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<b>MODEL POLICY</b>	<b>Subject:</b> PROTECTION ORDERS, EXTREME RISK PROTECTION ORDERS, AND ORDERS TO SURRENDER WEAPONS	

## INTRODUCTION

In the effort of seeking protection from batterers and other violent persons, victims, family members, Petitioners, and law enforcement personnel face significant risks. In the United States, based on an analysis of FBI and Florida State homicide reports, a woman is fatally shot by her partner every 16 hours. And research shows that people with a history of domestic violence are five-times more likely to murder their partner if there is a firearm in the house. A 2016 report from the National Law Enforcement Officers Memorial Fund found that calls related to domestic disputes and domestic-related incidents resulted in more police fatalities than any other type of call. Further, research also tells us that a woman's risk of homicide is highest when she is trying to end the relationship. For these reasons, in 2014, the Washington State Legislature unanimously passed a law requiring immediate surrender of weapons for certain persons subject to Protection Orders.

In addition, in 2016, the Washington voters authorized a new type of order, the Extreme Risk Protection Order (ERPO), mandating immediate removal of firearms from those posing risk of harm to self or others, such as individuals in crisis.

Swift order service, along with temporarily removing firearms for safe-keeping at the time of service, particularly for those Restrained Persons who present the greatest risk, is critically important.

This policy is designed to provide law enforcement personnel with clear definitions, direction, and procedures for entry, service, and enforcement of all types of court orders, including Extreme Risk Protection Orders and Orders to Surrender Weapons, to most effectively reduce risk of harm to victims, the community, and law enforcement.

This model policy may be supplemented and/or updated as needed based on changes in the law or best practices as recommended by the Regional Domestic Violence Firearms Enforcement Unit. (206-477-1074 [SeaKingFirearms@KingCounty.gov](mailto:SeaKingFirearms@KingCounty.gov))

## DEFINITIONS

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Family or Household Member – Individuals who have the following types of relationships with a Respondent/Restrained Person:

- Persons related by blood, marriage or adoption
- Dating partners. Persons 13 years of age or older in a dating relationship with a person 16 years of age or older
- Persons with a child in common, regardless of whether such persons have been married or have lived together
- Persons who reside or have resided together (for an ERPO, the persons must have resided together within the past year)
- Domestic partner
- Person in a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren
- Persons acting or have acted as the Respondent/Restrained Person’s legal guardian

Intimate Partner – A person who is or was married, in a state-registered domestic partnership, or in an intimate or dating relationship with another person at the present or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time, shall be treated as an Intimate Partner.

Petitioner – The person who files the initial case. In most cases, the person who initiates the case is also the Protected Person. In some situations, where there is an overarching family law case, such as a dissolution, or parenting plan, the person who initiated that case may be listed as the Respondent/Restrained Person on the Protection Order.

Protected Person – The person who asks the court to issue a Protection Order. The Protected Person may be either the named Petitioner or Respondent, depending upon the type of case, as noted above. In the case of ERPOs, there is no Protected Person, rather there is a Petitioner, who may be an individual or a law enforcement agency.

Respondent – The person who initially must respond to the case filed by the Petitioner and who is the “Restrained Person”. In an Extreme Risk Protection Order, the Respondent is always the person ordered to surrender firearms/concealed pistol license.

Restrained Person – The person to whom the order applies. A Restrained Person may be prohibited from having contact with the Protected Person or other family member, or having access to any firearm and concealed pistol license.

## **TYPES OF ORDERS**

(See also: <https://wscadv.org/wp-content/uploads/2015/06/WA-State-Civil-Safety-Order-Comparison-Chart.pdf>)

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Court Orders – Court orders come in many forms and may be issued by a Superior Court, Juvenile Court, District Court, Municipal Court, other states, or a Tribal Court. For some orders, the court may issue an Ex Parte (Temporary/ Emergency) Order that is effective until the court holds a hearing. Different types of orders include:

1. No Contact Order – No Contact Orders may be imposed as part of a criminal proceeding, usually during a defendant’s first court appearance. The order is served in court, and does not require a petition, request, or approval from the victim. No Contact Orders can be issued in any Superior, District or Municipal Court. No Contact Orders may be issued for the following types of criminal events:
  - a. Domestic Violence (RCW 10.99)
  - b. Promoting Prostitution (RCW 9A.88)
  - c. Trafficking (RCW 9A.40)
  - d. Harassment (9A.46) Obtained by a person alarmed, annoyed or harassed by another person.
  - e. Stalking (RCW 7.92.160) When any person charged with or arrested for stalking as defined in RCW 9A.46.110 or any other stalking-related offense under RCW 9A.46.060 is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, and the victim does not qualify for a domestic violence Protection Order under chapter RCW 26.50, the court authorizing release may issue, by telephone, a stalking no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.
  
