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**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2019-2**

**TO:** All Law Enforcement Chief Executives  
**FROM:** Gurbir S. Grewal, Attorney General  
**DATE:** August 15, 2019  
**SUBJECT:** **Attorney General Directive Pursuant to the Extreme Risk Protective Order Act of 2018**

**1. INTRODUCTION AND OVERVIEW**

**1.1 The Statute and its Purpose.**

This Directive provides guidelines to law enforcement agencies and prosecutors' offices on the implementation of the Extreme Risk Protective Order Act of 2018 ("ERPO Act" or "Act"), N.J.S.A. 2C:58-20 to -32. The Act provides procedures through which select people (the "petitioner") may apply for an Extreme Risk Protective Order ("ERPO") against a person (the "respondent") who poses a danger of causing bodily injury to self or others by possessing or purchasing a firearm. Those procedures govern both the temporary risk protective order (TERPO) and the final risk protective order (FERPO). An ERPO prohibits the respondent from possessing or purchasing a firearm or ammunition and from holding a firearms purchaser identification card, permit to purchase a handgun, and permit to carry a handgun.

The ERPO Act is based on the framework and procedure of domestic-violence protection orders in the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. An ERPO is a civil court order that is issued by a judge upon consideration of the evidence related to a number of factors, prompted by a petition by a family or household member or law enforcement officer. Under the Act, a court would consider evidence presented whether the respondent: has a history of threats or acts of violence; has a history of use (including attempted and threatened use) of physical force; is subject to or violated any protective orders; has been arrested, charged, or convicted of any violent indictable crime or disorderly-persons offense, stalking offense, or domestic violence offense; has been charged with crimes of animal cruelty; has a history of substance abuse; or has recently acquired a firearm or ammunition.

The Office of the Attorney General is committed to the full and fair implementation of all of the Act's provisions. These ERPO procedures are a mechanism for law enforcement to seek



the temporary suspension of firearms access for at-risk individuals who, during periods of crisis, pose an elevated risk of endangering themselves or others.<sup>1</sup> The Act's goal is to save lives in New Jersey, including the lives of the respondents and those around them. Law enforcement is committed to enforcing this law to protect the safety of respondents and the community, while respecting the rights of all respondents.

## 1.2 Applicability of Directive.

This Directive applies to the filing and execution of ERPOs by law enforcement officers and prosecutors. This Directive does not apply to protective orders filed under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -3, or the Sexual Assault Survivor Protection Act, N.J.S.A. 2C:14-13 to -21. Nor does it limit civilians' or law enforcement's other avenues to address moments of crisis, including through the Prevention of Domestic Violence Act, the Sexual Assault Survivor Protection Act, a mental-evaluation referral, a civil commitment, or criminal complaints, investigations, or charges. Indeed, the statute itself provides that "[f]iling a petition pursuant to this section shall not prevent a petitioner from filing a criminal complaint or applying for a restraining order pursuant to the [Prevention of Domestic Violence Act of 1991] or prevent any person from taking any action authorized pursuant to [the involuntary commitment statute] based on the circumstances forming the basis of the petition." N.J.S.A. 2C:58-23(a).

## 1.3 Non-Enforceability of Rights by Third Parties.

This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and the administration of criminal justice throughout the State. Nothing in this Directive shall be construed in any way to create any rights to anyone, including ERPO respondents, beyond those established under the Constitutions of the United States and the State of New Jersey, or under any New Jersey statute or court rule. The provisions of this Directive are intended to be implemented and enforced by law enforcement agencies, the New Jersey State Police, County Prosecutors, the Office of the Insurance Fraud Prosecutor, the Office of Public Integrity and Accountability, and the Division of Criminal Justice, and these provisions do not create any promises or rights that may be enforced by any other persons or entities.

## 1.4 Attorney General Order Issuing Directive.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, and under the Extreme Risk Protective Order Act of 2018, N.J.S.A. 2C:58-20 to -32, which takes take effect on September 1, 2019, I, Gurbir S. Grewal, hereby DIRECT all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the following policies, procedures, standards, and practices.

