causing personal injury to the person or others by having in the person's control or custody, purchasing, possessing, accessing, receiving, or attempting to purchase or receive a firearm and be accompanied by the confidential party form and declaration signed under penalty of perjury that provides the specific statements and circumstances for which relief is sought and any other relevant evidence.
- (b) Identify the number, types, and locations of any firearms that the officer believes to be in the person's current ownership, possession, access, custody, or control.
- (c) Identify any other known existing protection orders governing the person.
- (d) Identify, if reasonably possible, any pending lawsuits, complaints, petitions, or other actions between the person and the Marysville Police Department.
- (e) Include an attestation that the officer provided notice of the intent to seek an ERPO to a family or household member of the person and to any third party who the officer reasonably believes may be at risk of violence, or an attestation to the steps that will be taken to provide this notice.

An officer may seek an *ex parte* ERPO without notice to the person by including in the petition detailed allegations based on personal knowledge that the person poses a significant danger of causing personal injury to self or others in the near future by having in the person's custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive a firearm. If necessary, the *ex parte* ERPO may be obtained from an on-call, after-hours judge using the same procedures for after-hours search warrants (RCW 7.105.110).

310.4.2 NOTICE TO PERSONS AT RISK

When an officer petitions for an ERPO, the officer shall make a good-faith effort to provide notice to an intimate partner or family or household member of the person and to any known third party who the member reasonably believes may be at risk of violence. The notice shall state the intention to seek an ERPO or that the order has already been sought and include referrals to appropriate resources, including behavioral health, domestic violence, and counseling services (RCW 7.105.110).

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310.4.3 RENEWAL OF EXTREME RISK PROTECTION ORDERS

The City of Marysville Legal Department is responsible for review of an ERPO received by the Department to determine if renewal should be requested within the time prescribed by law (RCW 7.105.410).

310.5 SERVICE OF ORDERS

Service of orders should be made in accordance with agency protocols using one of the methods authorized by law or the court (RCW 7.105.150).

Service of orders should take precedence over the service of other process, except for orders of a similar emergency nature (RCW 7.105.155). Service of orders should be prioritized according to the degree of risk to the petitioner, family or household members, community members, and law enforcement personnel, especially when firearms are involved.

If the Department receives a court order for entry and service involving a location outside of the department's jurisdiction, the Department may enter and serve the order or immediately forward it to the agency with jurisdiction. If an order is forwarded to another jurisdiction, the officer shall ensure that the issuing court is informed.

Once an order is served, officers shall attempt to notify the petitioner of service and complete an incident report, including details regarding the surrender of firearms, dangerous weapons, and CPL, if applicable.

310.5.1 PERSONAL SERVICE REQUIREMENTS

Personal service is required in the following cases:

- OTSPW and protection orders with ERPOs
- Orders that require the transfer of physical custody of children
- Orders that require the restrained person to vacate the shared residence
- When the restrained person is incarcerated
- When someone other than the protected person files a petition for a vulnerable adult protection order

Personal service of orders shall include copies of all forms with the exception of the Law Enforcement and Confidential Information (LECIF) form completed by the protected party and the proof of service form (RCW 7.105.155).

The first attempt to serve an order shall be made within 24 hours of receipt from the court unless an emergency situation renders the service infeasible. If an emergency situation prevents a first attempt at service within 24 hours, service shall be attempted as soon as possible. If the first attempt is unsuccessful, at least two additional attempts should be made. Each service attempt shall be logged by SNO911 and include the date, time, address, and reason service could not be

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completed. Officers shall be able to declare that the person served was the restrained person, the date, time, and location of service, and the documents served.

If the order is issued against a minor, officers shall also make reasonable efforts to serve a copy of the order on the parent or guardian of the minor at the address where the minor resides, or the Department of Children, Youth, and Families if the minor is the subject of a dependency case or court approved out-of-home placement. A minor shall not be served at the minor's school unless no other address for service is known (RCW 7.105.150).

If personal service is not completed within 10 days, the officer should notify the petitioner, attempt to gain new information sufficient to complete service, and continue to attempt service unless otherwise notified by the court. If the petitioner is unable to provide a valid address or there is evidence that the person is evading service, the officer shall use law enforcement databases to assist in locating the person. Officers shall continue to attempt to complete service unless directed otherwise by the court.

All service attempts and documents served shall be documented on the proof of service form and submitted to the Administrative Services Unit (RCW 7.105.155).

If the protected person is present when service is attempted, the officer should take reasonable steps to separate the protected person before completing service or inquiring about and collecting all firearms (RCW 7.105.155).