2. Protection Orders and Ex Parte Protection Orders – Civil order obtained by a person who has been assaulted or who fears abuse. These types of orders are issued at the request of an alleged victim. Presence of a related criminal case is not required. Protection Orders are most often issued by Superior and District Courts. Some Municipal Courts accept Protection Order filings, but not all. Some orders must originate in District Court, while others can be filed directly into Superior Court. When the person seeking protection alleges that harm could result if an order is not issued immediately without prior notice to the Respondent, the court may grant an Ex Parte Temporary Protection Order, which lasts until the full hearing, for which the Respondent will be served notice. Some Temporary Orders entered in District Court will be transferred to Superior Court for the full hearing (most commonly when children are involved.)

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The following types of Protection Orders are available:

- a. Domestic Violence (RCW 26.50)
- b. Vulnerable Adult (RCW 74.34) Obtained by a vulnerable adult or an interested person on behalf of a vulnerable adult.
- c. Stalking (RCW 7.92) Obtained by a person who does not qualify as a family or household member for a Protection Order under RCW 26.50 and who is a victim of stalking conduct. The order can also be obtained by an interested person on behalf of a vulnerable adult or the legal guardian of a minor child.
- d. Sexual Assault (RCW 7.90) Obtained by a person who does not qualify for a Domestic Violence Protection Order and is a victim of non-consensual sexual conduct or non-consensual sexual penetration, including a single incident.
- e. Anti-Harassment (RCW 10.14) Obtained by a person who does not qualify for a Stalking Order and who is the victim of unwanted continuing contact that seriously annoys, alarms, or causes distress. Courts often require a showing that the person being harassed has made it clear to the other party that they want no further contact. There are filing fees for this type of order but fees can be waived if the person filing is low-income.

Orders to Surrender Weapon Issued Without Notice entered at the time of the Temporary Domestic Violence Protection Order are becoming more common. Personnel should look through all order paperwork sent for service to see if this type of order has been granted. Refer to the "Service of Orders" section for more details.

3. Restraining Order (RCW 26.09, 26.10, 26.44) – Temporary and Permanent Restraining Orders are generally filed as part of an existing family law case, generally in conjunction with divorce proceedings or child custody cases. Restraining Orders may also be granted when there are allegations of domestic violence, child sexual or physical abuse by a parent or family member.
4. Order to Surrender Weapons (OTSW) and Order to Surrender Weapon Without Notice (OTSWWN) (RCW 9.41.800) – Depending on the facts, a court must or may order a party to surrender any firearm or other dangerous weapon. The court directs surrender to law enforcement, to the party's legal counsel, or to any person designated by the court. An Order to Surrender Weapons is generally issued in conjunction with other orders and requires a Respondent/Restrained person to:
  - a. Immediately surrender all firearm or other dangerous weapons;
  - b. Surrender any concealed pistol license issued under RCW 9.41.070;
  - c. Prohibit the party from obtaining or possessing firearms or other dangerous weapons;

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d. Prohibit the party from obtaining or possessing a concealed pistol license.

5. Extreme Risk Protection Order (ERPO) (RCW 7.94) – A court order that temporarily suspends a person’s access to firearms if there is evidence that the person is threatening to harm him or herself or others. Unlike a No Contact Order or Protection Order, ERPOs do not restrict contact with persons or locations. ERPOs are limited to restricting access to firearms. Because of the risk of violent behavior, the person, who is called a “Respondent” in the ERPO, is ordered by the court to immediately turn over all firearms and any concealed pistol license to law enforcement. The Respondent is also directed not to have a firearm in his or her custody or control, and not to purchase, possess, receive, or attempt to purchase or receive a firearm.

A family or household member or a law enforcement officer or agency may ask the court to issue an ERPO by filing a petition. No criminal case is needed. The law defines a family or household member as any of the following:

- Person related by blood, marriage, or adoption to the Respondent;
- Dating partner of the Respondent;
- Person who has a child in common with the Respondent, regardless of whether such person has been married to the Respondent or has lived together with the Respondent at any time;
- Person who resides or has resided with the Respondent within the past year;
- Domestic partner of the Respondent;
- Person who has a biological or legal parent-child relationship with the Respondent, including stepparents and stepchildren and grandparents and grandchildren, or;
- Person who is acting or has acted as the Respondent’s legal guardian.

6. Ex Parte Extreme Risk Protection Orders

This Temporary Order is issued by the court without notification to the Respondent. A full ERPO must be issued by Superior Court; however, an **Ex Parte** ERPO may be initially issued by District or Municipal court and transferred by the court to Superior Court for the full hearing and final order (RCW 7.94.030(10)) and (RCW 7.94.050).

