



# NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT: <b>EXTREME RISK PROTECTIVE ORDER ACT</b>	GENERAL ORDER NO. <b>20-01</b>
SUPERSEDES: <b>NEW</b>	DATED: <b>JANUARY 13, 2020</b>
RELATED POLICIES & GENERAL ORDERS: <i>Domestic Violence Policy (G.O. 95-01)</i> <i>Domestic Violence Response Team (G.O. 05-01)</i> <i>Duties &amp; Responsibilities of Investigative Sections in DV Offenses &amp; Centralized Data Repository (G.O. 97-10)</i> <i>Duties &amp; Responsibilities in the Handling of DV Offenses Involving Police Officers (G.O. 99-1)</i> <i>Attorney General Directive Pursuant to the ERPO Act of 2018</i> <i>Domestic Violence Policy For Employees (G.O. 19-07)</i> <i>Property &amp; Evidence Management (G.O. 18-23)</i>	

**This order consists of the following numbered sections:**

- I. PURPOSE**
- II. POLICY**
- III. DEFINITIONS**
- IV. PROCEDURES**
- V. COMMUNITY RELATIONS AND OUTREACH**
- VI. EFFECT OF THIS ORDER**



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### I. PURPOSE

The purpose of this policy is to establish Newark Police Division procedures in accordance with Attorney General Law Enforcement Directive No. 2019-2, Extreme Risk Protective Order Act of 2018 (ERPO Act), N.J.S.A 2C:58-20 to 32. This Directive provides procedures for a petitioner (person filing for ERPO) to apply for an ERPO against a respondent (person against whom the ERPO is filed) that poses a danger of causing bodily injury to himself / herself or others by possessing or purchasing a firearm. The procedures govern both the temporary extreme risk protective order (TERPO) and the final extreme risk protective order (FERPO). The ERPO prohibits the respondent from possessing or purchasing a firearm or ammunition and from holding a firearms purchaser identification card, permit to purchase a handgun and permit to carry a handgun.

### II. POLICY

It shall be the policy of the Newark Police Division to follow the guidelines of the ERPO Act to ensure the safety of the public and law enforcement.

### III. DEFINITIONS

- A. **Ammunition** - Ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm but, does not include any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing or any unloaded, non-metallic shotgun hull or casing not having a primer.
- B. **Deadly Weapon** – Any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury or which in the manner it is fashioned would lead the victim reasonably to believe it to be capable of producing death or serious bodily injury, as defined under N.J.S.A. 2C:11-1(c).
- C. **Family or Household member** - A spouse, domestic partner as defined in N.J.S.A. 26: 8A-3, partner in a civil union couple as defined in N.J.S.A. 37: 1-29, or former spouse, former domestic partner, or former partner in a civil union couple, or any other person who is a present household member or was at any time a household member; a person with whom the respondent has a child in common, or with whom the respondent anticipates having a child in common if one of the parties is pregnant; or a current or former dating partner.
- D. **Firearm** - Any handgun, rifle, shotgun, machinegun, automatic or semiautomatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature



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in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person (N.J.S.A. 2C: 39-1).

- E. Law enforcement agency** - A department, division, bureau, commission, board or other authority of this State or of any political subdivision thereof which employs law enforcement officers.
- F. Law enforcement officer** – A person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.
- G. Petition** - An application to obtain a Temporary Extreme Risk Protective Order.
- H. Petitioner** - A family or household member or law enforcement officer seeking an extreme risk protective order.
- I. Recent** - Within six months prior to the date the petition was filed.
- J. Respondent** - A person against whom an order is sought.

## IV. PROCEDURES

### A. Filing for an ERPO

#### 1. Who May File for an ERPO

- a.** Only a petitioner, as defined above, can file a petition for an Extreme Risk Protective Order.
- b.** The ERPO Act does not require an act of domestic violence to have occurred, nor does it require a need to protect the petitioner's well-being.

