

## Extreme Risk Protection Orders

### 435.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for petitioning and serving Extreme Risk Protection Orders (ERPO) and the disposition of firearms obtained pursuant to an ERPO.

An ERPO is intended to temporarily prevent individuals who are at high risk of harming themselves or others, from possessing firearms. Family/household members, and law enforcement agencies may obtain an ERPO when there is evidence that the respondent poses a significant danger, including the danger that is a result of an unstable mental health crisis or violent behavior. An ERPO prohibits the respondent from possessing, acquiring, or otherwise controlling firearms. It therefore requires the respondent to surrender any firearms and/or concealed weapons permits that they own or possess.

### 435.2 DEFINITIONS

Antique Firearm: (A) Any firearm (including any firearm with matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured on or before 1898; or (B) any replica of any firearm described in subparagraph (A) if such replica-(i) is not designed or redesigned for using rim-fire or conventional centerfire fixed ammunition, or (ii) uses rim-fire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition.

CCW/CHP: Carrying concealed weapon permit or concealed handgun permit related to a state issued permit authorizing the permit carrying individual to carry a concealed handgun where permitted by law.

Curios or Relics: Firearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

- Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;
- Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; and
- Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

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Extreme Risk Protection Order (ERPO): Either a temporary order (TERPO) or a continuing order (ERPO) (also referred to as a “three-hundred-sixty-four day extreme risk protection order”) granted pursuant to C.R.S. 13-14.5-101 to 114. The order is a civil restraining order prohibiting the named individual (respondent) from controlling, owning, purchasing, possessing, receiving, or otherwise having custody of any firearms. temporary or continuing extreme risk protection orders are hereinafter referred to as T/ERPOs.

Family/Household Member: As it relates to the respondent, the family or household member includes:

- a. Person related by blood, marriage or adoption to the respondent
- b. 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 anytime
- c. Person who regularly resides or regularly resided with the respondent within the last 6 months
- d. Domestic partner of the respondent
- e. Person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren
- f. Person who is acting or has acted as the respondent legal guardian
- g. A person in any other relationship described in section 18-6-800.3 of the CRS

Federal Firearms License (FFL): An individual or company who possesses a federal license to sell /transfer firearms.

Firearm: Means 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 as described in C.R.S.18-1-901(3)(h).

InstaCheck (CBI): Process through CBI that verifies personal identifying information provided on an application to purchase a firearm.

Petitioner: Means the person who petitions for an Extreme Risk Protection Order pursuant to the law. A petitioner may be a family or household member of the respondent or a law enforcement officer or agency.

Respondent: Means the person who is identified as the respondent in a petition filed pursuant to the law. The subject of the ERPO/TERPO (here forward referred as T/ERPO)

## **435.3 POLICY**

The Louisville Police Department (the “Department”) may petition for and/or serve a T/ERPO issued by a Colorado district or county court when an individual poses a significant risk to self or others by having firearms in their custody, or control by possessing, purchasing, or receiving a firearm.

With a T/ERPO, there is **no** separate Order to Surrender Weapons, although a search warrant is required when the Department petitions for the T/ERPO and further may be required to conduct a search absent consent.

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Pursuant to C.R.S. § 13-3-301.5, T/ERPOs and search warrants must be filed with the County or District Court Judge and are first reviewed by the Operations Division Commander and Deputy Chief of Police (or their designee), as well as the City Attorney or his/her designee. The T/ERPO itself is the order to surrender all firearms.

Due to the nature of these orders, the respondent may be uncooperative and present a significant danger to petitioners and law enforcement.

T/ERPOs and related orders are served by Louisville Police Officers within the city limits of Louisville.

### **435.4 GENERAL T/ERPO PETITION INFORMATION**

Extreme Risk Protection Orders (ERPO), whether temporary (TERPO) or permanent (ERPO), are judicial orders issued by district or county courts pursuant to a petition being filed by the following:

- a. A family or household member (as defined above); or
- b. A law enforcement officer or agency.
- c. The Boulder County Attorney's Office may file a Mental Health Petition under its statutory authority to do so. If a Mental Health Petition contains allegations of firearms the Boulder County Attorney's Office may contact the local law enforcement agency jurisdiction, in which the family resides, to notify them of a potential need for the law enforcement agency to investigate the potential filing of an ERPO Petition. The Boulder County Attorneys Office does not file ERPO Petitions on behalf of the public.