Petitioners may request the issuance of an Ex Parte ERPO prior to a full hearing, by including facts in the Petition that based on personal knowledge the Respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing,

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possessing, or receiving a firearm. Providing notice of the hearing to the Respondent may increase the danger to the Petitioner or others. The court may factor this in their decision to issue an Ex Parte ERPO.

If a court finds there is reasonable cause to believe that the Respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, (and may also note that providing notice increases danger to the Petitioner or others), the court shall issue an Ex Parte ERPO.

## **ORDER VIOLATIONS**

A violation of an order may constitute a criminal offense if:

1. The order was in place AND
2. The offender knew about the order AND
  - The offender engaged in any type of prohibited contact, OR
  - The offender possessed or attempted to possess a firearm (ERPO/OTSW/DVPO's)

Violations may be:

- Gross Misdemeanor – If the violation did not involve an assault or reckless endangerment and if the Respondent/Restrained Person does not have two prior convictions for violating an order.
- Class C Felony for some types of Protective Orders) – If the contact involved assault or reckless endangerment or if the Respondent/Restrained Person has two prior convictions for violating an order.

### Mandatory Arrests for Some Court Order Violations

Personnel are encouraged to contact and consult with appropriate prosecutors regarding questions about Court Order violations. Personnel should also contact the Law Enforcement Agency responsible for entering the order to do a hand search, if they do not see the order in WACIC. Per RCW 26.50.115(3), presentation of an unexpired, certified copy of a Protection Order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system.

Per RCW 10.31.100(2)(a), officers are mandated to make arrests for some Court Order violations:

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1. A Respondent/Restrained Person has violated the terms of an order by committing an act or threat of violence, and/or going onto the grounds of or entering a residence, workplace, school, or day care, or knowingly coming within or remaining within, a specified distance of a location prohibited in the order, **AND**
2. The type of order is one of the following:
  - Stalking Protection Order and Court-Initiated Stalking No Contact Orders (RCW 7.92)
  - Sexual Assault Protection Order (RCW 7.90)
  - Harassment No Contact Order (RCW 9A.46)
  - Domestic Violence No Contact Order (RCW 10.99)
  - Domestic Violence Protection Order (RCW 26.50)
  - Vulnerable Adult Protection Order (RCW 74.34)
  - Restraining Order (RCW 26.09 & 26.10) – Front page of Order must state: “VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER RCW 26.50 AND WILL SUBJECT A VIOLATOR TO ARREST”
  - Foreign Protection Order (RCW 26.52.020)

Additionally, per RCW 26.50.110, arrests are mandated for violations of the following additional types of orders if a Respondent/Restrained Person knowingly comes within a prohibited residence, workplace, school, day care, or the person knowingly remains within a specified distance of a prohibited location:

- Trafficking No Contact Order (RCW 9A.40)
- Promoting Prostitution No Contact Order (RCW 9A.88)

## **ENTRY OF ORDERS RECEIVED FROM COURT**

The law enforcement agency has responsibility for entering court orders into the state (WACIC/NCIC) and local databases. Orders, Including Temporary Orders, should be entered the same day they are received whenever possible, so that all law enforcement personnel are aware of them. Timely and complete entry is also important to ensure proper tracking of orders and to be able to work effectively inter-jurisdictionally. The specific procedures for court order entry are detailed in (insert applicable Agency policy here).

The Entering Agency is generally the law enforcement agency with jurisdiction for where a Petitioner resides. If an order was issued by a jurisdiction’s Municipal Court, that jurisdiction should enter the order regardless of where the Petitioner resides. The Serving Agency is the law enforcement agency with jurisdiction for where the Respondent/Restrained Person resides. If both Petitioner and Respondent/Restrained

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Person reside in the same city, the law enforcement agency with jurisdiction will both enter and serve the order.

Personnel should also notify the law enforcement agency that issued the CPL to have them inactivate the CPL.

### **PREPARING ORDER FOR SERVICE / CREATING INFORMATION PACKET AND SERVICE PACKET**

The (Insert applicable agency division/section/unit) should conduct research regarding the Respondent/Restrained Person's history, and create a packet of information for personnel serving the orders. This will help ensure that service is successfully completed and will reduce risks associated with the service.