#### 2. Informing Individuals of ERPOs and Other Options

- a.** If a person expresses to an officer the belief that another person poses an immediate and present danger of causing bodily injury to him/herself or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the officer shall inform the person of the ERPO ACT and its procedures, including who qualifies as a petitioner.
- b.** Instances might arise when a person requests to file an ERPO, but the individual would also qualify for a restraining or protective order pursuant to



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the Prevention of Domestic Violence Act or the Sexual Assault Survivor Protection Act. In these cases, the officer should inform the individual of these other options to ensure that the individual is making an informed decision, so he/she can be afforded the maximum protection under the laws of this State.

- c. Likewise, if a person presents information or a request to Division personnel that could be addressed by an ERPO, the member should inform the individual of the procedures in accordance with this Directive.

### **B. The Standard for Obtaining an ERPO**

1. A search warrant for any firearms and/or ammunition, which the respondent possesses or owns, can only be issued in conjunction with a Temporary Extreme Risk Protective Order when the court determines that probable cause exists to believe that:
  - a. The respondent owns or possesses any firearms or ammunition;
  - b. The respondent poses an immediate and present danger of bodily injury to him/herself or others by owning or possessing any such firearms or ammunition; and
  - c. Such firearms and/or ammunition are presently at a specifically described location.
2. In cases when personnel have only good cause but, not probable cause (see definitions), that the respondent poses an immediate and present danger of causing bodily injury to him/herself or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, they may still seek a Temporary Extreme Risk Protective Order but not a search warrant.

### **C. Filing for a TERPO by a Law enforcement officer (LEO)**

1. The ACT provides that a LEO may file a petition for a TERPO:
  - a. If a family or household member presents at a law enforcement agency to file a TERPO petition, a LEO shall “takeover” the petition if:
    - i. The officer has probable cause to believe that the respondent poses an immediate present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm; and
    - ii. The officer believes that there is some reason that the petition would be best filed by a LEO and not the family or household member, e.g., the petitioner is fragile or unable to proceed, or the family or



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household unit would be best served by having law enforcement file the petition.

- b. If an officer, in the course of their own investigation and policing, from information received from a non-family or household member, has probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning possessing, purchasing, or receiving a firearm, the officer shall file a petition for a TERPO.
  - c. Officers may also take over or join a petition for a Temporary Extreme Risk Protective Order under any other circumstances in the officers' discretion, as long as the officer has good cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
    - i. If an officer has only good cause but, not probable cause, that the respondent poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the officer may seek a Temporary Extreme Risk Protective Order petition and order but, not a search warrant.
  - d. Officers shall designate in the eCDR petition, if they are the petitioner or if they are joining the petition of a family or household member. When an officer joins a petition both the officer and the family or household member will be listed as petitioner within eCDR.
2. Notwithstanding the provisions of N.J.S.A. 2A:62A-16 et seq. (Duty to Warn), the Extreme Risk Protective Order Act of 2018 provides an additional avenue for officers to use once they have been alerted that a healthcare practitioner duty-to-warn incident has been triggered.
- a. In addition to the remedies in N.J.S.A. 2A:62A-16 et seq., if an officer receives information from a healthcare practitioner of a threat pursuant to N.J.S.A. 2A:62A-16, the officer may file a petition for a Temporary Extreme Risk Protective Order with a search warrant as long as the officer has probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
  - b. Probable cause is necessary to obtain a search warrant with the Temporary Extreme Risk Protective Order. Absent probable cause but with good cause,



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the officers can still file a petition for a Temporary Extreme Risk Protective Order.

### **D. The Process of Filing for a TERPO**

A family or household member may file a petition for a Temporary Extreme Risk Protective Order at the Superior Court or at a State, county or municipal law enforcement agency, where the **respondent resides**. (Division personnel shall assist the petitioner in contacting the law enforcement agency or court vicinage where the respondent resides if it is outside of Essex County.)