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<sup>1</sup> Statement of Bill Introduced A.1217 at 7.

## 2. DEFINITIONS

As used in this Directive, and in accordance with the ERPO Act, N.J.S.A. 2C:58-21 and Administrative Office of the Courts Directive # 19-19, "Guidelines for Extreme Risk Protective Orders," Guideline 1 (2019) [hereinafter AOC Guideline]:

1. "Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, but does not include any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing or any unloaded, non-metallic shotgun hull or casing not having a primer.
2. "Deadly weapon" shall have the same meaning as in N.J.S.A. 2C:11-1(c).
3. "Family or household member" means a spouse, domestic partner as defined in N.J.S.A. 26:8A-3, partner in a civil union couple as defined in N.J.S.A. 37:1-29, or former spouse, former domestic partner, or former partner in a civil union couple, or any other person who is a present household member or was at any time a household member; a person with whom the respondent has a child in common, or with whom the respondent anticipates having a child in common if one of the parties is pregnant; or a current or former dating partner.
4. "Firearm" shall have the same meaning as in N.J.S.A. 2C:39-1.
5. "Law enforcement agency" means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.
6. "Law enforcement officer" means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.
7. "Petitioner" means a family or household member or law enforcement officer.
8. "Recent" means within six months prior to the date the petition was filed.
9. "Respondent" means a person against whom an order is sought.

### **3. FILING FOR AN ERPO**

#### **3.1 Who May File for an ERPO.**

The ERPO Act specifies that only a “petitioner” defined as a family or household member of the respondent, or a law enforcement officer acting in their official capacity, may file a petition for an ERPO. N.J.S.A. 2C:58-21, -23(a); see Section 2 (defining family or household member).

The definition of a “family or household member” covers the identical universe of those individuals who can be considered a “victim of domestic violence” and may file for a temporary restraining order (TRO) under the Prevention of Domestic Violence Act. See N.J.S.A. 2C:25-19(d). Although many people who file for a TERPO may also be eligible to file for a TRO, the difference is that the ERPO Act does not require an act of domestic violence to have occurred, nor does it require a need to protect the petitioner’s well-being. Compare N.J.S.A. 2C:25-28 and N.J.S.A. 2C:58-23. In other words, for example, it may be that a mother or dating partner of a respondent/defendant can file for both a TRO and a TERPO, but while a TRO requires protection for the mother or dating partner, the TERPO could be sought to protect the respondent or a third party from danger. And, of course, while a law enforcement officer may not file for a TRO on behalf of a domestic violence victim, the ERPO Act expressly allows a law enforcement officer to file a TERPO on behalf of anyone. N.J.S.A. 2C:58-21, -23(a). See Section 3.5 for more information on the filing of TERPO by a law enforcement officer.

#### **3.2 Informing Individuals of ERPOs and Other Options.**

One way to ensure the success of ERPOs is for law enforcement to educate people they encounter on the availability of ERPO petitions. Thus, if an individual expresses to a law enforcement officer the belief that another person poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the officer shall inform the person of the ERPO Act and its procedures, including who qualifies as a petitioner.

Scenarios may arise where an individual presents to law enforcement with the request to file an ERPO, but the individual would qualify for a restraining or protective order pursuant to the Prevention of Domestic Violence Act, or the Sexual Assault Survivor Protection Act. In that case, the officer should inform the individual of these other options to ensure the individual is making an informed decision, where they can be afforded the maximum protection under our laws. Likewise, if an individual presents to law enforcement with information or a request that could be addressed by an ERPO, the officer should inform the individual of the ERPO procedures in accordance with this Directive.

As stated above in Section 1.2, nothing in this Directive or the ERPO Act limits civilians’ or law enforcement’s other avenues to address moments of crisis, including through the Prevention of Domestic Violence Act, the Sexual Assault Survivor Protection Act, a mental-evaluation referral, civil commitment, and/or criminal complaints, investigations, or charges.