The information packet should include the following research and documents (these are not provided to the Respondent/Restrained Person):

- Whether the Respondent/Restrained Person has any outstanding warrants or has knowingly attempted to acquire a firearm in violation of federal or state law, or been denied an application to purchase or transfer a firearm as the result of a background check that indicates the Respondent/Restrained Person is ineligible to possess a firearm under state or federal law. (WACIC/NCIC check);
- Known information about the Respondent/Restrained Person's in- custody status;
- Information from State DOL regarding any concealed pistol license and pistol transfers, and firearm purchase history (if Social Security Number is known);
- State DOL photograph of Respondent/Restrained Person;
- Local / Agency records of Respondent/Restrained Person;
- Law Enforcement Information Sheet (LEIS), for law enforcement personnel use only;
- Supplemental Law Enforcement Information Sheet – Firearms. The Firearm LEIS is first-hand information from the Petitioner on the types of firearms and the likely known location of the firearms.;

The service packet, to be served on the Respondent/Restrained Person, should contain the following documents:

- Petition for Order for Protection
- Law Enforcement Addendum to the Petition (for ERPOs where law enforcement is the Petitioner).
- Temporary Order for Protection and Notice of Hearing
- Order to Surrender Weapons Without Notice (this may not always be issued with a Temporary Order for Protection)

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- Proof of Surrender form
- Instructions explaining how weapons are to be surrendered when applicable

If a court order is not sufficient for service (e.g. expired order, unsigned order, wrong address, etc.), law enforcement personnel should contact the Court Orders Problem-Solver in the Regional Domestic Violence Firearms Enforcement Unit, who will help to get quick resolution of the problem if possible, and efforts should be made to notify the Petitioner.

## **SERVICE OF ORDERS**

### **Risk Assessment**

Some orders may carry more risk for the Protected Person, family, community, or law enforcement, and should be prioritized for service. The (insert applicable agency division/section/unit) should submit all service packets to the on-duty supervisor for review of appropriate staffing and expertise needed for service.

The reviewing supervisor should conduct a formal risk assessment on all orders involving the surrender of weapons, including Extreme Risk Protection Orders. Prioritization of all other orders should be based on the Risk Assessment criteria noted below.

In conducting the review, the reviewing supervisor should keep in mind that the risk of lethality to a Petitioner is heightened upon a Respondent/Restrained Person's first notification of an order. Timing of order service and any required surrender of weapons should be prioritized to occur as expediently as possible based on factors considered in the risk assessment.

High-risk orders should not be served with fewer than two personnel.

Factors that should be taken into consideration during the risk assessment include:

- Prior incidents of assault (domestic violence and non-domestic violence)
- Prior incidents of assault or threat against children
- Prior incidents of assault against law enforcement
- Any type of physical violence, stalking or sexual harm toward victim
- Threat to harm or kill victim or others
- Conviction or arrest involving violent acts
- Presence of firearms or other dangerous weapons
- History of alcohol or substance abuse
- Violence against animals
- Behavioral crisis indicative of dangerousness to self and/or others including suicidality.

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### **Order Service**

1. Prior to serving the order, assigned personnel should read the order and the petition thoroughly and verify that the correct person is being served.
2. Prior to serving the order, assigned personnel should verify all firearms identified in the order and from any available information. All firearms must be surrendered upon service.
3. Service is not considered valid unless the Respondent/Restrained Person is personally served, has knowledge of the order, or unless the court specifies otherwise.
4. The first attempt at service should, if possible, occur within 24 hours of receiving the order and service packet from the (insert applicable agency division/section/unit). If the first attempt is not successful, no fewer than two additional attempts should be made to serve the order. If the Respondent/Restrained Person was determined to be high-risk, additional attempts at service should be made.
5. Each attempt at service should be noted in the Service Packet and reflected in CAD records, with date, time, address, and the reason service was not completed. Any known or suspected attempts by a Respondent/Restrained Person to avoid service should also be noted on the Return of Service form.
6. Service should be completed at least five court days prior to the hearing date (business days - Monday through Friday, excluding holidays) wherever possible so that the court hearing is not delayed, which can result in ongoing risk to the victim. However, service attempts should continue until the date of the hearing.
7. If the Respondent/Restrained Person is in the Protected Person's presence at the time of contact for service, serving personnel should take reasonable steps to separate the parties when possible prior to completing the service or inquiring about or collecting firearms.
8. If the Respondent/Restrained Person is served in the Protected Person's presence, serving personnel should take reasonable steps to help safeguard the Protected Person. (See *Washburn v. Federal Way*, 178 Wn.2d 732 (2013)). These steps also apply to civil standbys. Personnel should document any steps taken to ensure Protected Person's safety. Examples of reasonable steps may include:
  - If the order is served at the Protected Person's home, personnel should remain on-scene until the Respondent/Restrained Person departs.