If the order requires the restrained person to vacate the shared residence, the officer shall take reasonable steps to ensure the restrained person has left and is on notice that return to the residence is a violation of the order and could subject the restrained person to civil and criminal penalties, including arrest.

Upon service, officers should explain the purpose of the order and its duration to the restrained person. Officers should also notify the restrained person of the right to a hearing. Upon request, officers should provide the restrained person with information regarding community resources.

310.5.2 SAFETY CONSIDERATIONS

Prior to attempting personal service, the officer should evaluate the circumstances of the order and consider what precautions are appropriate to take. Research should be conducted into the restrained person's history with firearms, including but not limited to purchase/transfer records, incident reports, lethality assessments, previous protection orders, and hunting licensing records. If needed, the petitioner should be contacted to address any department concerns or ambiguities in the LECIF, and to gauge the restrained person's expected reaction. Factors to be considered in a risk assessment include:

- Prior incidents of assault or threats to harm or kill.

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- Any type of physical violence, stalking, or sexual harm toward the protected person.
- Conviction or arrest involving violent acts, including prohibition on firearm possession.
- Presence of or access to firearms or dangerous weapons.
- History of alcohol or substance abuse.
- Violence against animals.
- History of behavioral crises indicative of danger to self and/or others including suicidality.

If the restrained person is a law enforcement officer or a member of the military, the operations director or the authorized designee should coordinate service and prohibited item relinquishment with the restrained person's agency or commanding officer. There is no exception to the relinquishment requirement for anyone who is required to carry a firearm by their employer.

When appropriate based on the circumstances and department procedures, service of an order should be executed pursuant to the Operations Planning and Deconfliction Policy.

At least two officers should be present when an order is being served.

When appropriate, officers should employ de-escalation techniques (e.g., time, distance, shielding) and encourage immediate voluntary compliance with an OTSPW or ERPO.

310.5.3 ELECTRONIC SERVICE

When an officer petitions for an *ex parte* emergency protection order on behalf of the protected person and the court does not include an OTSPW or an ERPO, or has verified that all firearms, dangerous weapons, and any CPL have been temporarily removed by law enforcement, service of the order on the restrained person may be made electronically pursuant to the requirements of RCW 10.99.040.

310.5.4 SURRENDER OF PROHIBITED ITEMS

The officer serving any protection order accompanied by an OTSPW or an ERPO, including an *ex parte* order, shall (RCW 7.105.340; RCW 9.41.801):

- (a) Advise the restrained person that the order is effective upon service.
- (b) Request that all firearms, dangerous weapons, and any CPL be immediately surrendered, and issue a receipt for the surrendered items.
 1. The officer should ensure the original receipt is forwarded to the court of issue.
 2. Restrained persons may not transfer or sell firearms after the order is issued.
 3. Although a court may identify specific firearms to be surrendered, the restrained person must relinquish all firearms in their custody, control, or possession.
- (c) Take into custody any firearms discovered in plain view or pursuant to consent or other lawful search.
- (d) As soon as practicable, but by the end of the officer's shift, submit the proof of service to the Administrative Services Unit.

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All firearms collected shall be handled and booked in accordance with the Property and Evidence Policy.

If the restrained person denies possession of firearms, dangerous weapons, and/or CPL, officers should obtain a statement and a signed "Declaration: No Weapons to Surrender" form. If the restrained person claims to have transferred or sold all firearms prior to issuance of the order, officers should attempt to verify the transfer/sale and obtain a signed "Proof of Surrender" form.

If practicable, officers should transport or meet the restrained person at the location of the firearms, dangerous weapons, and CPL, as applicable, if such items are not at the place of service.

If the restrained person is in custody, arrangements to recover firearms and weapons shall be made prior to the person's release.

310.6 SEARCH WARRANTS

If a person who has been served with a protection order accompanied by an OTSPW or an ERPO refuses to surrender any firearm, dangerous weapon, or CPL, as applicable, the officer should consider whether to seek a search warrant. If a search warrant is to be obtained, the preparation and service of the search warrant shall be done in accordance with the Warrant Service Policy.

