



Policy Title: Extreme Risk Protection Orders (ERPO)	Policy Number: 349
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I. PURPOSE

It is the purpose of this policy to provide guidelines and procedures regarding this department's involvement with Extreme Risk Protection Orders ("ERPO"). The ERPO law was established by PA 38 of 2023 and can be found in MCL 691.1801. The ERPO law allows a Court to issue restraining orders prohibiting certain individuals from possessing and/or purchasing firearms. It also requires, pursuant to an ERPO, the surrender and seizure of a Restrained Individual's firearm(s) and any Concealed Pistol License (CPL) to a law enforcement agency, or if allowed by the ERPO, to a licensed firearms dealer. It also provides for the powers and duties of law enforcement to serve the ERPO, enforce the ERPO, seize firearms, retain firearms and return firearms; and make arrests based on violations of the ERPO law.

II. POLICY

It is the policy of this department to act in a manner consistent with the law enforcement responsibilities, expectations and directives found in the Michigan Extreme Risk Protection Order Act. 2023 PA 38. Michigan Circuit Courts may order, pursuant to MCL 691.1801, the surrender or seizure of firearm(s) and any CPL from persons deemed an extreme risk to cause harm to themselves or others. Officers will comply with all applicable laws and department policies in regard to the filing and completion of an ERPO, as well as to the seizure, acceptance, storage, and return of all firearms.

Officers who come into contact with individuals whom they deem pose an extreme risk of causing harm to themselves or others, will notify an on-duty supervisor. The on-duty supervisor will determine the need to petition the Circuit Court for an ERPO Emergency Ex Parte Order. The on-duty supervisor will notify the On-Call Administrator. During the entire filing and completion of an ERPO, as well as the receiving and storage of any firearm(s), safety of department personnel and the Restrained Individual will be the top priority.

Importantly, the State Court Administrative Office ("SCAO") has created both a series of required forms and an ERPO manual. Members of the department should make themselves familiar with the types of forms and have an understanding of the ERPO manual. They are both incorporated into this policy by reference.

III. SCAO REFERENCE MATERIAL

Forms. www.courts.michigan.gov/SCAO-forms/extreme-risk-protection/

Manual. www.courts.michigan.gov/49089d/siteassets/publications/manuals/erpo/manual-extreme-risk-protection-order.pdf

IV. DEFINITIONS

Anticipatory Search Warrant - If the court orders the firearm(s) immediately surrendered, the law enforcement officer serving the order may file an affidavit requesting that the court issue an anticipatory search warrant authorizing a law enforcement agency to search the location or locations where the firearm(s) or concealed pistol license is believed to be and to seize any firearm(s) or concealed pistol license discovered during the search in compliance with MCL 780.651 to 780.659.

Ex-Parte Order— the court may enter an Ex-Parte Order if the court is satisfied that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued. MCR 3.716(B)(7).

Extreme Risk Protection Order – an Order issued by the Circuit Court if the court determines by the preponderance of the evidence that the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm(s), and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.

Firearm: includes any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive. See MCL 8.3t.

Immediate Emergency Ex-Parte ERPO – an ERPO issued pursuant to the request of a law enforcement officer responding to a complaint involving the respondent.

Petitioner - means the individual who requests an extreme risk protection order. This is the person who filed the request with the Court for ERPO to be issued. See MCL 691.1803.

Possession or Control - includes, but is not limited to, actual possession or constructive possession by which the individual has the right to control the firearm, even though the firearm is in a different location than the individual. Possession or control does not require the individual to own the firearm. MCL 691.1803(j)

Respondent - means the individual against whom an extreme risk protection order is requested.

Restrained Individual - means the individual against whom an extreme risk protection order has been issued and is in effect.

SCAO Forms – These are forms created by the State Court Administrative Office that will be used when dealing with an ERPO.

SCAO Manual – A manual created by the SCAO to be a reference when dealing with an ERPO.

Seizure – pursuant to the ERPO law, the law enforcement agency ordered to seize a firearm under an ERPO will do all of the following: (1) seize the firearm identified in the ERPO from any place or from any individual who has possession or control of the firearm and (2) seize any other firearms discovered that are owned by or in the possession or control of the respondent or if allowed under other applicable law. MCL 691.1815(5).

Voluntary Surrender – occurs when a Restrained Individual, turns over their firearms to either this department or a licensed firearms dealer without the service of a search warrant.

V. PROCEDURES

Field Notice of ERPO Existence

If an officer receives information during the course of a traffic stop or other call for service, that a subject with whom they have contact is a Restrained Individual under an ERPO, that officer will immediately advise an on-duty supervisor, who will respond to the scene.

In the event the ERPO has been served, the originating law enforcement agency will be contacted via LEIN message to determine if the Restrained Individual has complied with the surrender provisions of the order. Failure by a Restrained Individual to comply with the order is grounds for an immediate custodial arrest. MCL 764.15 or MCL 764.15a. MCL 691.1815(4). If the Restrained Individual has complied with the order, no further action is required.

In the event the ERPO has not been served, the supervisor will serve the Restrained Individual with a true copy of the ERPO which can be obtained by contacting the originating law enforcement agency. If a true copy is not available, the supervisor will verbally advise the Restrained Individual of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the Restrained Individual may obtain a copy of the order. MCL 691.1815(3).

Proof of service is accomplished by completion of form CC 457, Proof of Personal Service/Oral Notice (Extreme Risk Protection Order).