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- If the order is served at the Respondent/Restrained Person’s home, personnel should remain on-scene until the Protected Person departs.
  - If the order is served at a third-party location, personnel should remain on-scene until either the Respondent/Restrained Person or the Protected Person departs.
9. If the Protected Person has provided information about additional firearms the Respondent/Restrained Person has access to, personnel should take reasonable steps to obtain them in accordance with this policy.
  10. Personnel completing the service should take steps, when needed, to ensure that the Respondent/Restrained Person understands the order (e.g. use of an interpreter).
  11. Expired court orders shall not be served and should be returned to the Court Orders Problem-Solver in the Regional Domestic Violence Firearms Enforcement Unit.
  12. Unsigned court orders shall not be served and should be returned to the Court Orders Problem-Solver.
  13. Attempts should be made to notify the Petitioner if an order cannot be served.

**Successful Service of Orders**

1. Provide the Respondent/Restrained Person with copies of all the forms, **EXCEPT**:
  - Law Enforcement Information Sheet (LEIS)
  - Supplemental Law Enforcement Information Sheet – Firearms
  - Return of Service Sheet
2. Complete the Return of Service form. Note that **every box must be marked** for each document that was required to be served or the court may determine that the service was incomplete and will require a continuance and further attempts to serve the Respondent/Restrained person to ensure proper service. These delays can result in additional risk to the Protected Person. Sign and date the form. Your agency’s procedure may also include immediate notification of the records unit of the time and date service was completed.
3. Document on the Return of Service form any behavior or pertinent evidence (e.g. belligerence at time of service, threats, avoidance of service, description of firearms seen at the time of service, as well as Respondent’s statements regarding possession of the firearms. This kind of information won’t be available to the court unless it is included on the Return of Service form.

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4. A supervisor should review the completed Return of Service form for thoroughness and quality control.
5. Attempt to notify the Petitioner/Protected Person if phone or email contact information has been provided.

### **Unsuccessful Service of Orders**

If attempts at service are not successful, complete the Return of Service form or the form letter showing that the order was not served, stating the reason. Include all attempts made to serve the Respondent/Restrained Person, including any avoidance attempts made by the Respondent/Restrained Person. Efforts should be made to contact the protected party about the inability to serve, using the email or phone number provided.

### **ORDER TO SURRENDER WEAPONS**

No Contact Orders and Protection Orders may also include an Order to Surrender Weapons (OTSW). Typically, the Protected Person will provide information as to the number and types of firearms the Restrained Person possesses, if it is known. Personnel should follow the following procedures for an OTSW:

1. Follow the instructions provided in the court order.
2. Although the order may specify specific firearms brands and models to be surrendered, personnel should also ask the victim separately for ALL firearms to which a Respondent/Restrained Person has access to or is in possession of, in addition to any firearms specifically listed in the order.
3. Advise the Respondent/Restrained Person that the court has ordered that all firearms in his or her custody, control, or possession, and any CPL, must be immediately temporarily turned over to law enforcement for safe-keeping.
4. Explain to the Respondent/Restrained Person this is a temporary court order, law enforcement will retain the firearms for safe-keeping, and s/he can contest it at the hearing.
5. If the Respondent/Restrained Person denies possession of firearm(s), conduct basic investigative steps to help verify or disprove Respondent/Restrained Person's claims. Note on the Return of Service if Respondent/Restrained Person asserts he or she possesses no weapons or a CPL.
6. Ask the Respondent/Restrained Person if s/he will consent to a search. (*Refer to specific agency policies concerning search procedures.*)

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7. Consider application for a search warrant to ensure all firearms in the Respondent/Restrained Person's custody, control or possession have been surrendered. Take possession of all firearms that are surrendered, are in plain view, or are discovered pursuant to a lawful search. For victim safety, every lawful effort should be made to obtain any and all firearms at the time of the order service, rather than asking the Respondent/Restrained Person to bring firearms to the agency at a later date.
8. In order to reduce risk of lethality and harm, if the Respondent/Restrained Person is not physically located where his/her firearms and CPL are located, transport or follow him or her to retrieve all firearms and the CPL whenever practicable.
  - If a Respondent/Restrained Person is served in court or via mail/publication, he or she may surrender firearms and CPL to law enforcement within 48 hours of receiving notice, rather than immediate surrender. Follow-up should be done to ensure this occurred.
9. Provide a receipt for all surrendered firearms and CPL to the Respondent/Restrained Person. Keep a copy for agency files. The original is to be filed with the court within 72 hours after the service of the order.
10. Book the firearms into evidence according to Agency procedure.
11. Complete and sign the Return of Service form and mark the appropriate box for surrender of firearms.
  - Every box must be marked for each document that was required to be served or the court may find that the service was incomplete and will require further service of the Respondent/Restrained Person. Note that there are separate boxes for Orders to Surrender Weapons.
12. Attempt to notify the Petitioner/Protected Person if phone or email contact information has been provided.

