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TO: ALL BERGEN COUNTY CHIEFS OF POLICE, POLICE DIRECTORS, OFFICERS-IN-CHARGE, AND SHERIFF

FROM: PROSECUTOR MARK MUSELLA

DATE: SEPTEMBER 16, 2019

SUBJECT: BERGEN COUNTY PROSECUTOR'S OFFICE LAW ENFORCEMENT DIRECTIVE NO. 2019-10 REGARDING EXTREME RISK PROTECTIVE ORDERS

Please find attached the following documents approved by the Attorney General with respect to petitions requested under the Extreme Risk Protective Order Act ("ERPO"):

1. Paper version of an ERPO petition to be completed when a petitioner requests an ERPO against a law enforcement officer (Attachment A). This paper petition should be submitted to the law enforcement agency where the potential respondent-officer is employed, with a copy sent to The Bergen County Prosecutor's Office at erpo@bcpo.net.
2. A reference card with instructions for general ERPOs (Attachment B) and a reference card specifically detailing the instructions for an ERPO where a law enforcement officer is a potential respondent (Attachment C).

In response to several inquiries, please be advised that if an ERPO is requested during regular court hours, the ERPO application must be heard by a Superior Court judge. Law enforcement officers can request that the Superior Court judge hear the application telephonically, but the decision to do so will rest with each individual judge. The court will notify the petitioner of the date, time, and mode of the hearing.

Also, if a law enforcement officer is a petitioner for an ERPO, or joins in a petition, the officer should so indicate his or her law enforcement status on the petition.



A State Accredited and Nationally Recognized Law Enforcement Agency

I thank you for your cooperation in this matter.



MARK MUSELLA
BERGEN COUNTY PROSECUTOR

MM:pms
Attachments

<p>In the Matter of,</p> <p>_____, Respondent</p> <p>SBI Number _____</p> <p>Date of Birth _____</p>	<p><input type="checkbox"/> Superior Court of New Jersey</p> <p><input type="checkbox"/> Municipal Court of _____</p> <p>County _____</p> <p>Petition Number _____</p> <p>Complaint/Ind Number _____</p> <p style="text-align: center;">Petition for Temporary Extreme Risk Protective Order</p>
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I am the Petitioner named below. I believe Respondent poses an immediate and present danger of causing bodily injury to the Petitioner, the Respondent, or others by owning, possessing, purchasing or receiving firearms and/or ammunition. I ask the court to grant a Temporary Extreme Risk Protective Order to prohibit Respondent from owning, possessing, or acquiring firearms and/or ammunition, and to order surrender of firearms and/or ammunition to a law enforcement agency.

Petitioner's Information

Name		Date of Birth	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	
Street Address		City	State	Zip
Home Phone Number	Work Phone Number	Relationship to Respondent		

Respondent's Information (to the extent the information is known)

First Name		MI	Last Name		Date of Birth	SSN	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	
Street Address				City	State	Zip		
Home Phone Number	Work Phone Number		E-mail Address					
Aliases								
Employer's Name								
Employer's Address				City	State	Zip		
Height ft in	Weight	Hair Color	Eye Color	Race/Ethnic	Distinguishing Features (Scars, facial hair, etc.)			
Military Status <input type="checkbox"/> Yes <input type="checkbox"/> No		Driver's License Number			State	Expiration Date		

I believe Respondent poses an immediate and present danger of causing bodily injury to self or others by owning, possessing, purchasing or receiving firearms and/or ammunition because Respondent:

- has any history of threats or acts of violence directed towards self or others. Explain.

- has any history of use, attempted use, or threatened use of physical force against another person. Explain.

- is the subject of a temporary or final restraining order or has violated a temporary or final restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 *et. seq.*). Explain.

- is the subject of a temporary or final protective order or has violated a temporary or final protective order issued pursuant to the "Sexual Assault Survivor Protection Act of 2015," P.L.2015, c.147 (C.2C:14-13 *et al.*). Explain.

