

PROTECTION ORDERS, ORDERS TO SURRENDER WEAPONS, EXTREME RISK PROTECTION ORDERS, AND DOMESTIC VIOLENCE

WASH STATE LAW ENFORCEMENT TRAINING, POLICY AND PROCEDURE CHECKLIST

In 2014, in recognition of the risks survivors face when their abusers can access firearms, the Washington State Legislature unanimously passed ESHB 1840 (RCW 9.41) to add Orders To Surrender Weapons to Protection Orders. In 2015, the Legislature passed SB 5381, known as “Sheena’s Law,” which requires all law enforcement agencies to develop policies for storing surrendered firearms, procedures for notifying family members when firearms are being returned, and procedures for checking various databases to verify that the person requesting return of a surrendered firearm is eligible to possess firearms. In 2016, the voters adopted I-1491 (RCW 7.94) authorizing Extreme Risk Protection Orders. And in 2016, the Legislature passed HB 1501 regarding actions law enforcement must take when they become aware through a failed background check that a person prohibited from possessing firearms has attempted to purchase firearms. The following checklist was designed to assist law enforcement agencies throughout the State of Washington to ensure that training, policies and procedures concerning Protection Orders, OTSWs, ERPOs, Domestic Violence and firearms prohibitions are in compliance with current law and are as effective as possible in reducing risk through use of recommended best practices.

Agencies are encouraged to carefully review the checklist, compare the checklist recommendations with existing Department training, policies and procedures, and complete any updates as needed. Some agencies have ERPO and OTSW policies and training distinct from those for other types of court orders, as well as for domestic violence, and voluntary surrender of firearms. Other agencies combine these topics. Some put more detail in policy; others have briefer policies and put more in their procedures. The purpose of the checklist is to help ensure the critically important elements are addressed regardless of how the agency organizes its training, policies and procedures. A model policy that incorporates both policy and procedure suggestions for three primary areas (Protection Orders, OTSWs, and ERPOs), is available to all Departments at: www.WASPC.org, under Program Services → Model Policies. This indexed document also includes suggested language updates and considerations for domestic violence policies and procedures, as well as forms and templates.

GENERAL

- Policy and training explain that one of the most important ways to significantly enhance the safety of domestic violence victims, those requesting protective orders, their families and law enforcement, is by enforcing court orders that prohibit individuals from possessing firearms. Policy and training provides a brief overview of the importance of a risk-based, prevention of harm approach to improve the safety of intimate partners, family members, the community and law enforcement, prioritizing temporary removal of weapons from those known to pose greater risk.
 - Research shows that domestic violence abusers have high rates of recidivism, when they have access to firearms the risk of lethality is significant, and the lethality risks are even higher immediately after a victim indicates she is leaving the relationship, which may occur at the time of 911 calls or when protection orders are first served.
 - Research shows that laws that prohibit respondents to domestic violence protection orders from purchasing and possessing firearms are associated with reductions in intimate partner homicide, and enforcement of these prohibitions leads to further reductions in intimate partner homicide rates.
 - In the United States, a woman is fatally shot by her partner every 16 hours.

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- When a gun is present in a domestic violence situation, a woman is five times more likely to be murdered.
- In more than half of the domestic violence homicides in Washington State from 2006-2015, the defendant had previously been ordered to surrender firearms.
- Batterers also employ guns as tools of intimidation against their partners and children. An estimated 4.5 million women in the U.S. have, at one time, been threatened with a gun by an intimate partner.
- Exposure to domestic violence and firearms violence negatively impacts the well-being of children.

Policy and training provide clear, legally sufficient definitions for those persons listed in court orders:

- Family or Household Member
- Intimate Partner
- Petitioner
- Protected Person
- Respondent
- Restrained Person

Policy and training provide clear information about the following types of court orders. Information includes the types available, who may obtain, what the order prohibits, what constitutes a criminal violation of each order type and crime classifications, mandatory arrest situations with order violations, penalties for violations:

- No Contact Order
- Protection Order (DVPOs, SAPOs, VAPOs, Anti-Harassment, and Stalking; see: <http://protectionorder.org>)
- Ex Parte Protection Order
- Restraining Order
- Order to Surrender Weapons
- Extreme Risk Protection Order (ERPO)
- Ex Parte ERPO

INITIAL ENTRY OF COURT ORDERS

- Policy establishes who has responsibility for entering court orders into State and Local databases.
- Policy provides language to ensure expediency of entering court orders, emphasizing that 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, that timely, accurate and complete entry is also important to ensure proper tracking of orders and to be able to work effectively inter-jurisdictionally.