<https://www.courts.michigan.gov/490665/siteassets/forms/scao-approved/cc457.pdf>

Supervisor Request of Immediate Emergency Ex-Parte ERPO

The on-duty supervisor will determine the need to petition the 3rd Circuit Court for an ERPO emergency Ex Parte Order. **The supervisor will notify the On-Call Administrator.** The supervisor will verbally request by telephone that a 3rd Circuit Court judge or magistrate on duty immediately issue an emergency Ex Parte Order if the supervisor is responding to a complaint involving the respondent and the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure the respondent or another individual by possessing a firearm(s). MCL 691.1807(4); MCR 3.718(B).

If an immediate emergency Ex Parte Order is issued, the supervisor will notify the respondent of the order and advise where they can obtain a copy of the order.

Within one business day, the supervisor will file a sworn written petition detailing the facts and circumstances presented verbally to the judge or magistrate by completing form CC 454.

<https://www.courts.michigan.gov/490665/siteassets/forms/scao-approved/cc454.pdf>

Department Notice of ERPO Requiring Immediate Response

If the department receives notice from a Circuit Court that Livonia PD is the designated law enforcement agency in an ERPO, that means the Restrained Individual resides in the City of Livonia and an immediate enforcement action is necessary in our jurisdiction. The procedure is the following:

Patrol Officer-in-Charge (OIC) Responsibilities

- Confirm that the ERPO has been entered into LEIN and NCIC by dispatch as provided by the C.J.I.S. Policy Council Act.
- The Patrol OIC will contact the On-Call Investigative Bureau Supervisor and advise that Livonia PD is the listed law enforcement agency in an ERPO that has not been served.

Detective Bureau Responsibilities

- The Detective Bureau will conduct a preliminary inquiry into the Restrained Individual and all circumstances surrounding the service of the ERPO.
- The Detective Bureau will be the bureau in charge of the service of the ERPO.
- The Detective Bureau will put together a general and contingent (anticipatory search warrant) service of ERPO plan in consultation with the Intelligence Bureau.
- The Detective Bureau will complete SCAO form CC 458a, Affidavit for Anticipatory Search Warrant Extreme Risk Protection Order and apply with the 3rd Circuit Court for an Anticipatory Search Warrant Extreme Protection Order using SCAO form 458.
- The Investigative Division will serve the ERPO consistent with the ERPO Act and will make sure that a tabulation and return is left with the Restrained Individual or at the search warrant execution location, pursuant to Michigan law. MCL 691.1815(6).

CC 458a – Affidavit

<https://www.courts.michigan.gov/490907/siteassets/forms/scao-approved/cc458a.pdf>

CC458 – Circuit Court Search Warrant

<https://www.courts.michigan.gov/490923/siteassets/forms/scao-approved/cc458.pdf>

Department Notice of ERPO – Non-Immediate (24 Hours)

If the order indicates the firearm(s) must be surrendered within 24 hours, the Restrained Individual must file the required documents with the Circuit Court in order to comply with the ERPO. If the court is closed when this 24-hour period expires, the Restrained Individual must complete the required filing not later than the next business day. MCR 3.719(D)(1). The procedure is the following:

Patrol Officer-in-Charge (OIC) Responsibilities

- Confirm that the ERPO has been entered into LEIN and NCIC by dispatch as provided by the C.J.I.S. Policy Council Act.

Failure to Comply and Custodial Arrest.

Following service of the ERPO, the Officer in Charge will give the Restrained Individual an opportunity to comply with the extreme risk protection order before making a custodial arrest for violation of the order. The failure by the Restrained Individual to comply with the order is grounds for an immediate custodial arrest. MCL 691.1815(4)

Proof of Service

The supervisor who serves an ERPO, or who gives oral notice of the order, must file proof of service or proof of oral notice within one business day after service. MCL 691.1813(3); MCR 3.719(B)(3).

This form is CC 457, Proof of Personal Service/Oral Notice (Extreme Risk Protection Order).

<https://www.courts.michigan.gov/490665/siteassets/forms/scao-approved/cc457.pdf>

Department Post Service Responsibilities

The Detective Bureau Supervisor will assure that dispatch has entered information into LEIN/NCIC regarding the ERPO being served, rescinded, modified, extended, or expired. MCL 691.1815(2).

Storage and Return of Firearms

If the department seizes a firearm(s) under an ERPO it will retain and store the firearm(s) subject to order of the court that issued the ERPO. MCL 691.1815 (7, 8, 10 and 11).

In addition to any other order that the court determines appropriate, the court will order that the Restrained Individual may reclaim the firearm(s) when the ERPO expires or is terminated unless the Restrained Individual is prohibited for another reason from owning or possessing a firearm(s), or order that the firearm(s) be transferred to a licensed firearms dealer if the Restrained Individual sells or transfers ownership of the firearm(s) to the dealer.

Subject to MCL 691.1815(7)-(8), if an individual other than the Restrained Individual claims title to a firearm(s) seized under an ERPO, the firearm(s) must be returned to the claimant if the court determines that the claimant is the lawful owner. MCL 691.1815(11).

Before allowing the Restrained Individual to reclaim a firearm(s) and to determine whether the Restrained Individual is prohibited from owning or possessing a firearm for another reason, the law enforcement agency will conduct a verification under LEIN and the National Instant Criminal Background (NICB) Check System in the same manner as required under section 5b(6) of 1927 PA 372, MCL 28.425B.

A law enforcement agency from whom a Restrained Individual reclaims a firearm(s) under MCL 691.1815(7) will enter into LEIN and notify the FBI that the court has ordered the firearm(s) returned on expiration of the ERPO. MCL 691.1815(8).

If the Restrained Individual fails to reclaim a firearm(s) within 90 days after the ERPO expires or is terminated, the law enforcement agency storing the firearm(s) will proceed as for a firearm subject to disposal under MCL 750.239 and MCL 750.239a, or follow the procedures for property under MCL 434.21 to MCL 434.29. MCL 691.1815(10).