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Chapter 203 – Criminal Investigations			
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References			

EXTREME RISK PROTECTION ORDER (ERPO) ACT

203.16 – 1 PURPOSE

The purpose of this policy is to establish guidelines for members in law enforcement to petition for an Extreme Risk Protection Order (ERPO) and to set forth protocols for enforcing these orders.

203.16 – 2 BACKGROUND

The Detroit Police Department (DPD) recognizes that persons who pose an extreme risk of harm to themselves and/or others are a threat to the health and safety of the citizens of Detroit. The Michigan legislature passed Act 38 of 2023 called the Extreme Risk Protection Order Act. The law requires courts to issue an ERPO if the court determines, by a preponderance of evidence, that the person subject to the order can reasonably be expected within the near future to intentionally or unintentionally seriously injure themselves or another individual by possessing a firearm and has engaged in an act or acts or made significant threats that are substantially supportive of that expectation.

203.16 – 3 POLICY

1. All members shall comply with the requirements set forth in the Extreme Risk Protection Act and applicable court rules.
2. ERPOs may be utilized in conjunction with or independently of other forms of law enforcement response, including arrests or personal protection orders, where appropriate.
3. Enforcement of ERPOs may involve contact with armed individuals in crisis or individuals who are unwilling to relinquish their firearms. Members shall adhere to applicable DPD directives and training in dealing with such individuals.
4. ERPOs may increase the risk of harm to members, the person against whom the ERPO was sought (the “respondent”), or individuals with whom the respondent lives or is in proximity of. Members shall apply DPD policy and training in determining the appropriate tactics. High-risk entries and investigations that arise from an ERPO

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enforcement action must include an appropriate safety assessment.

5. Consistent with Directive 201.5, *Responding to Mental Health Crises*, members responding to situations involving a potential ERPO respondent in behavioral crisis shall apply de-escalation strategies and, when appropriate, request Crisis Intervention Team (CIT) assistance.
6. Consistent with Directive 102.2, *Bias-Based Policing*, ERPO actions must be based on specific risk-related facts and not on protected characteristics (e.g., gender orientation, ethnicity, national origin, political beliefs, or lawful firearm ownership or any other constitutionally protected status).

203.16 – 4 DEFINITIONS

203.16 – 4.1 Designated Law Enforcement Agency

The law enforcement agency of where a restrained individual resides and is responsible for entry of an ERPO into the Law Enforcement Information Network (LEIN) and National Crime Information Center (NCIC) systems.

203.16 – 4.2 Domestic Violence/Domestic Relationship

A pattern of threatening or violent behaviors; an assault or an assault and battery by a spouse; former spouse; an individual with whom the person resides or has resided; an individual with whom the person has or has had a dating relationship; an individual with whom the person is or has engaged in a sexual relationship; an individual to whom the person is related or was formally related by marriage; an individual with whom the person has a child in common; a minor child of an individual described in the preceding.

203.16 – 4.3 Extreme Risk Protection Order (ERPO)

A court issued civil order that temporarily prohibits a person who is at risk of harming themselves or others from purchasing or possessing a firearm and/or applying for a concealed pistol license. The ERPO is valid for one year from the date of issuance and is enforceable anywhere in the State of Michigan.

203.16 – 4.4 Law Enforcement Member

A law enforcement member as defined under the Michigan Commission on Law Enforcement Standards Act, a prosecuting attorney, or an assistant prosecuting attorney.

203.16 – 4.5 Mental Illness

A substantial disorder of thought or mood that significantly impairs judgement, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life including but not limited to clinical depression.

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203.16 – 4.6 Petitioner

An individual who requests an ERPO. The petitioner may be anyone having a domestic relationship with the respondent, another family member (including grandparents, grandchildren, first-cousins, aunts, uncles or guardians), health care providers (physicians, physician assistants, nurse practitioners licensed in any state, and mental health professionals licensed in any state), and law enforcement members in the State of Michigan.

203.16 – 4.7 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.

203.16 – 4.8 Preponderance of Evidence

Evidence that is sufficient to convince an impartial person to decide an issue one way rather than another. In this instance, the amount of evidence supporting that the respondent poses a significant threat of self-injury or injury to others by possessing a firearm.