- has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, stalking offense pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10), or domestic violence offense enumerated in section 3 of P.L.1991, c.261 (C.2C:25-19). Explain.

has any prior arrests, pending charges or convictions for any offense involving cruelty to animals or any history of acts involving cruelty to animals. Explain.

has any history of drug or alcohol abuse and recovery from this abuse. Explain.

has recently acquired a firearm, ammunition or other deadly weapon. Explain.

has recklessly used, displayed, or brandished a firearm. Explain.

has an existing or previous extreme risk protective order issued against him or her. Explain.

has previously violated an extreme risk protective order issued against him or her. Explain.

has any prior involuntary commitment in a hospital or treatment facility for persons with psychiatric disabilities. Explain.

has received or is receiving mental health treatment. Explain.

has complied or has failed to comply with any mental health treatment. Explain.

has received a diagnosis of a mental health disorder. Explain.

List any other information that may be relevant.

Supporting documentation provided. Explain.

The Respondent currently possesses the following firearm(s) and/or ammunition

Type	Description	Number	Location
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Handgun	_____	_____	_____
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Shotgun	_____	_____	_____
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Rifle	_____	_____	_____
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Assault Firearm	_____	_____	_____
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Ammunition	_____	_____	_____
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Other	_____	_____	_____
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Does the Respondent possess a:

a. Firearms Purchaser ID Card?

Yes No Unknown

b. Permit to Purchase a Handgun?

Yes No Unknown

c. Permit to Carry a Handgun?

Yes No Unknown

Certification

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date

Signature of Petitioner

I was assisted in the completion of this petition by _____.

Date

Signature

EXTREME RISK PROTECTIVE ORDER REFERENCE CARD

TERPO = temporary order | FERPO = final order | Petitioner = person filing | Respondent = person filed against

Who can file an ERPO petition (“the petitioner”)?	
Family or Household Member	Law Enforcement Officer
Spouse or Former Spouse	
Present or Former Household Member	
Current or Former Dating Partner	
Has or Will Have Child in Common	

Domestic Violence v. ERPOs (some situations best addressed by one or other or both, so be aware)	
DV	ERPO
Family or Household Member	Family or Household Member, & LEOs
Act of Domestic Violence	No Criminal Act Required
Need to Protect Victim’s Well-Being	Immediate & Present Danger of Bodily Injury to Self /Others by Possessing/ Purchasing Firearm

What does an ERPO do?
Prohibits respondent from possessing/purchasing/owning/receiving firearms/ammunition, or from securing/holding firearms purchaser identification card or permit to purchase/carry handgun, subject to contempt 2C:29-9(e)
Orders respondent to surrender to law enforcement any firearms, ammunition, firearms purchaser identification card, permit to purchase/carry handgun, or permit to carry handgun possessed, owned, or held by respondent
If probable cause that respondent owns or possesses any firearms or ammunition at specifically described location, search warrant can be issued
Makes respondent “certain person” 2C:39-7(b)(4), 3rd-degree crime

MUST BE FILED IN AGENCY OR COURTHOUSE IN SAME COUNTY THAT RESPONDENT LIVES. IF LIVES OUT OF STATE, WHERE PETITIONER LIVES.

IF RESPONDENT IS LAW ENFORCEMENT OFFICER, PETITIONER MUST FILE PAPER PETITION IN AGENCY WHERE OFFICER WORKS, NOTIFY INTERNAL AFFAIRS IMMEDIATELY, DO NOT ENTER INTO ECDR.

If should be filed in different agency, call correct agency for petitioner to file TERPO with them over phone.

When Law Enforcement should file a petition, join a petition, or takeover a petition:		
SHALL File a Petition	SHALL Takeover a Petition	MAY Takeover or Join a Petition
Probable cause that respondent poses immediate & present danger of causing bodily injury to self or others by owning/possessing/purchasing/receiving firearm.	a) Probable cause that respondent poses immediate & present danger of causing bodily injury to self or others by owning/possessing/purchasing/receiving firearm; <u>and</u> b) Petition would be best filed by LEO	Any other circumstances in officer’s discretion as long as <u>good cause</u> to believe that respondent poses immediate & present danger of causing bodily injury to self or others by owning/possessing/purchasing/ receiving firearm.
If you only have <u>good cause</u> (not probable cause) that respondent poses immediate & present danger by firearm may still seek TERPO petition & order, but not search warrant.		
If someone expresses to you <u>the belief</u> that another person poses immediate & present danger of causing bodily injury to self or others by firearm, <u>tell them</u> of the ERPO Act & procedures.		