### **435.5 NON-LAW ENFORCEMENT (FAMILY/HOUSEHOLD MEMBER) T/ERPO PETITION PROCEDURE**

When officers encounter a family/household member who expresses interest in petitioning for a T/ERPO, the following procedure shall be followed:

- a. Provide the individual with the State-issued T/ERPO information brochure and provide general information about the T/ERPO process.
- b. Direct the individual to a Colorado district or county court in the jurisdiction in which the respondent lives where s/he may file a T/ERPO.

Information received from non-law enforcement individuals considering filing a T/ERPO shall be documented in an Incident Report, and immediate notification made to the on-call Staff Duty Officer. Information that suggests a person is an immediate risk of harming themselves or others and who is reportedly in possession of firearms should be considered for a court-ordered mental health hold and/or the Law Enforcement T/ERPO Petition outlined below.

Once the Louisville Police Department has been notified of a signed and confirmed T/ERPO by the courts, the process for serving the T/ERPO is detailed in the below procedures.

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### **435.6 LAW ENFORCEMENT T/ERPO PETITION PROCEDURE**

Officers may receive information and/or determine an individual poses a significant risk to personal injury to themselves or others and has access to or possesses firearms. As such, Officers shall adhere to the following procedure:

- a. Conduct a thorough and complete investigation, which should include:
  1. Taking actions to keep the peace
  2. Assessing the need for a 72-hour mental health hold
  3. Determining if the subject has access to or possess firearms
  4. Providing the party(ies) with the State ERPO brochure
  5. Accepting firearms voluntarily offered for safekeeping by the lawful owner
- b. Officers shall generate an incident report documenting all involvement and actions taken.
- c. Officers are authorized to seek a T/ERPO if grounds exist pursuant to C.R.S. § 13-14.5-103 or -104. To commence the T/ERPO process, the Officer shall notify the on-duty supervisor. The supervisor will in turn consult with the staff duty officer and complete the required T/ERPO paperwork. This includes: the reports, the petition, a sworn affidavit for a concurrent search warrant pursuant to C.R.S. § 13-3-301.5, involuntary Evaluation and Treatment order, and the Risk Assessment Matrix.
- d. A petition for a T/ERPO must comply with the statutory requirements in C.R.S. § 13-14.5-104(3) and must include the following information:
  1. That the respondent poses a significant risk of causing personal injury to self or others and is in custody or control of a firearm(s) or can purchase, possess, or receive a firearm(s);
  2. A sworn affidavit outlining the specific statements, actions, or fact that give rise to a reasonable fear of future dangerous acts by the respondent;
  3. Identify the number, types, and locations of any firearms owned, possessed, or controlled by the respondent;
  4. Whether or not the respondent is required to possess or carry a firearm as a condition of employment;
  5. Identify any information concerning any existing protection orders (domestic violence, emergency protection order, etc.); and
  6. Identify any pending civil action between the petitioner and respondent (dissolution of marriage, lawsuits, etc).
  7. The petitioner shall be listed as the Louisville Police Department, and will not be an individual officer's name. The address of record is: Louisville Police Department 992 Via Appia Way, Louisville, Colorado 80027.
- e. A concurrent search warrant application is required when petitioner is a law enforcement agency. The application for search warrant must comply with all provisions of C.R.S. § 16-3-301.5 and § 16-3-303 C.R.S and provide facts to establish by probable cause:
  1. That the named person is a named respondent in a T/ERPO; and
  2. That the named person is in possession of one or more firearms; and
  3. Identify the location of such firearms; and

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4. Include other information relied upon by the applicant and why the applicant considers such information credible and reliable.
- f. Prior to filing a T/ERPO petition and search warrant with the Court, the T/ERPO paperwork shall be submitted to Operations Division Commander and Deputy Police Chief (or their designees) and the City Attorney (or designee) for review. If a criminal search warrant is being requested, such applications shall be sent to the District Attorney's office for review.
- g. If the T/ERPO paperwork is approved, it will be filed with the appropriate district or county court judge.

### **435.7 T/ERPO HEARING**

During the T/ERPO hearing, the district or county court judge must find by clear and convincing evidence that the respondent poses a significant risk of causing personal injury to him/herself or others in the near future and has custody or control of a firearm or is able to purchase or receive a firearm. If the Louisville Police Department was not the petitioner for the T/ERPO, the courts may request the petitioner give notice to the Louisville Police Department so a representative may be allowed to participate and attend the hearing. If the Louisville Police Department is the petitioner, members could be subpoenaed to testify.

### **435.8 T/ERPO SERVICE**

The following steps should be followed for the service of a T/ERPO, any related orders and a search warrant. The service of T/ERPOs takes precedence over the service of other orders, unless the other orders are of similar emergency nature.