### **Refusal to Surrender Weapons**

An Order to Surrender Weapons or Extreme Risk Protection Order does not by itself, grant personnel authority to enter homes to seize firearms or effect an arrest. Depending on the specific facts and observations available to personnel at the time of service, there may be articulable exigencies, or keeping in mind victim, family and community safety, it may be prudent under the community caretaking function, for personnel to proceed in seizing firearms without first obtaining a search warrant. Personnel are encouraged to consult with legal professionals for further guidance in this area.

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If a Respondent/Restrained Person refuses to surrender firearms and/or CPL, he or she should be advised that possessing or acquiring a firearm or CPL is prohibited and that violating the order may subject the Respondent/Restrained Person to criminal and civil penalties.

If a Respondent/Restrained Person states they do not possess any firearms and there is probable cause to believe otherwise, personnel should request consent for a search. (*Refer to specific agency policies for consent to search procedures*)

If the Respondent/Restrained Person fails to comply with the surrender of firearms as directed by the order, fails to provide consent for a search, and there is probable cause to believe that the Respondent/Restrained Person possesses or has access to firearms, personnel may apply for a search warrant.

- Absent exigent circumstances or for an articulable community caretaking function, personnel do not have legal authority to detain a Respondent/Restrained Person during OTSW or ERPO service, including the time while applying for a search warrant.

## **EXTREME RISK PROTECTION ORDERS (ERPOs)**

An Extreme Risk Protection Order is intended to temporarily prevent individuals who are at high risk of harming themselves or others from possessing or accessing firearms. Family, household members, and police agencies may obtain an ERPO when there is evidence that a Respondent/Restrained Person poses a significant danger, including danger as a result of dangerous mental health crisis or violent behavior.

With an ERPO, there is no separate Order to Surrender Weapons. The order itself is the order to surrender. The service of ERPOs takes precedence over the service of other orders, unless the other orders are of similar emergency nature. Due to the nature of these orders, the Respondent/Restrained Person may be uncooperative and present a significant danger to Petitioners and law enforcement.

When personnel encounter a person who expresses interest in petitioning for an ERPO, information should be provided to the person about what an ERPO is and that one may be obtained at Superior Court. Personnel should provide the person with an ERPO brochure or information on how to find additional resources. Available web resources include:

- <http://www.washingtonprotectionorders.org>
- <https://www.courts.wa.gov/forms>

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An ERPO is issued for one year by the court. The Respondent/Restrained Person may ask the court to cancel the order once in the 12-month period but must prove that he or she no longer poses a significant danger to self or others by having access to firearms. The Petitioner may ask the court to renew the order for another year at any time after the order has been in effect for 260 days.

Unlike all other types of Protection Orders, with ERPOs, a law enforcement officer may be the individual who files a petition for this type of order. (RCW 7.94.030). If there is reasonable belief that a person is a present danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving or otherwise having custody of a firearm and an officer believes an ERPO would assist, the officer should review the circumstances with his/her on-duty supervisor. The supervisor will review any requests to petition the court for an ERPO with a command personnel prior to submitting a petition.

Personnel petitioning the court must use the mandatory ERPO petition and order forms created by the Administrative Office of the Court. In addition, a Law Enforcement Addendum to the Petition is available for Law Enforcement Petitioners and should be submitted with the ERPO petition.

### **Law Enforcement ERPO Petition Procedure**

Law enforcement personnel should obtain approval from command personnel prior to submitting a petition on behalf of the Agency for an Extreme Risk Protection Order. Consideration should also be given to consulting with the Agency Navigator and/or one of the Regional Unit prosecutors or a local prosecutor when petitioning for an ERPO. Personnel should follow the following procedures to petition for an ERPO:

1. Complete ERPO Petition forms. The forms are located at: [www.washingtonprotectionorders.org](http://www.washingtonprotectionorders.org). Information in the Petition should include the following:
  - Detailed explanation of why the Respondent/Restrained Person poses a significant danger of injuring self or others by having in his or her custody or control, purchasing, possessing, or receiving firearms. Explanations may include:
    - A recent act or threat of violence by the Respondent/Restrained Person against self or others, whether or not such violence or threat of violence involves a firearm;
    - A pattern of acts or threats of violence by the Respondent/Restrained Person against self or others;
    - Any behavioral issues of the Respondent/Restrained Person that might contribute to dangerousness;

