

# Extreme Risk Protection Orders

## 310.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for petitioning and serving extreme risk protection orders and accounting for the firearms obtained pursuant to those orders.

### 310.1.1 DEFINITIONS

Definitions related to this policy include:

**Extreme risk protection order** – An order prohibiting a named person from having custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive firearms.

**Ex parte extreme risk protection order** – An extreme risk protection order that has been issued in the absence of or without notification to the named person.

## 310.2 POLICY

It is the policy of the Marysville Police Department to petition for and serve extreme risk protection orders in compliance with state law and to properly account for firearms obtained by the Department pursuant to such orders.

## 310.3 EXTREME RISK PROTECTION ORDERS

An officer who reasonably believes a person, including a minor (person under the age of 18), 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 extreme risk protection order (RCW 7.105.100).

### 310.3.1 NOTICE TO PERSONS AT RISK

When a member petitions for an extreme risk protection order, the member 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 extreme risk protection order or that the order has already been sought and include referrals to appropriate resources, including behavioral health, domestic violence, and counseling (RCW 7.105.110).

### 310.3.2 REQUIREMENTS OF PETITION

An application for an extreme risk protection order should be prepared, filed, and served consistent with state law and the procedures developed by the extreme risk protection order 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):

# Marysville Police Department

## Marysville PD Policy Manual

### *Extreme Risk Protection Orders*

---

- (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.
- (b) Identify the number, types, and locations of any firearms that the [officer\_deputy] believes to be owned, possessed, accessed, controlled, or in the custody of the person.
- (c) Identify any other known existing protection orders governing the person.
- (d) Identify, if reasonably identifiable, any pending lawsuits, complaints, petitions, or other action between the person and the Marysville Police Department.
- (e) Include an attestation that the officer provided notice of the intent to seek the order 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 also seek an ex parte extreme risk protection order, 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 the person 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 order 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 SERVICE OF ORDERS**

Service of orders should be made in accordance with the agency protocols.

Personal service of orders shall include copies of all forms with the exception of the confidential party information form completed by the protected party and the proof of service form (RCW 7.105.155).

Service of orders should take precedence over the service of other orders, except for orders of a similar emergency nature (RCW 7.105.155).

##### **310.4.1 PERSONAL SERVICE REQUIREMENTS**

When personally serving an order, including an ex parte order, the first attempt to serve an extreme risk protection order should be made within 24 hours after 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. If the order is issued against a minor under the age of 18, 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 in the case where the minor is the subject of a dependency or court approved out-of-home placement. A minor shall not be served at the minor's

# Marysville Police Department

## Marysville PD Policy Manual

### *Extreme Risk Protection Orders*

---

school unless no other address for service is known. All attempts at service must be documented on a proof of service form and submitted to the court in a timely matter (RCW 7.105.150; RCW 7.105.155; RCW 7.105.330(5)).

If personal service is not completed within 10 days, the officer should notify the petitioner, attempt to gain new information sufficient to permit service, and continue to attempt service unless otherwise notified by the court. If the petitioner is unable to provide a service address or there is evidence that the person is evading service, the officer shall use law enforcement databases to assist in locating the person. If service is not successful, all service attempts shall be documented on the proper form and submitted to the Administrative Commander for filing with the court (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 any firearms (RCW 7.105.155).

#### 310.4.2 SAFETY CONSIDERATIONS

Upon receipt of extreme risk protection order, the operations director or the authorized designee should evaluate the circumstances of the order and consider what precautions are appropriate for service of the protection order.

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.

#### 310.4.3 SURRENDER OF PROHIBITED ITEMS

The officer serving any extreme risk protection order, including an ex parte order, shall (RCW 7.105.340):

- (a) Request that any firearms and any concealed pistol license be immediately surrendered, and issue a receipt for the surrendered items.
  - 1. The officer should ensure the Surrendered Weapons court form (WPF All Cases 02-065) is forwarded to the Administrative Commander.
- (b) Take into custody any firearms discovered in plain view or pursuant to consent or other lawful search.
- (c) As soon as practicable, but by the end of the officer's shift, submit the proof of service to the Administrative Commander.

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

### **310.5 SEARCH WARRANTS**

If a person who has been served with an extreme risk protection order refuses to surrender any firearm, the officer should consider whether to seek a search warrant. If a search warrant is to

# Marysville Police Department

## Marysville PD Policy Manual

### *Extreme Risk Protection Orders*

---

be obtained, the preparation and service of the search warrant shall be done in accordance with the Warrant Service Policy.