- a. The Clerk of the Court will forward a T/ERPO issued by the Court to the Civil Unit at the Boulder County Sheriff's Office, who will in turn forward and communicate such order(s) to the on-duty Louisville Police Supervisor. The Louisville Police Operations Division Commander will oversee the process of serving the court order. The Department will serve the order within five (5) days of receiving the T/ERPO.
  1. If the Department is unable to serve the order within five (5) days, the Department will notify the petitioner and seek additional information about the whereabouts of the respondent. The assigned officer is responsible for contacting the petitioner and informing them of the disposition of any execution attempts.
  2. In planning for the service of the T/ERPO, officers shall consider:
    - a. The location of service, including whether there are alternative (safer) location(s) (other than the respondent's residence) to effect service
    - b. Background information (including Department records check and criminal history)
    - c. Service at a different location than where the respondent reportedly has weapons.
  3. The Department may request additional time to allow for the proper and safe planning and execution of the T/ERPO.
- b. After the Operations Division Commander reviews the T/ERPO, an operational plan will be created for the service of the T/ERPO, any related orders, and search warrant (if applicable).

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- c. Utilizing the operational plan, Louisville Police Officers, and if necessary, the Boulder County SWAT Team, will be utilized to serve and execute the T/ERPO, related orders and search warrant. Only under extreme circumstances will a No-Knock or strong-hold breach be contemplated to execute a T/ERPO, and T/ERPOs will not be executed outside of day-light hours. Any such plan requires the written approval of the Chief of Police prior to execution.
- d. During the service, Officers shall complete the following:
  1. Provide the respondent with the T/ERPO and concurrent notice of the hearing (location, date and time). The respondent will also be presented with referrals to domestic violence, behavioral health, and counseling resources.
  2. Request the respondent immediately surrender any firearms in their possession and any CCW as is required by the order. Take possession of any firearms and CCW that are surrendered, found in plain view or discovered pursuant to any consensual search or lawful search per a search warrant.
  3. Once the firearms are in the possession of the Department, the respondent may elect to:
    - a. Sell/transfer the firearms to an agreeable licensed firearms dealer (FFL),
    - b. Arrange for storage at the Louisville Police Department, or
    - c. If the firearm is an antique, curio, or relic firearm, it may be transferred to a relative who does not reside with the respondent after confirming the relative is eligible to possess a firearm via a background check.
    - d. Concealed Handgun Permit must be surrendered as well. If the member is unable to retrieve or determine if the respondent possessed one, notify the Sheriff's Department in the appropriate jurisdiction to cancel it.
    - e. Ammunition and magazines are not to be seized.
  4. Respondent has twenty-four (24) hours after being served or after the hearing to surrender all firearms and concealed carry permit.
  5. If a search warrant is not issued with the T/ERPO, Officers are to take any firearms surrendered by a respondent, document their receipt, and make the appropriate return to the Court. A subsequent search of the respondent's property may only be done under lawful authority (exigent circumstances, a warrant, other appropriate order).
  6. If the Court has not received a filing required by the respondent under C.R.S. § 13-14.5-108 (6)(a), the Clerk of the Court will notify the Louisville Police Department (via the Civil Unit at the Boulder Sheriff's Office). Upon receiving this information, the Operations Division Commander shall ensure that a good faith effort has been made to determine whether there is evidence that the respondent has failed to relinquish any firearm in the respondent's custody, control or possession and/or a concealed handgun permit issued to the respondent, as required by C.R.S. § 13-14.5-108(6)(c).
  7. The Operations Division Commander is responsible for ensuring all appropriate returns are made to the Court within the required timelines.
    - a. Returns are made to the court (via the Civil Unit at the Boulder Sheriff's Office).

## **435.9 SURRENDER, STORAGE, AND RETURN OF FIREARM(S)/CCW**

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In compliance with orders set by the court in the T/ERPO, the respondent has 24 hours to surrender all firearm(s)/CCW listed in the court order, or in their control or possession. If the respondent indicates no preference as to the disposition of the firearms, Officers will take custody of the firearm for storage in the property unit. Officers will be required to issue an inventory sheet accounting for every firearm surrendered, including the concealed carry permit. The original copy of the inventory is filed with the court within seventy-two (72) hours and a copy must be provided to the respondent.

### 435.9.1 VOLUNTARY SURRENDER

Firearms surrender, outside of the collection of firearms at the respondent's location, may take place by appointment to the Police Department. In either case the following procedures will be followed.