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- The history of use, attempted use, or threatened use of physical force by the Respondent/Restrained Person against another person, or the Respondent/Restrained Person's history of stalking another person.
  - The number, types, and locations of any firearms believed to be in the Respondent/Restrained Person's current ownership possession, custody, or control;
  - Whether there is a known existing Protection Order governing the Respondent/Restrained Person, under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW or under any other applicable statute;
  - Whether there is a pending lawsuit, complaint, petition, or other action between the parties under the laws of Washington;
  - A violation by the Respondent/Restrained Person of a Protection Order or a No Contact Order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW;
  - A previous or existing ERPO issued against the Respondent/Restrained Person;
  - A violation of a previous or existing ERPO issued against the Respondent/Restrained Person;
  - A prior arrest or conviction of the Respondent/Restrained Person for a crime that constitutes domestic violence as defined in RCW 10.99.020;
  - The Respondent/Restrained Person's ownership or access to, or intent to possess firearms;
  - The unlawful or reckless use, display, or brandishing of a firearm by the Respondent/Restrained Person;
  - Any prior arrest of the Respondent/Restrained Person for a felony offense or violent crime;
  - Corroborated evidence of the abuse of controlled substances or alcohol by the Respondent/Restrained Person; and
  - Evidence of recent acquisition of firearms by the Respondent/Restrained Person.
2. Complete Law Enforcement Addendum (LEA). The LEA Addendum to the Petition is for law enforcement Petitioners only and can offer the court a more complete picture

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of the Respondent/Restrained Person and history than may otherwise be included in the Petition.

3. Complete the Law Enforcement Information Sheet (LEIS). The LEIS should include the Respondent/Restrained Person's full name, date of birth, address, and other identifying information (e.g. height, weight, eye color, driver's license, etc.)
4. Complete the Supplemental Law Enforcement Information Sheet – Firearms. This will include any available information regarding the Respondent/Restrained Person's firearms, including firearms location.
5. Personnel should make a good faith effort to provide notice to a family or household member of the Respondent/Restrained Person and any known third parties who have been specifically identified as being at risk of violence. Personnel will attempt notification prior to filing the Petition, if possible, and if not possible, personnel will notify after filing the Petition. Notification attempts should be documented in the CAD or supplemental report.
6. Submit completed forms to the appropriate court clerk. The clerk will assign the Petition a case number and provide a date and time for the hearing. If a temporary order is not requested, the hearing to issue the order may take place in up to 14 days.
7. If law enforcement personnel file the Petition, they must attend the hearing(s). (If a hearing is continued and law enforcement does not appear, the court may dismiss the ERPO Petition.)

### **Ex Parte Extreme Risk Protection Orders**

This temporary order is issued by the court without notification to the Respondent/Restrained Person. Petitioners may request that an Ex Parte ERPO be issued before a full hearing on the Petition, by including facts in the Petition that based on personal knowledge the Respondent/Restrained Person poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. It is helpful to note as well that providing notice of the hearing to the Respondent/Restrained Person may increase the danger to the Petitioner or others.

If a court finds there is reasonable cause to believe that the Respondent/Restrained Person poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, (and may also note that providing notice increases danger to the Petitioner or others), the court shall issue an Ex Parte ERPO.

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If law enforcement is seeking an Ex Parte ERPO during non-business hours (nights and weekends), law enforcement should contact the Regional Domestic Violence Firearms Enforcement Unit (as with the after-hours search warrant process).

### **Service of ERPOs**

ERPOs and Ex Parte ERPOs should be served in the same manner as Orders to Surrender Weapons. Ex Parte ERPOs should be served concurrently with the notice of hearing and petition. Personnel should be cognizant there may be an escalated risk of danger to officers and Petitioners during and following the service of Ex Parte ERPOs.

### **SURRENDER, STORAGE AND RETURN OF FIREARMS**

**In the interest of public safety, it is the policy of the (Insert agency name) Law Enforcement Agency to accept surrendered firearms regardless of where a Respondent/Restrained Person resides, and to record which firearms were surrendered and when, to ensure that verification of compliance with the Court Order can be determined.**

#### **Surrender by appointment (When allowed by agency):**

1. Respondent/Restrained Person may call the law enforcement agency to schedule an appointment to surrender firearms and CPL. (*Insert applicable agency procedure for scheduling appointment.*) In the interest of public safety, appointments should be scheduled at the soonest opportunity. Respondent/Restrained Person should also be advised of the potential for delay based on personnel availability, even with a scheduled appointment.
2. Respondent/Restrained Person should be advised to come to the agency at the appointed time with unloaded firearms in vehicle. Respondent/Restrained Person should be advised to leave the firearms and ammunition inside the vehicle. No firearms should be brought into the agency building by the Respondent/Restrained Person
3. Personnel should take the surrendered firearms, ammunition and CPL into the property room while the Respondent/Restrained Person waits in the lobby (*or follow specific agency procedures*).
4. Personnel should check WACIC/NCIC to ensure that any firearm is not listed as stolen and that all identified firearms have been surrendered.
5. Personnel should provide the Respondent/Restrained Person with a property receipt. A copy of the receipt should be added to the agency case file.