1. Contact the 'on call' assistant prosecutor for all ERPO applications, during regular court business hours 8:30 a.m. and 4:30 p.m. and after business hours.
2. ERPO petitions will be heard at the Criminal Division of the Superior Court during regular court business hours – between 8:30 a.m. and 4:30 p.m., Monday through Friday. The on-call assistant prosecutor will facilitate contact with the emergent duty judge of the superior court.
3. After-hours, weekends and holidays, the on-call municipal court judge will hear ERPO petitions.
4. Division personnel shall enter the petition in the eCDR system for the petitioner.

### **E. Completion of the Petition**

1. The Temporary Extreme Risk Protective Order petition shall allege that the respondent poses an immediate and present danger of bodily injury to themselves or others by possessing, purchasing, owning, or receiving a firearm.
2. The petition shall be sworn and under oath, subject to punishment if any statements are willfully false. Such oath shall be executed in the eCDR system.
3. Once the Temporary Extreme Risk Protective Order is complete within eCDR, officers shall contact the designated judge, in accordance with Section III C from a recorded telephone line. The judge may ascertain testimony from the petitioner telephonically or require the petitioner appear in person and will review the Temporary Extreme Risk Protective Order within eCDR and issue or deny it.

### **F. Denial of TERPO**

If a municipal court judge denies a Temporary Extreme Risk Protective Order, the documentation must be forwarded to superior court indicating the denial.



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1. The municipal court judge must advise the petitioner, on the record, of the right to an immediate review of the denial to an on-call Superior Court judge.
2. If the petitioner, whether a household or family member or Division personnel, wishes to exercise this right, the personnel shall contact an on-call Superior Court judge.
3. The on-call Superior Court judge shall be presented with the same TERPO for review that was presented to the municipal court judge.
4. Division personnel shall document the approval or denial of the TERPO in the appropriate reports.

## **G. Filing of an ERPO Petition against a Law Enforcement Officer**

### **1. Non-Newark Police Division Personnel:**

- a. When a petitioner seeks a TERPO against a NJ law enforcement officer respondent, the petition shall be submitted to the law enforcement agency in which the respondent-officer is employed.
- b. Like an ordinary Temporary Extreme Risk Protective Order, the agency shall advise the petitioner of the procedure for completing and signing a petition.
- c. The officer receiving the complaint shall have the individual complete a paper petition for an Extreme Risk Protective Order.
- d. A copy of the application shall immediately be sent to the county prosecutor of the county in which the agency is located.
- e. If the respondent officer is a member of the New Jersey State Police, Division of Criminal Justice, State Department of Corrections, any other State of New Jersey law enforcement agency, or out-of-state or federal law enforcement agency, the officer shall send a copy to the Division of Criminal Justice.
- f. The petition shall not be entered into the eCDR system until the respondent's employment with the agency is confirmed.

### **2. Division Personnel:**

- a. Any Division member presented with a TERPO petition request against Division personnel shall **immediately** notify their first-line supervisor who shall in turn notify the Office of Professional Standards.





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- b. Division personnel shall complete the petition application, following the guidelines set forth in this policy, and immediately send a copy of the application to the Essex County Prosecutor's Office Professional Standards Bureau.
- c. Division members shall be guided by the Office of Professional Standards and Essex County Prosecutor's Office Professional Standards Bureau.

### 3. Office of Professional Standards Responsibilities:

The Commander of OPS shall ensure an "ERPO internal affairs investigation" is initiated immediately, or as soon as possible, and be completed within 48 hours in accordance with the AG ERPO Directive. This shall be an expedited process that requires, but is not limited to the following:

- a. Review of the application for a petition; in-person or telephone interview of the petitioner and review of any internal agency files on the respondent-officer as long as it is completed in 48 hours.
- b. The ERPO internal affairs investigation can also consist of any other action that the agency deems appropriate, including an interview of the respondent-officer.
- c. An extension may be requested from the Essex County Prosecutor's Office PSB, which may be granted upon the showing of good cause.
- d. The ERPO internal affairs investigation does not replace any other OPS investigation based on any information that is learned prior to, during, or after the course of the investigation, and those investigations shall be conducted in accordance with established AG Guidelines and Division policies.
- e. In making its findings to the Essex County Prosecutor's Office, consideration shall be given to the Extreme Risk Protective Order and whether there is probable cause to believe that the respondent-officer poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
- f. At the conclusion of the investigation, the OPS Commander shall immediately forward its findings and any conclusions to the Essex County Prosecutor's Office PSB.
- g. Within one business day of receiving the ERPO internal affairs investigation from OPS, the Essex County Prosecutor shall make a determination whether to file the TERPO petition in the Superior Court.