### 3.3 The Standard for Obtaining an ERPO.

To ensure the constitutionality of any search warrants issued under the ERPO Act pursuant to State v. James Hemenway, (A-19-18) (July 24, 2019), and in line with the instruction provided by AOC Guideline 4(e), law enforcement and prosecutors shall establish and request that the search warrant associated with an ERPO application be issued by the court under the standard of probable cause. In other words, a search warrant for any firearms and ammunition which the respondent possesses or owns can only be issued in conjunction with a TERPO when the court determines that probable cause exists to believe that (1) the respondent owns or possesses any firearms or ammunition, (2) the respondent poses an immediate and present danger of bodily injury to self or others by owning or possessing any such firearms or ammunition, and (3) such firearms or ammunition are presently at a specifically described location. AOC Guideline 4(e). In this context, as under the Prevention of Domestic Violence Act, probable cause requires that the issuing court only have a well-grounded suspicion. See State v. Hemenway.

In cases where law enforcement and prosecutors have only good cause—not probable cause—that the respondent poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, they may still seek a TERPO petition and order, but not a search warrant.

### 3.4 The Process of Filing for a TERPO by a Family or Household Member.

Except when filing for a TERPO against a law enforcement officer, see Section 5 of this Directive, a family or household member may file a petition for a TERPO at the Superior Court, or at a State, county, or municipal law enforcement agency. N.J.S.A. 2C:58-23(a). The petitioner shall not be charged a fee to file the petition. N.J.S.A. 2C:58-23(c).

The statute provides that the agency “shall advise the petitioner of the procedure for completing and signing a petition” for a TERPO and “may assist the family or household member in preparing or filing the petition.” N.J.S.A. 2C:58-23(a) (emphasis added). The statute explains that “[t]his assistance may include, but not be limited to, providing information related to the factors set forth in [the ERPO Act], joining in the petition, referring the matter to another law enforcement agency for additional assistance, or filing the officer’s own petition with the court.” Ibid.

The petition will be in an electronic format on the Judiciary’s Electronic Court Disposition Reporting (eCDR) system<sup>2</sup>. Thus, if a petitioner seeks to file a petition with a State, county, or municipal law enforcement agency, and no decision has been made for a law enforcement officer to “takeover” or “join” the filing and become the petitioner, see infra Section 3.5, the agency must help the petitioner in entering their petition in the eCDR system.

The TERPO petition must be filed in a law enforcement agency or court vicinage located in the same county where the respondent resides. If the respondent resides out of state, it must be filed in a law enforcement agency or court vicinage in the same county where the petitioner

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<sup>2</sup> The AOC Guidelines refer to it as the Protective Restraining Order System Environment (PROSE).

resides. If an individual attempts to file a TERPO at a law enforcement agency located in a different county than where the respondent resides, or than where the petitioner resides if the respondent resides out of state, the agency shall assist the petitioner in calling the local law enforcement agency where the respondent resides, or where the petitioner resides if the respondent resides out of state, and have that agency file the petition on the eCDR system under the petitioner's direction on the phone.

Although a member of the appropriate law enforcement agency must enter the petition in the eCDR system for the petitioner, it is in the agency's discretion as to what further assistance will be given, such as providing information related to the factors in N.J.S.A. 2C:58-23(f). As to whether the law enforcement officer should join in the petition or file their own petition, see infra Section 3.5.

### 3.5 Filing for a TERPO by a Law Enforcement Officer.

The Act provides that a law enforcement officer may file a petition for a TERPO. N.J.S.A. 2C:58-21, -23(a). If an officer, in the course of their own investigation and policing, or from information received from a non-family or household member, has probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the officer shall file a petition for a TERPO.

If a family or household member presents at a law enforcement agency to file a TERPO petition, a law enforcement officer shall "takeover"<sup>3</sup> the petition if (a) the officer has probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm; and (b) the officer believes that there is some reason that the petition would be best filed by a law enforcement officer and not the family or household member, e.g., the petitioner is fragile or unable to proceed, or the family or household unit would be best served by having law enforcement file the petition.