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6. Personnel should complete a supplemental report to be added to the agency case file.
7. Personnel should notify the clerk's office in the applicable issuing court of the weapon surrender or the court will not find compliance with the Court Order.

### **Surrender by Walk-in**

Same as steps 3 through 7 above. Respondent/Restrained Person should be encouraged to wait for available personnel if the agency anticipates a delay by responding personnel.

### **Storage of Firearms**

Firearms and CPLs surrendered under RCW 9.41.800 (Surrender of Weapons or Licenses) should be stored pursuant to the procedures in the agency Property and Evidence Manual.

### **Return of Firearms and CPL**

The Respondent/Restrained Person must have proper identification and authority from the court for the firearms and CPL to be returned. In addition, the Protected Person or family members could be at greater risk after a firearm is returned. Timely notification to the Protected Person of any firearms to be returned may help reduce the risk of violence or lethality.

Firearms surrendered pursuant to a Court Order should only be returned to the rightful owner pursuant to proof of a specific court order revoking the Surrender Order and granting the release of the firearms at issue, subject to the Respondent/Restrained Person's eligibility to possess firearms.

Prior to the return of a firearms or CPL, Evidence personnel should ensure confirmation of the following:

- That the Protected Person and/or family or household members have been notified immediately that the Respondent/Restrained Person has requested the return of surrendered firearms and/or CPL. The law requires reasonable efforts be made to reach the Protected Person.
- That the individual and/or owner is otherwise eligible to possess a firearm, regardless of the status of this particular order. The following databases must be checked:
  - NCIC III / WACIC – Check for protection orders, felony or DV warrants, or active DOC status.

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- NICS – Obtain an NTN number.
- JIS / DISCUS / JABS (if agency has access) – Check for pending cases that may not be included in the NCIC check. Check for disqualifying juvenile convictions.
- DSHS – Request mental health background check.
- That the individual to whom the firearms are to be returned is the individual from whom the firearms were obtained, or an authorized representative of that individual, or another person identified by a Court Order.
- Proof of a Court Order authorizing release of the firearms and CPL.
- The Protection Order has expired by its terms or is dismissed and is no longer in effect.
- The Order was a temporary order that has expired and the court denied a motion for a permanent order.
- The Order has been modified by the court and the person is no longer prohibited from possessing firearms.
- The firearms are not required to be held for evidence or another reason.
- If the owner is eligible to possess firearms but the agency has knowledge the owner lives with a person who is ineligible to possess firearms (felon, disqualifying DV convictions, No Contact and Protection Orders), the firearms may not be released without a Court Order. Felons and others disqualified from possession are prohibited from actual or constructive possession.
- If a person other than the Respondent/Restrained Person claims title to any firearms surrendered and is determined by the agency to be the lawful owner of the firearm, the owner should be advised that he or she may request of the court that the firearm should be returned to him or her.

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**POLICY ATTACHMENTS** (<http://kcpc.a.associationsonline.com/>)

- Firearms Release Background Checklist Example
- Law Enforcement Agency Addendum to the ERPO Petition
- Law Enforcement Information Sheet
- Paper Service Record Sheet Example
- Petition for an Extreme Risk Protection Order
- Receipt for Surrendered Weapons and Concealed Pistol License
- Responding to ERPO Information Sheet (For Respondents)
- Return of Service Sheet
- Risk Analysis / Threat Assessment Worksheet Examples
- Weapons Surrender Instructions

**RCWs**

No Contact Orders:

- [10.99](#)
- [9A.88](#)
- [9A.40](#)
- [9A.46](#)
- [7.92.160](#)
- [9A.46.110](#)
- [9A.46.060](#)

Protection Orders:

- [26.50](#)
- [74.34](#)
- [7.92](#)
- [7.90](#)

Restraining Orders:

- [26.09](#)
- [26.10](#)
- [26.44](#)

Orders to Surrender Weapons:

- [9.41.800](#)
- [9.41.070](#)

Extreme Risk Protection Orders

- [7.94](#)

Ex Parte Extreme Risk Protection Orders

- [7.94.030\(10\)](#)
- [7.94.040](#)
- [7.94.050](#)

Mandatory Arrests

- [10.31.100\(2\)\(a\)](#)
- [26.50.110](#)