#### **310.6 ADMINISTRATIVE COMMANDER RESPONSIBILITIES**

The Administrative Commander is responsible for ensuring that:

- (a) Orders received from the court are entered into the national instant criminal background check system or any other federal or state computer-based system used by the Department that identifies prohibited purchasers of firearms, and into any other computer-based criminal intelligence information systems used by the Department that lists outstanding warrants (RCW 7.105.350).
- (b) The original receipt of surrendered firearms is filed with the court within 72 hours of service of an extreme risk protection order. A copy of the receipt shall also be properly maintained by the Department (RCW 7.105.340).
- (c) Any proofs of service for notices or orders are filed with the court.
- (d) Expired or terminated orders entered into computer-based systems by the Department are removed (RCW 7.105.350).
- (e) Orders that could not be personally served should be returned to the issuing court on the next judicial day following the last service attempt (RCW 7.105.155).
  - 1. The return should be made on the appropriate form and include the reason that service was unsuccessful.

#### **310.7 COURT-ORDERED FIREARMS SURRENDERS**

Authorized members should accept firearms and a concealed pistol license from any person who is the subject of an extreme risk protection order. The member receiving any firearm shall:

- (a) Record the person's name, address, and telephone number.
- (b) Record the serial number of the firearm.
- (c) Prepare an incident report and property report.
- (d) Provide a property receipt to the person who surrendered the firearms (RCW 7.105.340).
  - (a) The original receipt is to be forwarded to the Administrative Commander.
- (e) Document the condition of the surrendered firearms including by digital photograph (RCW 7.105.340)
- (f) Package and submit the firearms in accordance with the Property and Evidence Policy.

#### **310.8 STANDARD FOR ARREST**

When an officer has confirmed that a valid extreme risk protection 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 10.31.100).

# Marysville Police Department

## Marysville PD Policy Manual

### *Extreme Risk Protection Orders*

---

#### **310.9 RELEASE OF FIREARMS**

Firearms that were taken into custody or surrendered pursuant to an extreme risk protection order should be returned to the restrained person upon the expiration of the order, in accordance with the Property and Evidence Policy (RCW 7.105.345).

#### **310.10 RENEWAL OF EXTREME RISK PROTECTION ORDER**

The Administrative Services Unit supervisor is responsible for consulting with the City Prosecutor and review of an extreme risk protection order obtained by the Department, to determine if renewal should be requested within the time prescribed by law (RCW 7.105.410).

#### **310.11 ORDERS TO SHOW CAUSE**

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

- (a) Fulfilling any additional service requirements for the order to show cause
- (b) Providing the court a complete list of firearms surrendered by the person pursuant to the extreme risk protection order that are in the possession of the Department
- (c) Providing the court with verification that any concealed pistol license was surrendered by the person pursuant to the extreme risk protection order 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 person who is subject to the extreme risk protection order is not in full compliance with the terms, including the basis for the belief

#### **310.12 EXTREME RISK PROTECTION ORDER COORDINATOR**

The Chief of Police should designate an extreme risk protection order coordinator. The responsibilities of the coordinator include:

- (a) Developing and maintaining procedures for the filing of a petition for an order or a renewal of an order 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 extreme risk protection order to persons who may be at risk of violence (RCW 7.105.110).
- (b) Identifying factors to consider when assessing whether to seek an order, including:
  - 1. Whether threats have been made, and if so, whether the threats are credible and specific.
  - 2. Whether the potential victim is within close proximity.
  - 3. Whether the person has expressed suicidal tendencies.
  - 4. Whether the person has access to firearms.

# Marysville Police Department

## Marysville PD Policy Manual

### *Extreme Risk Protection Orders*

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5. Whether the person has committed an act of violence toward themselves or another person.
  6. The criminal history of the person, in particular any history of criminal violence, including whether the person is currently on parole, probation, or monitored release.
  7. The mental health history of the person, in particular whether the person has any history of mental illness or has ever been detained for being a danger to themselves or others.
  8. 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.
  9. Whether the person has any history of drug or alcohol abuse.
- (c) Developing and maintaining procedures for the receipt and service of orders consistent with the requirements of RCW 7.105.150 (Methods of Service) and RCW 7.105.155 (Service by a Law Enforcement Officer). Procedures should include:
1. Methods of authorized service for orders (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 an order to determine appropriate 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.
  4. Forwarding orders to the Administrative Commander for recording in appropriate databases and required notice to the court, as applicable.
  5. Preparing or obtaining a search warrant prior to attempting service of an order, when appropriate.
- (d) Coordinating with the Office of Professional Standards Commander to provide officers who may be involved in petitioning for or serving orders with training on such orders. Training should include determining when a petition is appropriate, the process for seeking an order, and the service of such orders.
- (e) Reviewing each petition, and any associated court documents for an order prepared by members, for compliance with this policy, department procedures, and state law.
- (f) Developing and maintaining procedures for members to accept voluntarily surrendered prohibited items at times other than when an order is being served by the Department.
1. Procedures should include preparing and providing a receipt identifying all prohibited items to the person surrendering the items.