

## Extreme Risk Protection Orders

### 341.1 PURPOSE AND SCOPE

The Colorado Department of Revenue may not be the primary law enforcement agency seeking Emergency Risk Protection Orders (ERPO). This policy is to provide information on ERPOs. The purpose of this policy is to provide guidelines for petitioning for and serving extreme risk protection orders, and accounting for firearms and concealed carry permits obtained pursuant to those orders (CRS § 13-14.5-108).

#### 341.1.1 DEFINITIONS

Definitions related to this policy include:

**Antique Firearms or Relic** - Antique firearms as defined in 18 U.S.C. sec. 921 (a)(16) as amended, or a curio or relic, as defined in 27 CFR 478.11. Generally defined as any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898.

**Extreme risk protection order (ERPO)** - An Extreme Risk Protection Order means either a temporary or continuing order pursuant to 13-14.5-102(1), C.R.S.

**Firearms** - 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 per CRS §18-1-901(3)(h). The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.

**Petitioner** - The law enforcement officer or law enforcement agency (or other person) who petitions the court of record for an ERPO. The petition for an ERPO must be filed in the county where the respondent resides. The address of record on the petition must be that of the law enforcement agency filing the petition.

**Respondent** - The individual identified and the subject of the ERPO.

**Prohibited items** - Firearms and concealed carry permits that are prohibited by an extreme risk protection order.

**Temporary ERPOs** - State law allows family or household members or a law enforcement agency to petition the court for a temporary ERPO by signing an affidavit supporting the need for the temporary ERPO. If the court finds that the respondent poses a significant risk of causing personal injury to themselves or others by having firearms, the court must issue a temporary ERPO on the same day or the following court day and schedule a hearing for an ERPO within 14 days.

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### **341.2 POLICY**

It is the policy of the Colorado Department of Revenue to petition for and serve extreme risk protection orders in compliance with state law, and to properly account for prohibited items obtained by the Agency pursuant to such orders.

### **341.3 EXTREME RISK PROTECTION ORDER COORDINATION**

The Office of Professional Standards and Training (OPS) will coordinate the following(if applicable):

- (a) Developing and maintaining procedures for the filing of a petition for an order or a renewal of an order by agency members. Procedures should include (CRS § 13-14.5-103; CRS § 13-14.5-104):
  - 1. For temporary extreme risk protection orders, that a search warrant shall be sought concurrently with any petition.
  - 2. A process for handling notices received from non-law enforcement petitioners to determine whether agency attendance at a hearing is appropriate.
  - 3. Involving agency counsel as required.
  - 4. Making required state court administrator forms available (CRS § 13-14.5-114).
- (b) Developing and maintaining factors to consider when assessing the need 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.
  - 5. 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.
  - 6. 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 self or others.
  - 7. Any 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.
  - 8. 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 CRS § 13-14.5-103 and CRS § 13-14.5-106. Procedures should include (CRS § 13-14.5-106):
  - 1. Evaluation of an order to determine appropriate service and necessary precautions (see the Warrant Service and Operations Planning and Deconfliction policies).

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- (a) Additional time to allow for the proper and safe planning and execution of the court order may be requested, if needed.
- 2. Forwarding orders, receipts, and other required notices to the Records Supervisor for recording in appropriate databases and required notice to the court, as applicable (CRS § 13-14.5-108).
- 3. Developing a process for achieving timely service of orders.
- (d) Coordinating with the Office of Professional Standards and Training (OPS) Manager to provide investigators 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 to ensure compliance with this policy, agency procedures, and state law.
- (f) Developing and maintaining procedures for members to accept surrendered prohibited items at times other than when an order is being served by the agency.
  - 1. Procedures should include preparing and providing a receipt identifying all prohibited items to the person surrendering the items.
- (g) Developing a process for receiving and reviewing notices from the court that a respondent of an extreme risk protection order has failed to make required filings and determining whether there is evidence that the respondent has failed to surrender any prohibited items (CRS § 13-14.5-108).

### **341.4 EXTREME RISK PROTECTION ORDERS**

An investigator who reasonably believes that an extreme risk protection order (and any search warrant information if available) is appropriate should obtain approval from an appropriate supervisor and the Office of Professional Standards and Training or authorized designee prior to seeking an order.