A law enforcement officer may otherwise file, "takeover," or "join"<sup>4</sup> a petition for a TERPO under any other circumstances in the officer's discretion as long as the officer has good cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm. If an officer has only good cause, not probable cause, that the respondent poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the officer may seek a TERPO petition and order, but not a search warrant. See Section 3.3.

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<sup>3</sup> When a law enforcement officer "takes over" a petition, they become the sole petitioner, and shall designate themselves as the petitioner in the eCDR system.

<sup>4</sup> When a law enforcement officer "joins" a petition, they become a petitioner along with the original family or household-member petitioner, and shall designate both petitioners in the eCDR system.

A law enforcement officer may file a TERPO at the courthouse or at their law enforcement agency by using the eCDR system. In the eCDR petition, the officer shall designate if they are the petitioner, or if they are “joining” the petition of a family or household member.

### 3.6 Duty to Warn and ERPOs.

The “duty to warn” statute, N.J.S.A. 2A:62A-16 to -17, provides that when a licensed health-care practitioner learns of a threat of imminent, serious physical violence from a patient against themselves or another, and a reasonable professional would believe the patient intended to carry out the threat, the practitioner must notify the chief of police of the municipality in which the patient resides. If the chief determines, from that information, that the patient suffers from any one of the “disabilities” set forth in N.J.S.A. 2C:58-3(c), the chief may apply for the revocation of any firearms purchaser identification card or permit to purchase or possess a firearm granted to the patient by the Superior Court in accordance with N.J.S.A. 2C:58-3(f). N.J.S.A. 2A:62A-16(e). The court may also order the patient to surrender to the county prosecutor any firearm owned or accessible to the patient, and if the patient fails to surrender them, the court may order a search and removal of the items where the judge has reasonable cause to believe the items are located, and states with specificity the reasons and scope of the search and seizure. Ibid.

The ERPO Act provides an additional avenue for law enforcement to use once they have been alerted that a health-care practitioner duty-to-warn has been triggered. So in addition to the remedies in N.J.S.A. 2A:62A-16, if a chief law enforcement officer receives information from a practitioner of a threat pursuant to N.J.S.A. 2A:62A-16, the chief law enforcement officer may file (or designate another officer in the agency to file) a petition for a TERPO as long as the officer has probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm. But see Section 3.3 (explaining that standard for TERPO is probable cause, and if only good cause exists, law enforcement may still seek TERPO but without search warrant). The TERPO then shall proceed as a regular TERPO petition.

### 3.7 The Contents of the Petition.

The AOC Guidelines instruct that the TERPO petition shall allege that the respondent poses an immediate and present danger of bodily injury to self or others by possessing, purchasing, owning, or receiving a firearm. AOC Guideline 2(e). It shall also set forth the facts, and the basis of knowledge for these alleged facts, tending to establish that the respondent poses an immediate and present danger of bodily injury to self or others by possessing, purchasing, owning, or receiving a firearm and the number, types, physical description, and locations of any firearms and ammunition that the petitioner believes to be currently possessed by the respondent. Ibid. The petition may reference documents relevant to the petition. Ibid. The petition shall be sworn and under oath, subject to punishment if any statements are willfully false. Ibid. This all shall be done on the eCDR system.

#### 4. ERPO PROCEEDINGS: THE ROLE OF THE COUNTY PROSECUTOR

##### 4.1 Overview of the TERPO and FERPO Proceedings.

When a petitioner files a petition for a TERPO, except when it is filed against a law enforcement officer respondent, see Section 5, it shall be heard by the court “in an expedited manner.” N.J.S.A. 2C:58-23(a). The venue shall be in the county where the respondent lives, unless the respondent lives out of state, in which case the venue shall be in the county where the petitioner lives. AOC Guideline 3(b). At the TERPO hearing, the court may examine under oath the petitioner and any witness the petitioner produces, or the court may rely on an affidavit submitted by the petitioner in lieu of oral testimony or the information provided by the county prosecutor<sup>5</sup> or designee, see Sections 4.3, 4.4, and 4.5. AOC Guideline 3(c). The court officer or law enforcement officer assisting the petitioner shall contemporaneously record such sworn oral testimony by means of a recording device, if available; otherwise, adequate notes summarizing what is said shall be made by the judge. AOC Guideline 3(c). This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of an order. Ibid. This will be the same procedure that currently occurs for domestic violence temporary restraining orders. See R. 5:7A(b).