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appropriate law enforcement agency in the county and municipality, respectively, in which the respondent resides. Upon receipt of this Temporary Extreme Risk Protective Order, the agency shall immediately or as soon as practicable serve this order upon the respondent.

2. At no time shall the family or household member petitioner be asked to serve any Temporary Extreme Risk Protective Order upon the respondent.
3. Division members shall document the attempted execution of any TERPO or FERPO on an administrative report (DP1:1001).
4. Any TERPO or FERPO shall remain in effect throughout the State until a court issues a further order and shall be enforced by all law enforcement officers. There is no automatic expiration of a TERPO or FERPO.

## **J. Search Warrant Execution**

1. Based upon consideration of information provided in the Temporary Extreme Risk Protective Order petition and during the Temporary Extreme Risk Protective Order or Final Extreme Risk Protective Order hearing, if the court determines that probable cause exists to believe that:
  - a. The respondent owns or possesses any firearms or ammunition; and
  - b. The respondent poses an immediate and present danger of bodily injury to him/herself or others by owning or possessing any such firearms or ammunition; and
  - c. Such firearms or ammunition are presently at a specifically described location;
  - d. The court, in conjunction with the Temporary Extreme Risk Protective Order or the Final Extreme Risk Protective Order, shall issue a search warrant for any firearms and ammunition, which the respondent possesses, owns, controls, or has custody of at that specified location.
    - i. Officers shall immediately or as soon as possible execute the search warrant and seize all firearms, ammunition, firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun within the possession, custody, or control of the respondent, or that could be in the respondent's possession.
    - ii. Due to the determination by the court of the respondent presenting an "immediate and present danger of causing bodily injury" to self or others by having custody or control of a firearm, when executing a



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search warrant to seize a respondent's firearms or ammunition, it shall be within the supervisor's discretion on the scene to determine whether a respondent can surrender the firearms or ammunition, and how they may do so.

- iii. Officers have the right to remain literally at the respondent's side at all times and such action is reasonable under the 4<sup>th</sup> Amendment of the United States Constitution and Article 1, paragraph 7 of the New Jersey Constitution.
- e. If, during the execution of the search warrant, Division members find evidence of criminality in accordance with the plain view exception, or any other legally permissible basis, that evidence shall be confiscated. No further search can be conducted once the object of the search seized, without first amending the search warrant.
- f. If a person other than the respondent claims title to any firearm or ammunition, officers shall direct the person claiming title to request a return of the weapons to the agency pursuant to N.J.S.A. 2C:58-26(e). If the agency determines that the person claiming title is the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to that person (N.J.S.A. 2C:58- 26(e)). However, nothing in this policy shall affect the authority of the prosecutor or the Division to maintain possession of any firearm as otherwise authorized by law.

## **K. Storing, Selling and Transfer of Firearms**

1. Upon surrender or seizure of any firearms and ammunition, the property shall be stored in accordance with *G.O. 18-23 (Property & Evidence Management)*.
2. Unless the respondent is a Newark Police Division member, all firearms and ammunition in the respondent's custody or control, or which the respondent owns or possesses, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun that are seized or surrendered are to be promptly forwarded to the county prosecutor's office in which the ERPO is handled.
3. If a person other than the respondent claims title to any firearm or ammunition surrendered, and the agency confirms that the person is the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to that person (N.J.S.A 2C:58-26(e)).
4. The respondent can also request that the firearm or ammunition be sold, or the title of the firearm or ammunition be transferred, to a federally licensed firearms dealer, even if he/she is no longer eligible to own or possess a firearm or ammunition (N.J.S.A 2C:58-27).