PREPARING ORDER FOR SERVICE

- Policy and training explain the importance of understanding risk factors in domestic violence situations, that the risk of lethality to a Petitioner is heightened upon a Respondent's first notification of an order, and that timing of order service and any required surrender of weapons should be prioritized to occur as expeditiously as possible based on factors considered in the risk assessment. 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

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- 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
- Policy establishes responsibility for creating a service packet for order-serving personnel.
- Policy provides clear direction to conduct research prior to service and inclusion of key information with the packet to help reduce risks associated with service:
 - Clear list of items to be included with information packet (for serving personnel only and not for release to the Respondent (such as the LEIS, which is never to be served on the Respondent)
 - Clear list of items to be served on the Respondent
- Policy requires supervisor to conduct a risk assessment prior to attempting order service:
 - Policy includes factors to be taken into consideration during the risk assessment.
 - Policy includes minimum staffing considerations for serving orders deemed to be high-risk.
- Policy provides instructions on what to do if a court order is not sufficient for service (such as incorrect address, wrong jurisdiction, missing expiration date, or unsigned.)
- Policy requires serving personnel to conduct a thorough review of the service packet prior to service.
- Policy establishes a high priority on serving the order in an expedited timeframe.

SERVICE OF ORDERS

- Policy and training explain the importance of reading the order and the Petition thoroughly, being cognizant of all firearms that the Respondent may possess or have access to, and making sure that all firearms are surrendered at the time the court order is served (that just like a No Contact Order or other type of order, the obligation to comply with the order is effective when the person is served.)
- Policy and training explain that every box on the Return of Service form must be marked for each document that was required to be served, including the separate boxes for OTSWs, or the court may find that the service was incomplete and will require further service, which causes delay in being able to enforce the court order.
- Policy and training emphasize that while the law allows for private individuals to serve orders, non-law enforcement service should be discouraged due to increased risk.
- Policy and training encourage ongoing attempts to complete order service and how to increase the likelihood of service as well as the number of attempts that should be made.
- Policy and training provide information about the importance of completing service within a specified timeframe to avoid the delay of court hearings (because that means the Respondent has continued access to any firearms.)
- Policy and training instruct serving personnel to document each attempt of service, any attempts by the Respondent to avoid service, along with any observations about the presence of firearms, concerns about the Respondent's behavior or assertions of non-possession contrary to other information, of which the court should be aware.
- Policy and training provide instructions to separate Respondents from Protected Persons during service whenever possible.

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- Policy and training provide instruction on how personnel should take reasonable steps to help safeguard the Protected Person.
- Policy and training provide direction for handling expired orders.
- Policy and training direct personnel to notify the Petitioner when an order cannot be served, since that may affect the safety of the Petitioner and any children.
- Policy and training provide instructions for specific items to serve on the Respondent. Instructions include proper documentation of service.
- Policy and training provide instructions on what to do when attempts at service are not successful.

ORDERS TO SURRENDER WEAPONS (OTSW)

- Policy and training direct assigned personnel to verify all firearms from any available information (including police reports leading to the order, information in the petition about firearms, CPL information, additional information the Petitioner may have about the number, type and location of firearms), and explain that while the Petition or order may not have details about *all* weapons, an OTSW requires that the Respondent not purchase, possess or have custody or control of any weapon, so personnel should also ask the victim separately for ALL firearms to which a Respondent has access to or is in possession of, in addition to any firearms specifically listed in the order.
- Policy and training explain that personnel should not share any list of Respondent's firearms with the Respondent unless asking about a firearm that has not been turned over *after* the Respondent has relinquished their firearms (so as to not limit the firearms surrendered, since there are often more in the Respondent's possession than law enforcement knows about.)
- Policy and training provide instructions to personnel to ADVISE the Respondent when serving an OTSW 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*; that this is a temporary court order, law enforcement will retain the firearms for safe-keeping, and the Respondent can contest it at the hearing.
- Policy and training provide instructions on what to do when a Respondent denies possession of firearm(s).
- Policy and training provide instructions to personnel for when a Respondent reports that his/her firearms were transferred to another party or sold (which is a violation of a court order if it occurs after service.)
- Policy and training instruct serving personnel on when to ask for consent to search a Respondent's residence or vehicle.
- Policy and training provide information about applying for search warrants in certain situations.
- Policy and training instruct serving personnel to take possession of all firearms that are surrendered, are in plain view, or are discovered pursuant to a lawful search.
- Policy directs personnel to provide the Respondent with a receipt for all surrendered firearms, and to file the receipt and the completed form called "Proof of Surrender" (not the form called "Declaration of Non-Surrender") with the court within 72 hours after the service of the order.

REFUSAL TO SURRENDER WEAPONS

- Policy and training provide guidance and instructions to personnel on what to do when a Respondent refuses to surrender weapons.