If the TERPO is granted by the court, the FERPO hearing shall be scheduled to be held in the Superior Court within 10 days after the TERPO petition is filed. AOC Guideline 5(a). Venue for the FERPO shall be in the county where the TERPO was issued, unless good cause is shown for it to be elsewhere. AOC Guideline 5(b). At the FERPO hearing, the court may examine under oath the petitioner and any witness the petitioner produces, and consider any information provided, including from the prosecutor or designee, see Sections 4.3, 4.4, and 4.5. AOC Guideline 5(c). The respondent shall have the right to be present at the hearing, testify, present witnesses, submit documents or information, and cross-examine witnesses who appear. Ibid. The rules of evidence do not apply at the hearing. Ibid.

In determining whether to issue a TERPO or a FERPO, the court may consider all relevant evidence, including whether the respondent:

- (1) has any history of threats or acts of violence by the respondent directed toward self or others;
- (2) has any history of use, attempted use, or threatened use of physical force by the respondent against another person;
- (3) 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,” (N.J.S.A. 2C:25-17 et seq.);

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<sup>5</sup> For purposes of the statute and this Directive, the term “county prosecutor” shall also include: Attorney General, Assistant Attorney General, Deputy Attorney General, and Assistant Prosecutor.



(4) 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,” (N.J.S.A. 2C:14-13 et al.);

(5) has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, stalking offense pursuant to section 1 of N.J.S.A. 2C:12-10, or domestic violence offense enumerated in section 3 of N.J.S.A. 2C:25-19;

(6) has any prior arrests, pending charges, or convictions for any offense involving cruelty to animals or any history of acts involving cruelty to animals;

(7) has any history of drug or alcohol abuse and recovery from this abuse;

(8) has recently acquired a firearm, ammunition, or other deadly weapon;

(9) has recklessly used, displayed, or brandished a firearm;

(10) has an existing or previous extreme risk protective order issued against him or her; and

(11) has previously violated an extreme risk protective order issued against him or her.

[N.J.S.A. 2C:58-23(f); AOC Guideline 3(d)(1) to (11).]

If the court finds one or more of the factors listed in N.J.S.A. 2C:58-23(f) and AOC Guideline 3(d)(1) to (11), then the court may consider additional factors including whether the respondent:

(12) has any prior involuntary commitment in a hospital or treatment facility for persons with psychiatric disabilities;

(13) has received or is receiving mental health treatment;

(14) has complied or has failed to comply with any mental health treatment; and

(15) has received a diagnosis of a mental health disorder.

[AOC Guideline 3(d)(12) to (15).]

This total list of factors a court may consider according to AOC Guideline 3(d)(1) to (15) will be known as the “ERPO factors.”

#### 4.2 Role of the Prosecutor in an ERPO Proceeding.

If the petitioner is a law enforcement officer acting in their official capacity, as either the original petitioner or after having “taken over” the petition, or if law enforcement has joined in the petition, the prosecutor shall appear at the FERPO, and at the TERPO if practical, to present and argue the petition.

Even where law enforcement is not a party to the proceeding, the Act sets forth duties for the prosecutor. The statute provides that the prosecutor or a designee shall produce to the court in an expedited manner any available evidence, including evidence related to the factors in N.J.S.A. 2C:58-23(f). The court will consider this evidence at the TERPO hearing, so the expedited production must occur prior to the TERPO hearing. The prosecutor or a designee also has this obligation for the FERPO hearing. N.J.S.A. 2C:58-24(b). As to exactly what kind of evidence should be produced for a TERPO and a FERPO hearing, see Section 4.4.