203.16 – 4.9 Respondent

The respondent in an ERPO is restrained and prohibited from doing the specific act or acts indicated in the order.

203.16 – 4.10 Restrained Individual

The person identified in the order as the person prohibited from doing the specific act or acts.

203.16 – 5 Procedure

There are three types of ERPO's: Immediate Emergency Ex-Parte ERPO, Ex-Parte ERPO, and Final ERPO. All require approval from a judge or magistrate. Petitioners of Ex-Parte and Final ERPOs may be law enforcement members, family members of the respondent, and certain health care providers. **Only law enforcement members may request an Immediate Emergency Ex Parte ERPO.**

203.16 – 5.1 Petitioning for an Immediate Emergency Ex-Parte ERPO (Emergency ERPO)

1. The petitioner shall be a law enforcement member as defined by this policy.
2. The petitioner must be responding to a complaint involving the respondent:
 - If a juvenile, the minor must reside in Wayne County.
 - If an adult, a petition can be filed in any county. If filing in Wayne County, the petitioner shall be a law enforcement member or a law enforcement agency in Wayne County.

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For example: The adult respondent resides in Macomb County, but contact was made in Detroit, leading to an ERPO request. Members can file with Wayne County for the Macomb County resident because they are sworn members within Wayne County.

3. The petitioner must be of reasonable belief that the respondent, within the near future, will intentionally or unintentionally seriously injure themselves or others by possessing a firearm AND has engaged in an act(s) or made significant threats that are substantially supportive of the expectation that they will follow through with those threats/acts.

Members must obtain the approval of a supervisor before petitioning the court for an ERPO. The patrol supervisor will make the scene, ascertain the situation and contact Notification and Control to contact the on-duty 3rd Circuit Judge. For the investigative members, they shall adhere to their individual unit SOPs, set forth by their Commanding Officer or their designee, on how to procedurally advance on how to petition.

203.16 – 5.2 Criteria for Filing an Emergency Extreme Protection Order Request

1. The respondent has a history of attempted or threatened the use of physical force against themselves or another individual. A firearm need not be involved.
2. Evidence, including observations and testimony, of having a serious mental illness or serious emotional disturbance that makes the respondent a danger to self or others.
3. Previous or existing court orders or juvenile delinquency petition for the commission or attempted commission of offenses with an element of assault or threat or that were committed against the person or property of a spouse or intimate partner, including but not limited to:
 - ERPO
 - Personal Protection Order (PPO)
 - Pretrial Release Order
 - Probation Orders
 - Parole Order
 - Any Injunctive Order
4. Violation of an ERPO or PPO or Foreign PPO.
5. Any conviction or pending charges, adult or juvenile, for the commission or attempt of the following if known:
 - Assault and Battery
 - Stalking or Aggravated Stalking or similar offense in another jurisdiction.
 - An offense that has an element of assault.
 - An offense that has an element of threat to person or property.
 - An offense involving cruelty or abuse of animals.

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- Any of the serious misdemeanors under the Crime Victim Rights Act (MCL 780.811).
 - Any evidence of recent unlawful use of controlled substances if known.
 - Any recent abuse of alcohol.
 - Any previous unlawful possession, use, display, or brandishing of a deadly weapon by the respondent.
 - Any evidence of an acquisition or attempted acquisition within the past 180 days by the respondent of a deadly weapon or ammunition.
6. Any other facts the court may deem relevant and reliable, including respondent(s) statements or household information.
 7. The petitioner must be prepared to provide the court with the following information:
 - The respondent(s) name, address, date of birth, race, and gender.
 - A specific description of any firearms to be surrendered or seized.
 - The location of any firearms to be surrendered or seized.
 - A statement of knowledge or belief that identifies the firearms.
 - Confirmation that Petitioner knows or believes that the respondent is licensed to carry a concealed pistol and is either required as a condition of employment to carry that pistol or is a police or corrections officer or member, if indicated on the ERPO complaint.