- a. The citizen/respondent will report to the Police Department, leaving the unloaded weapon(s) out of view and in a locked vehicle.
- b. Officer(s) will obtain a valid identification and clear the party for warrants. It is important that the number and types of weapons to be turned over are discussed prior to moving to the citizen's vehicle. The assigned Officer will provide an information sheet for the citizen to read. The waiver must be signed by the citizen prior to the transfer of property. The officer will check off the type of firearm and number of firearms the citizen is relinquishing on the paperwork.
- c. Officer will advise the citizen not to touch or handle the firearms. The officer will also take the CCW permit if the respondent has one, and will mail the permit back to the issuing Sheriff, and document such in the officer's report.
- d. The Officer will take the firearms to the Property Unit and package them for storage. The weapons will be secured in the lockers or turned over to Property Unit personnel.
  1. The original case number from the T/ERPO case will be used and the items will be entered into the BEAST.
  2. The officer will provide a copy of the BEAST property sheet to the citizen to indicate ALL items that were turned over to the Property Unit.

### 435.9.2 FIREARM SEIZURE

The search warrant obtained pursuant to a T/ERPO will be served by the Louisville Police Department. After the respondent has been properly served, the members shall take custody of the respondent's firearm(s) pursuant to the previously obtained search warrant, or another lawful search. If applicable, or named in the warrant, the officer will also seize the respondent's concealed carry permit, and will mail the permit back to the issuing Sheriff.

As with the voluntary surrender of weapons, members will not seize any ammunition or magazines associated with the firearm(s).

Similar to the voluntary surrender, the respondent will have the option for the disposition of their firearms. The respondent can select to either transfer to a federal firearms dealer or police custody. If the

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respondent offers no preference the firearms will remain in police custody. Upon completion of the search, an inventory sheet shall be issued to the respondent articulating all items seized. The original will be filed with the court, and a copy maintained by the law enforcement agency. The original must be filed with the court within 72 hours.

### 435.9.3 RELEASE TO A THIRD PARTY

After the firearms are in the possession of the Louisville Police Department, and another party claims verifiable title to the firearms, the firearms will be released to him or her. Prior to releasing the firearms, the Property Unit must also confirm that the individual is eligible to be in possession of firearm(s), via a criminal records background check, CBI InstaCheck. This transaction must be documented, and notification made to the courts.

### 435.9.4 STORAGE OF FIREARMS

Once the firearms are in the control and care of the Louisville Police Department, the firearms will be stored in a substantially similar condition that the firearms were in when they were surrendered and according to the policies and procedures of the Property Unit.

If the respondent opts for the storage of the weapons with a registered Federal Firearms Dealer, the Department will take custody of the firearms until they can be sold or transferred to the FFL. The Department may contact a dealer requesting storage on the respondent's behalf, and assist to facilitate the transfer. The FFL does not have to agree and may refuse acceptance of the firearms.

- a. Requires a letter of authorization from the owner to transfer to a licensed firearms dealer authorizing the storage of the firearms
- b. The FFL must provide the agency with a receipt for the weapons.
- c. Copies provided to the court.

### 435.9.5 RETURN OF FIREARMS

If the T/ERPO is terminated, or expires without renewal, the agency in possession of the respondent's firearm(s) and CCW (if applicable), have three (3) days to return the firearm(s) to the respondent upon their request. The three (3) day window for the return of the firearm(s) will begin upon the completion of a background check, or InstaCheck by the Colorado Bureau of Investigation.

- a. The Property Unit will request the completion of the CBI InstaCheck via a CCIC.
- b. CBI will notify the Property Unit via CCIC of the status of the respondent.
- c. If applicable, the respondent's concealed carry permit will be returned at the same time as the firearm(s).
- d. Any firearm(s) surrendered by the respondent, or taken into custody as the result of a search warrant, that remains unclaimed by the respondent, or lawful owner for at least one year from the date the T/ERPO expired, whichever is later, become the property of the Louisville Police Department. The firearm(s) will then be disposed of in accordance with the Louisville Police Department's policy and procedure for disposal of firearms. Full documentation of the disposition of

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the firearm(s) needs to be submitted to the respondent, to the courts, and maintained by the Property Unit.

### **435.10 FAILURE TO DISCLOSE OR RELINQUISH FIREARMS**

Any person who has in their custody or control a firearm or purchases, possesses, or receives a firearm with knowledge that he or she is prohibited from doing so by a T/ERPO can be arrested for a class 2 misdemeanor under C.R.S. 13-14.5-111.

If there is probable cause that a person is still in possession of firearm (s) after being served with the T/ERPO, then officers should seek a criminal search warrant after consulting with the DA's office.