When law enforcement is not the petitioner, the prosecutor is not required to appear at either the TERPO or the FERPO hearing. The prosecutor may see their role as a “friend of the court” in providing information for the court to consider but they are not an advocate or a party to the litigation. This does not preclude, of course, the prosecutor from taking a more active role in hearings, or requiring law enforcement to join in or takeover the petition

Unless the respondent is a law enforcement officer, see Section 5.5, the county prosecutor’s office that is responsible to provide the information relevant to N.J.S.A. 2C:58-23(f) factors is the office of the county where the ERPO is venued, in other words, where the respondent resides, or if the respondent resides out of state, then where the petitioner resides. But because most of the information that the prosecutor or designee is required to provide will have to come from law enforcement, unless the county prosecutor’s office notifies the law enforcement agency that the county prosecutor’s office will provide the information itself, the law enforcement agency where respondent resides (or if the respondent lives out of the state, then the law enforcement agency where the petitioner resides) is herein designated to produce to the court the information for the ERPO hearings.

#### 4.3 Information That Must Be Provided for a Family- or Household-Member Petition.

##### 4.3.1 *Information at the TERPO Stage.*

The prosecutor or a designee must produce to the court in an expedited manner any “readily available information or evidence” pertaining to all of the ERPO factors. AOC Guideline 3(e). Given the need for expeditious production of such information, so that a court can consider it at the TERPO hearing, the Supreme Court Committee on Criminal Practice made clear that prosecutors or law enforcement are not required to perform a new investigation prior to the TERPO hearing, but rather must conduct a records search of “information or evidence to which the prosecutor or designee has reasonable, ready access.” Response of the Supreme Court Committee on Criminal Practice to Proposed Rule 3:5B “Extreme Risk Protective Orders (“CPC Report”) (May 28, 2019)<sup>6</sup> at 19. The Criminal Practice Committee was equally concerned that the statutory obligation to provide information “could be interpreted to impose an obligation on the prosecutor to ‘dig’ for information or records that are not in their control.” Ibid. The

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<sup>6</sup> The AOC Directive explains that its Guidelines were approved based on the recommendations in the Supreme Court Committee on Criminal Practice Report.

Committee concluded that the “expediency requirement would appear to preclude any obligation to search for records not in the prosecutor’s possession or control.” Ibid.<sup>7</sup>

Thus, the law enforcement agency where respondent resides (or if the respondent lives out of the state, then the law enforcement agency where the petitioner resides) shall provide directly to the court, either in a document or verbally, the following information at or prior to the TERPO hearing:

- the respondent’s criminal history<sup>8</sup>, if existing;
- the results of a motor vehicle inquiry;
- any positive results of a Domestic Violence Central Registry inquiry;
- any positive results of a Sexual Assault Survivor Protection Act Central Registry inquiry;
- any existing juvenile records from the Juvenile Central Registry;
- any existing records in the ERPO electronic central registry; and
- any additional information the law enforcement agency or prosecutor has readily available and relevant to the ERPO factors.

If the law enforcement agency does not have any available information to produce to the court, it shall inform the court of such.

If the law enforcement agency where the petitioner filed the TERPO petition has any of the above information, and the respondent lives in the state, the agency shall forward it to the law enforcement agency where the respondent resides.

#### 4.3.2 *Information at the FERPO Stage.*

In the cases where the TERPO is granted, this expedited-information obligation from the county prosecutor or designee is repeated at the FERPO stage. N.J.S.A. 2C:58-24(b). The AOC Guidelines explain that for the FERPO, “[i]n addition to information referenced Guideline 3(e) [the information that shall be provided for the TERPO hearing], the county prosecutor or designee shall produce for the court’s consideration information obtained through sources including the execution of any search warrant and any additional information obtained through the performance of its responsibilities under [the Act].” AOC Guideline 5(e). This appears to expand the information obligation by the county prosecutor or designee, but in no way requires or dictates the scope of any prosecutor’s or law enforcement agency’s investigation, as the statute still only requires “available evidence” to be provided at the FERPO stage. N.J.S.A. 2C:58-24(b).