203.16 – 5.3 Filing a Request for an Extreme Risk Protection Order

1. Confirm the person identified meets the criteria.
2. Complete a Complaint for Extreme Risk Protection Order, Adult Respondent (SCAO Form CC 452) for an adult or a Complaint for Extreme Risk Protection Order, Minor Respondent (SCAO Form CC 452M) for a minor.
3. Members must file a Confidential Information, Extreme Risk Protection Order Proceeding (SCAO Form CC 450) along with the petition.
4. This form is available at: <https://www.courts.michigan.gov/SCAO-forms/extreme-risk-protection/>
5. For law enforcement members to file with the Circuit Court they shall email erpo@3rdcc.org. Citizen petitioners have to file in person at the 3rd Circuit Court.
6. Law enforcement members shall include erpo@detroitmi.gov on the email when filing any ERPO-related documents with the court to ensure departmental record-keeping.
7. If a verbal petition is granted (Immediate Emergency ERPO), the member shall file a Sworn Written Petition After Immediate Emergency Ex-Parte Extreme Risk Protection Order (SCAO Form CC 455) with the court by the end of their tour of duty. The form shall include the facts and circumstances verbally presented to the judge as the basis for issuing the order. If the written petition is not filed within one business day, the Immediate Emergency ERPO is terminated by the court.
8. A member seeking an immediate emergency ERPO request shall ask the judge for permission to record the verbal petition using the member's BWC, so that an

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accurate Sworn Written Petition after Immediate Emergency Ex-Parte Extreme Risk Protection Order may be completed. The member shall be guided by the judge's direction.

9. To modify, terminate, or extend an ERPO—or to request changes to an anticipatory search warrant—you must complete and file the Motion to Modify, Terminate, or Extend Extreme Risk Protection Order (SCAO Form CC 460).

203.16 – 5.4 Anticipatory Search Warrants

Members seeking an anticipatory search warrant shall submit an affidavit requesting the court to issue a search warrant authorizing the law enforcement agency to search the location(s) 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.

1. The affidavit must be made using the Affidavit for Anticipatory Search Warrant, Extreme Risk Protection Order (SCAO Form CC 458a). The affidavit must include affirmative allegations contained in the complaint or verbal petition.
2. An anticipatory search warrant issued under MCR 3.718(C) is subject to and contingent on the failure or refusal of the respondent, following service of the order, to immediately comply with the order and immediately surrender to a law enforcement member any firearm or concealed pistol license in the individual's possession or control.
3. If the court issues an ex parte emergency ERPO, the court will issue the anticipatory search warrant if the affidavit establishes probable cause to believe that if the respondent refuses to immediately comply with the order, there is a fair probability that the respondent's firearm(s) or concealed pistol license will be found in the location or locations to be searched. MCR 3.718(C).

203.16 – 5.5 Confirmation of Extreme Risk Protection Order

1. Members may obtain confirmation of an ERPO using LEIN.
2. Prior to enforcing an ERPO, members must verify that the respondent has been served with the order.

203.16 – 5.6 Serving an Extreme Risk Protection Order

1. Members shall take the following action if an ERPO has not been served:
 - File a proof of service using the Proof of Personal Service-Oral Notice Extreme Risk Protection Order (SCAO form CC 457).
2. The respondent shall be given an opportunity to comply with the order before a custodial arrest can be made for violation of the order. Failure to comply would result in immediate custodial arrest. Penalties for the refusal or failure to comply with an ERPO are:

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- a. 1st offense: 1 year felony
 - b. 2nd offense: 4-year felony
 - c. 3rd offense: 5-year felony
3. If the respondent is a law enforcement member, the order should be served by a supervisor or a member from a different agency.
4. When presented with a third-party petitioner ERPO that orders the immediate surrender of firearms, members shall verify its validity and contact their supervisor. The supervisor will make the final decision regarding enforcement action in accordance with the guidelines set forth below:
 - The supervisor shall treat this type of ERPO as a high-risk search warrant, unless it is determined otherwise.
 - Steps shall be taken to verify the identity of the respondent, their place of residence, any law enforcement contacts, a statement, if possible, from the petitioner of the respondent's mental health history and any other information related to the risk of harm posed to members prior to ANY attempt to serve the respondent.
 - The statute allows for a member to serve an ERPO at any time. Accordingly, the decision to delay service for the best possible outcome for safety is up to the supervisor.
 - High risk situations that arise from an ERPO enforcement action shall include a safety assessment that shall include the following information:
 - a. Evaluation of the target location.
 - b. Evaluation of the individuals involved.
 - c. Criminal history/police interactions of those involved.
 - d. Physical and mental health of those involved.
 - e. Weapons, background, access, and training.
 - f. Resources and staffing available.
 - g. Execution options (SRT, etc.).
5. Consistent with Directive 201.5, *Responding to Mental Health Crises*, the supervisor will determine the level of response necessary on a case-by-case basis and determine whether specialized units should be used.
6. A petitioner who knowingly and intentionally makes a false statement to the court in the complaint or in support of the complaint is guilty as follows:
 - a. 1st offense: 93-day misdemeanor
 - b. 2nd offense: 4-year felony
 - c. 3rd offense: 5-year felony
7. Any individual who knowingly places a firearm in the possession of a restrained individual is guilty of a one-year felony.