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### **L. Release of ERPO Records to Non-Law Enforcement Persons or Agencies**

1. Extreme Risk Protective Order petitions, supporting documentation, and Extreme Risk Protective Order internal affairs records contain sensitive and confidential information, including criminal and mental health records, that raise privacy concerns.
  - a. Any records created or submitted pursuant to the Extreme Risk Protective Order Act of 2018, New Jersey Attorney General Directive #2019-2, and this general order are confidential and not subject to public disclosure.
  - b. Information provided by law enforcement for the Extreme Risk Protective Order is only for the court's consideration, not other parties' inspection, and only the respondent has the right to this information.
  - c. Information provided by law enforcement for the Extreme Risk Protective Order is only for the court's consideration, not other parties' inspection, and only the respondent has the right to this information.
  - d. When the respondent is a law enforcement officer, the Extreme Risk Protective Order internal affairs investigation and any other internal affairs or personnel records are confidential and not subject to public disclosure.
2. Any Extreme Risk Protective Order records that pertain to an event or encounter that involves an investigation of a criminal offense are considered a "criminal investigatory record" exempt from disclosure under the Open Public Records Act (OPRA), (N.J.S.A. 47: 1A-1 et seq.).
3. Neither New Jersey Attorney General Directive #2019-2, nor the release of any document or information pursuant to New Jersey Attorney General Directive #2019-2, shall constitute a waiver of any privilege to maintain the confidentiality of a record that a law enforcement agency may have under the Open Public Records Act, any other statute, or the common law right of access. Nothing in New Jersey Attorney General Directive #2019-2 shall be construed to create any promises or any rights beyond those established under the Constitution, statutes, regulations, and decisional law of New Jersey.

### **M. Termination of FERPOS**

1. The superior court may terminate a Final Extreme Risk Protective Order if the opposing party has received notice, if the appropriate law enforcement agency and county prosecutor have been notified, and if a hearing has been held by the court. It shall be in the prosecutor's discretion whether to object to a termination of a Final



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Extreme Risk Protective Order. If the prosecutor is not involved, then it shall be at this agency's discretion.

2. In determining whether to object, the agency or county prosecutor should consider the Extreme Risk Protective Order factors, as well as any other relevant evidence including but, not limited to, whether the respondent has received, or is receiving, mental health treatment, and the petitioner's opinion as to termination.
3. If the respondent petitioned for termination, the respondent shall bear the burden at the termination hearing of proving by a preponderance of the evidence that he/she no longer poses a significant danger of causing bodily injury to themselves or to others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
4. Upon the termination of an Extreme Risk Protective Order, the respondent may petition the agency to return his/her firearms or ammunition (N.J.S.A. 2C: 58-26(d)). Such action shall be done within 30 days unless the firearm or ammunition has been reported as stolen or the respondent is prohibited from possessing a firearm or ammunition under state or federal law.
5. The Extreme Risk Protective Order Act of 2018 also provides that after one year after the Extreme Risk Protective Order is terminated, the agency may destroy the firearm or ammunition in accordance with its policies and procedures for destruction of firearms or ammunition (N.J.S.A. 2C: 58-28). The agency or prosecutor shall give notice to the former respondent prior to destruction of the firearms or ammunition.

## V. COMMUNITY RELATIONS AND OUTREACH

The Newark Police Division, to protect both the public and law enforcement, shall raise public awareness and help educate the public on the ability to file ERPO's through various Division resources, including:

1. Community Affairs/Clergy Unit
2. Public Information Unit
3. Special Victims Division



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## VI. EFFECT OF THIS ORDER

This Order is hereby effective immediately. All Division Orders, Memoranda, and sections of Rules and Regulations that are inconsistent with this policy are hereby rescinded and repealed.

BY ORDER OF

A blue ink signature of Anthony F. Ambrose, consisting of stylized, overlapping letters.

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ANTHONY F. AMBROSE  
PUBLIC SAFETY DIRECTOR

AFA/BO:rme

Attachment: AG Directive Law Enforcement 2019-2