EXTREME RISK PROTECTIVE ORDER REFERENCE CARD

TERPO = temporary order | FERPO = final order | Petitioner = person filing | Respondent = person filed against

ERPO FACTORS
1. history of threats/acts of violence directed toward self or others
2. history of use, attempted/threatened use of physical force against another
3. subject of or violated DV TRO/FRO
4. subject of or violated temporary/final Sexual Assault Survivor Protective Order
5. prior arrests/pending charges/convictions for violent indictable crime or DP offense, stalking, or DV offense
6. prior arrests/pending charges/convictions for offense of cruelty to animals or history of acts of cruelty to animals
7. history of drug/alcohol abuse & recovery from this abuse;
8. recently acquired firearm/ammunition/deadly weapon
9. recklessly used/displayed/ brandished firearm
10. existing or previous ERPO issued against him or her
11. previously violated an ERPO issued against him or her
If find one or more of above factors, then may consider additional factors:
12. prior involuntary commitment in hospital/treatment facility for persons with psychiatric disabilities
13. received/receiving mental health treatment
14. complied/failed to comply with mental health treatment
15. diagnosis of mental health disorder

Appeals	
If TERPO denied prior to 10/1/2019	Petitioner can appeal next business day at courthouse
If TERPO denied on or after 10/1/2019	Petitioner can request immediate phone appeal to emergent Superior Court judge (call for them)
All appeals of Superior Court judges	Petitioner or respondent can file an appeal to the Appellate Division

Agency where respondent resides must provide (expedite) readily available information/evidence to court	
<u>For the TERPO</u>	<u>For the FERPO</u>
respondent's criminal history	any additions/changes to information required to be produced for TERPO, or if different judge resubmit TERPO information
results of motor vehicle inquiry	
results of Domestic Violence Registry inquiry	
results of Sexual Assault Survivor Protection Act Registry inquiry	
juvenile records from the Juvenile Registry	any information obtained through execution of search warrant relevant to ERPO factors
records in the ERPO Registry	
any additional information the LE agency or prosecutor has readily available & relevant to the ERPO factors	
If petitioner is LEO, then statements/reports that officer is relying on for the TERPO petition or will rely upon at the TERPO or TERPO hearing.	

Service of Order & Search Warrant
Agency where respondent lives shall serve TERPO & execute search warrant (if with order) immediately or as soon as possible.
If search warrant: seize all firearms & ammunition within possession, custody, or control of respondent, including weapons belonging to someone else if respondent could access or possess.

EXTREME RISK PROTECTIVE ORDER REFERENCE CARD – WHEN NJ OFFICER IS RESPONDENT

TERPO PETITIONS FILED AGAINST A NJ LAW ENFORCEMENT OFFICER MUST BE SUBMITTED IN THE LAW ENFORCEMENT AGENCY WHERE THE RESPONDENT-OFFICER IS EMPLOYED.

PETITIONER SHOULD BE INSTRUCTED TO FILL OUT A PAPER TERPO PETITION

DO NOT ENTER IT IN THE ECDR OR SUBMIT THE PETITION TO THE COURT AT THIS TIME.

Petitioner submit paper petition to agency where officer is employed

- Agency send copy to CPO/DCJ for notice
- If should be filed in different agency, forward to correct agency



Agency must start expedited ERPO internal affairs investigation

- Must be completed in 48 hours
- Expedited: review petition, speak to petitioner, review IA files, etc.
- If need extension ask CPO/DCJ
- Does not replace other IA investigations



Potential Seizure of Officer's Weapons

- If first officer responding/handling IA investigation has probable cause that weapons expose officer/ others risk of bodily injury:
 - agency shall immediately seize all weapons, duty and personal
- Forward duty weapons to agency, personal to CPO of agency



Agency sends conclusion to Prosecutor

- Agency sends findings and conclusion to County Prosecutor's Officer or if state agency, Division of Criminal Justice
- Agency shall consider ERPO factors, and whether PC of immediate/present danger of bodily injury



Prosecutor Review

- Prosecutor must review and decide within 1 business day whether probable cause of immediate/present danger of bodily injury exists



Prosecutor makes final determination as to filing petition after review

- If yes, detective to file with court on eCDR and notify petitioner, and prosecutor to appear at hearing
- If no, notify petitioner and officer's LEA, and return weapons
- Prosecutors keep statistics