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8. Members shall notify the court when a respondent has violated a served ERPO by completing and filing a Motion to Show Cause for Violating Extreme Risk Protection Order (SCAO Form CC 462). Citizens and non-law enforcement petitioners must report violations to law enforcement for appropriate action.

203.16 – 5.7 Informing Individuals on ERPO Process

Under no circumstances shall a member advise a citizen to pursue an ERPO where the criteria for an emergency ERPO are met and immediate action is necessary. Members shall either personally initiate the ERPO process or request proper action from the appropriate investigative command.

Members shall advise citizens that an ERPO may be sought in the Family Division of the Wayne County Circuit Court (or other appropriate court) when the citizen requests this information or when:

1. The member reasonably believes the member's involvement in the ERPO process is not appropriate under the circumstances (e.g., the member does not believe there is a sufficient basis for pursuing an ERPO)
2. The complainant appears to desire the ERPO for illegitimate purposes unrelated to safety such that the DPD should not be involved.
3. The member's involvement is not feasible under the circumstances due to priority that must be given to emergency runs or criminal cases.

203.16 – 6 Seizure/Surrender/Retainment of Firearms

203.16 – 6.1 Firearm Storage & Chain of Custody

Members seizing a firearm or ammunition in accordance with an ERPO shall process the items as evidence in accordance with Directive 306.1, *Evidence Property*, and any applicable state statutes.

203.16 – 6.2 Release of Firearms

1. Prior to the release of any property turned over the department for safekeeping, the respondent shall be subjected to a verification through LEIN to determine:
 - Whether the Extreme Risk Protection Order is still valid.
 - Whether the individual is prohibited from owning or possessing a firearm for another reason.
2. If the seized firearm or ammunition belongs to another person other than the respondent, it is required that the actual owner of the property receive the property, unless dictated by the court order.
3. Upon failure of a restrained individual or actual owner to reclaim their firearms within 90 days of the expiration or termination of the ERPO, the department shall forfeit the firearms and prepare for disposal per MCL 750.239 Forfeiture of weapons; disposal; immunity from civil liability and MCL 750.239a.

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203.16 – 7 Reporting

1. An incident report shall be completed for all ERPO petition requests and enforcement actions, including an entry regarding any seized, surrendered, and released firearms and ammunition.
2. All supporting documents shall be attached to the initial report.
3. Members shall be equally obligated to include in their incident report any violations or deviations of any of the statutory requirements or court protocols.

203.16 – 8 Member Responsibility

1. If a member of this Department becomes a respondent in an ERPO, that member shall notify their supervisor immediately.
2. That supervisor is to obtain as much information surrounding the facts and circumstances of the issuance of that ERPO and complete a supervisor's report to be forwarded to the Chief of Police via the chain of command.

Law enforcement members who require assistance with the process shall contact Notification and Control to contact on-duty personnel with ERPO expertise.

203.16 – 9 Training

Members shall receive training on ERPO laws, filing procedures, de-escalation techniques, and the safe handling and seizure of firearms. The Training Section shall document and maintain records of this training.

203.16 – 10 Administrative Review and Data Tracking

The Civil Rights Division (CRD) shall conduct an annual audit of all ERPO petitions to confirm compliance with state law and departmental policy. CRD shall forward all annual audits to the Board of Police Commissioners for review.

Related Directives

- Directive 102.2 Bias-Based Policing
- Directive 201.5 Responding to Mental Health Crises
- Directive 306.1 Evidence Property