310.7 ADMINISTRATIVE SERVICES UNIT RESPONSIBILITIES

The Administrative Services Unit is responsible for ensuring that:

- (a) ERPO orders from the court are immediately entered upon receipt into WACIC/NCIC and into any other computer-based criminal intelligence information systems used by the Department that lists outstanding warrants (RCW 7.105.350).
 - 1. The Administrative Services Unit is also responsible for updating the initial entry once service has been completed with the means and date of service.
- (b) The original receipt of surrendered firearms is filed with the court within 72 hours of service of an ERPO. A copy of the receipt shall also be maintained by the Department (RCW 7.105.340).
- (c) The original receipt of surrendered firearms, dangerous weapons, and CPL is filed with the court within 24 hours of service of an OTSPW. A copy of the receipt shall also be maintained by the Department (RCW 9.41.801).
- (d) Any proofs of service for notices or orders are filed with the court. Service is not complete until the proofs are filed with the court.
 - 1. The Administrative Services Unit shall return any incomplete proof of service form to the serving officer for completion before submission.
- (e) Expired or terminated orders entered into computer-based systems by the Department are removed (RCW 7.105.350).
- (f) For orders that could not be personally served, the proof of service form should be returned to the issuing court on the next judicial day following the last service attempt (RCW 7.105.155).

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1. The return should be made on the appropriate form and include the reason that service was unsuccessful.

310.8 COURT ORDERED SURRENDER OF PROHIBITED ITEMS

Officers should accept firearms, CPL and/or dangerous weapons whenever a restrained person presents them unless exigent circumstances arise. The receiving officer shall:

- (a) Record the person's name, address, and telephone number.
- (b) Record the serial number of the firearm.
- (c) Record the date that the firearm was accepted for storage.
- (d) Prepare an incident report and property report.
- (e) Provide a property receipt to the person who surrendered the firearms (RCW 7.105.340; RCW 9.41.801).
 1. If the firearm was surrendered pursuant to the Extreme Risk Protection Order Act, the original receipt should be forwarded promptly for timely filing with the court (RCW 7.105.340).
 2. When practicable, the receipt should include a description of the condition of the firearm and the signature of the restrained person as an acknowledgement of surrender and condition of the firearm.
- (f) Check WACIC/NCIC and other appropriate databases to determine if the firearm has been reported stolen.
- (g) Package and submit the firearms in accordance with the Property and Evidence Policy.

310.9 ORDERS TO SHOW CAUSE

When the Department receives notice from the court of an order to show cause, the officer should consult with legal counsel, as appropriate, to address any requirements involving the Department, including the following (RCW 7.105.340; RCW 9.41.801):

- (a) Fulfilling any additional service requirements for the order to show cause
- (b) If applicable, providing the court a complete list of firearms surrendered by the person that are in the possession of the Department
- (c) If applicable, providing the court with verification that any CPL was surrendered by the person and that the agency with authority to revoke the license has been notified
- (d) Filing an affidavit with the court where there is reasonable suspicion that the restrained person is not in full compliance with the terms of the order, including the basis for the belief

310.10 VERIFICATION OF COURT ORDERS

Determining the validity of an order, particularly an order from another jurisdiction, can be challenging. Therefore, in determining whether there is probable cause to make an arrest for a

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violation of an order, officers should carefully review the actual order when available, and, where appropriate and practicable:

- (a) Ask the restrained person about the notice or receipt of the order, knowledge of its terms, and efforts to respond to the order.
- (b) Ask the petitioner if they have a Hope Card.
- (c) Check available records or databases that may show the status or conditions of the order.
- (d) Contact the issuing court to verify the validity of the order.
- (e) Contact a law enforcement official from the jurisdiction where the order was issued to verify information.

Officers should document in an appropriate report their efforts to verify the validity of an order, regardless of whether an arrest is made. Officers should contact a supervisor for clarification when needed.

If the officer determines that the restrained person does not know about the order and is provided a copy by the petitioner, the officer shall serve the restrained person if present or make reasonable efforts to complete service if not present. If the officer uses the petitioner's copy for service, the petitioner shall be provided with a receipt.

310.11 STANDARD FOR ARREST

When an officer has confirmed that a valid order exists and has probable cause to believe the person has knowledge of the order and violated that order, the officer shall make an arrest and take the person into custody (RCW 7.105.450; RCW 10.31.100).

310.12 FOREIGN COURT ORDERS

A foreign court order shall be enforced by officers as if it were the order of a court in this state. An otherwise valid foreign court order shall be enforced, regardless of whether the order has been properly registered in Washington.

For Canadian court orders, any required notice shall be made according to RCW 26.55.020.

310.13 TRAINING

The Office of Professional Standards Commander should provide initial and annual training on this policy and topics relevant to carrying out this policy. Such topics should include:

- (a) The criteria for mandatory and discretionary OTSPW.
- (b) OTSPW contempt arrest warrants.
- (c) Enforcement of protection orders, including the crimes that may be charged for violating provisions of protection orders, available court sanctions, and compliance hearings.
- (d) Procedures for investigating alleged violations of protection orders.

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- (e) Trauma-informed interviewing techniques.
- (f) The use of lethality and risk assessment tools.