The supervisor will immediately notify the director of the division regarding an ERPO.

The supervisor will assist the primary investigator in coordinating the service of the ERPO (and search warrant, if applicable).

#### **341.4.1 STANDARDS**

Extreme risk protection orders may be appropriate if a person poses a significant risk of causing personal injury to him/herself or others by having a firearm in his/her custody or control (CRS § 13-14.5-104). If a person poses a significant risk of causing personal injury to him/herself or others in the near future by having a firearm in his/her custody or control, a temporary extreme risk protection order may be appropriate (CRS § 13-14.5-103).

#### **341.4.2 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 Office of Professional Standards and

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Training(CRS § 13-14.5-103; CRS § 13-14.5-104). The affidavit for the ERPO must be filed with the court of record in the county in which the respondent resides.

### **341.4.3 NOTICE TO FAMILIES AND PERSONS AT RISK**

Upon the issuance of an extreme risk protection order, investigators should make a reasonable good-faith effort to provide notice to a family or household member of the person named in the order and to any other person who may be at direct risk of violence. Investigators should also provide family or household members with referrals to appropriate resources, including domestic violence, behavioral health, and counseling resources (CRS § 13-14.5-105).

Investigators should document all efforts to provide notice and indicate whether or not the efforts were successful.

### **341.5 SERVICE OF ORDERS**

Investigators shall coordinate with law enforcement in the appropriate jurisdiction the service of a copy of an extreme risk protection order, along with any accompanying notice of hearing and petition, as applicable, on the person named in the order as soon as practicable.

Service of orders shall take precedence over the service of other orders, except for orders of a similar emergency nature (CRS § 13-14.5-103; CRS § 13-14.5-105; CRS § 13-14.5-106).

#### **341.5.1 ADDITIONAL SERVICE REQUIREMENTS**

If investigators in conjunction with law enforcement in the appropriate jurisdiction are not able to complete service within five days, they should make reasonable attempts to notify the petitioner and gather additional information of the respondent's potential whereabouts (CRS § 13-14.5-106).

A notice providing referrals to appropriate resources, including domestic violence, behavioral health, and counseling resources, should be provided to the person being served with a temporary extreme risk protection order at the same time as service of the order (CRS § 13-14.5-103).

#### **341.5.2 SAFETY CONSIDERATIONS**

Upon receipt of an 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 agency procedures, service of an order should be executed pursuant to the Operations Planning and Deconfliction Policy.

In no circumstances should fewer than two investigators be present when an order is being served.

#### **341.5.3 SURRENDER OF PROHIBITED ITEMS**

Investigators in coordination with the local law enforcement agency having primary jurisdiction serving an extreme risk protection order should request that the named person immediately surrender all prohibited items as required by the order. Investigators shall take custody of any items surrendered pursuant to the order.

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A receipt identifying all surrendered items shall be prepared by the local law enforcement agency having primary jurisdiction and a copy given to the person (CRS § 13-14.5-108). The investigators in coordination with the local law enforcement agency having primary jurisdiction should ensure the original receipt is included in the original case report and forwarded to the local law enforcement agency having primary jurisdiction as soon as practicable.

All items collected should be handled and booked in accordance with the Property and Evidence Policy.

### **341.5.4 SEARCH WARRANTS**

Investigators in coordination with the local law enforcement agency having primary jurisdiction should consider whether a search warrant may be reasonably necessary prior to attempting service of an order.

Investigators in coordination with the local law enforcement agency having primary jurisdiction should also consider whether to seek a search warrant if the named person refuses to surrender any prohibited items or if an investigator serving an extreme risk protection order reasonably believes there are prohibited items within the person's custody, control, or possession that have not been surrendered (CRS § 13-14.5-103; CRS § 16-3-301.5; CRS § 13-14.5-108).

### **341.6 RELEASE OF PROHIBITED ITEMS**

All items should be stored with the local law enforcement agency having primary jurisdiction. Any person requesting the release of any prohibited item shall contact the local law enforcement agency having primary jurisdiction.

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

The Investigation Section supervisor is responsible for the review of any extreme risk protection order obtained by the Agency to determine if renewal or extension of the order should be requested within the time prescribed by law (CRS § 13-14.5-107).