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EXTREME RISK PROTECTION ORDERS

- Policy and training provide a brief overview that ERPOs are an additional tool to temporarily prevent individuals who are at high risk of harming themselves or others from possessing or accessing firearms, without law enforcement having to arrest or civilly commit that person; that unlike other types of protection orders, family, household members, and police agencies may petition the court for an ERPO; and that proceeding quickly to obtain an ERPO and remove access to firearms is important given the nature of the risk.
- Policy and training provide clear guidance on when Department personnel can file for an Extreme Risk Protection Order.
- Policy and training provide clear procedures for Department personnel on how to complete an ERPO petition, including required information and documentation, as well as utilizing the Law Enforcement Addendum (LEA) to the Petition, which is for law enforcement Petitioners only. (The Addendum can offer the court a more complete picture of the Respondent and history than may otherwise be included in the Petition because the Petition is also designed for use by family and household members.)
- Policy and training provide clarification as to court(s) of jurisdiction (e.g. municipal, district, superior) for filing ERPO and Ex Parte ERPO Petitions.
- Policy and training provide information about processes utilized by court for ERPO and Ex Parte ERPO Petitions (e.g. hearing, in-session, in-person testimony, etc.).
- Policy and training provide instruction on how to handle a situation with an ERPO where there is a refusal to relinquish the firearm(s) or denial of access, possession or control of any firearms contrary to information.
- Policy and training provide instruction on how to handle access to firearms owned or possessed by others in the household, so that they understand both they and the Respondent may be subject to enforcement if access is allowed.
- Policy and training provide information about how to obtain, process, and serve any subsequent search warrants issued by a court following a review of non-surrender with an ERPO.

SURRENDER, STORAGE AND RETURN OF FIREARMS

- Policy emphasizes the importance of making voluntary surrender of firearms as easy and as immediate as possible to reduce risk of ongoing possession or access to firearms and states that Department will accept and document surrendered firearms regardless of where a Respondent resides.
- Policy requires personnel to record as soon as possible in the appropriate database which firearms were surrendered and when, to ensure that verification of compliance with the Court Order can be determined.
- Policy sets forth procedures on how a Respondent may surrender firearms, minimizing delay and difficulty.
- Policy establishes that surrendered firearms and CPLs will be stored for safekeeping (using the Respondent's name or the name of the person who turned them in, with the OTSW/ERPO number, so that compliance can be verified.)
- Policy explains that firearms are stored with the expectation that if possession is again permitted, the firearms will be returned in the same condition.
- Policy establishes criteria that must be met and best practices for records search to ensure the owner is not a prohibited possessor prior the release or return of any surrendered firearms.
- Policy requires timely notification of the Protected Person of surrendered firearms to be returned (and the Petitioner, if different) so that there is an opportunity to provide current or additional information to the court about ongoing risk of harm prior to return.

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- Policy instructs what the LEA should do if they receive a CPL for surrender that was issued by another LEA (to ensure that the issuing LEA takes the necessary steps required by law.)

DOMESTIC VIOLENCE

Agencies should carefully review and update training, policies and procedures related to Response and Investigation of Domestic Violence Incidents to ensure firearms aspects have been updated. Recommended updates include:

- Policy and training establish that it is a priority of the Department to timely serve and enforce protective court orders, and to track and report on orders received and enforced as part of Department performance measures.
- Agencies with Communications Centers should ensure that call-takers inquire about accessibility of firearms with all domestic violence calls, and that available information is provided to responding personnel before they arrive at the scene.
- Policy and training direct that officers should separate involved parties so that the victim is out of the hearing range of the alleged suspect at the scene, prior to any inquiry by the responding officers.
- Policy and training establish that temporary removal of firearms for safekeeping is within community caretaking authority given known risks of ongoing access to firearms by domestic violence abusers; permission of both parties is not requisite, nor is use of the firearm in the incident.
- Policy and training direct that PRIOR to asking for the temporary removal of firearms, responding personnel should inquire of the victim about all firearms to which the suspect has access, control, or possession, so that there is a complete record for future court proceedings. The inquiry should make clear to the victim that the officer is not just asking about whether a firearm was used at that time (i.e., the suspect may keep a firearm in plain sight in a manner that is coercive; the suspect may have threatened use of firearms in the past; the suspect may have additional firearms in a vehicle, etc.) Personnel should be advised that use of a firearms pictures tool may help with descriptions.
- Policy and training direct responding personnel to comprehensively document in incident reports details about all firearms to which a suspect may have access, control or possession, to help reduce the risk to victims, families and law enforcement of ongoing access to firearms.
- Policy and training direct that responding personnel should ask the victim for permission to remove all accessible firearms temporarily for the safety of the victim, family and others until the court holds a hearing.
- Policy and training instruct responding personnel to provide victims, family, or household members with information and resources about orders (including OTSW and ERPO) that may be available for their protection. Personnel should be advised that situations that don't meet the criteria for domestic violence orders may be appropriate for ERPOs.
- Policy and training clearly instruct personnel to enforce any order restricting a Respondent's ability to have contact with a victim and to take appropriate arrest action when there is probable cause to believe an order was violated.
- Policy and training instruct personnel to complete a substantive investigation of the incident leading to the domestic violence call. Policy and training include details about information to include in report, and provide an understanding of risk factors to which personnel should be attentive.
- Policy requires all offense reports are documented under the appropriate crime classification with department code for Domestic Violence (RCW 10.99.030(11)). Departments should also have a code for reports where there are firearms, so that those cases are appropriately followed up on by supervisors, prosecutors and judicial officers.
- Policy requires the Department to forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed (RCW 10.99.030(9)).