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<sup>7</sup> The AOC Guidelines make clear that only the respondent has the automatic right to see the information provided by law enforcement. The petitioner does not have an automatic right to see this information, and can only request that the court order that he or she may see it, on good cause shown. AOC Guideline 8(a); see also CPC Report at 16–17.

<sup>8</sup> All law enforcement officers and prosecutors shall comply with all federal and state statutes, regulations, and privileges as to the confidentiality of criminal and all other records.

Accordingly, prior to the FERPO hearing, the law enforcement agency where respondent resides (or if the respondent lives out of the state, then the law enforcement agency where the petitioner resides) is herein designated to produce to the court the following information:

- any additions or changes to the information listed as required to be produced according to this Directive in section 4.3.1;
- any information obtained through the execution of any search warrant pursuant to N.J.S.A. 2C:58-26(b) relevant to the ERPO factors; and
- any additional information the law enforcement agency or prosecutor has readily available and relevant to the ERPO factors.

#### 4.4 Information That Must Be Provided for a Law-Enforcement Petition.

When law enforcement is the petitioner or has joined in the ERPO petition, the AOC Guidelines contemplate a broader obligation by the county prosecutor or designee to produce information to the court. This is because law enforcement is now the petitioner, and a party to the litigation. The Guidelines state that the county prosecutor or designee shall produce “any statements or reports pertaining to the factors listed in paragraph (d) of this Guideline upon which the officer relies in the petition.” AOC Guideline 3(e). This is true at the TERPO and FERPO hearing. AOC Guideline 6(e). So if the county prosecutor or law enforcement officer is going to refer to any ERPO factor at the TERPO or FERPO proceeding, any statements or reports pertaining to that factor available to the county prosecutor or law enforcement officer shall be produced to the court prior to the proceeding. Statements or reports do not include video or audio files. State v. Robinson, 229 N.J. 44, 71 (2017).

#### 4.5 Appeals of a TERPO or a FERPO.

##### 4.5.1 *Expedited Appeals of a TERPO Denial.*

Effective October 1, 2019, if a municipal court judge denies the petition for a TERPO, the petitioner, whether a household or family member or a law enforcement officer, can request an immediate de novo hearing by an emergent duty Superior Court judge. AOC Guidelines. The municipal court judge must advise the petitioner, on the record, of the right to an immediate review of the denial to an on-call Superior Court judge. Ibid. If the petitioner, whether a household or family member or a law enforcement officer, wishes to exercise this right, the law enforcement officer shall contact an on-call Superior Court judge. Ibid. That Superior Court judge will review the petition and conduct a hearing telephonically to determine whether to grant or deny the TERPO. Ibid.

If a petitioner requests a review of a denial of a petition for a TERPO by a municipal court judge prior to October 1, 2019, the petitioner shall be advised of the ability to go to the Criminal Division of the Superior Court the next business day and request a de novo review by a Superior Court judge. Ibid. A Superior Court judge will make a determination to grant or deny the petition that same day. Ibid.

If a Superior Court judge denies the TERPO, the petitioner can file an appeal to the Appellate Division as of right within 45 days of the entry of that order pursuant to R. 2:2-3(a)(1). Ibid.

#### 4.5.2 *Appeals of a FERPO.*

If the petitioner or respondent wishes to appeal the decision by a Superior Court judge to grant or deny the FERPO, an appeal must be filed within 45 days of the entry of that decision pursuant to R. 2:2-3(a)(1). AOC Guidelines.

### 5. **WHEN AN ERPO PETITION IS FILED AGAINST A LAW ENFORCEMENT OFFICER**

#### 5.1 Venue.

The ERPO Act provides that when a petitioner seeks a TERPO against a New Jersey law-enforcement officer<sup>9</sup> respondent, a different procedure must take place. First, the petition shall be submitted to the law enforcement agency in which the respondent-officer is employed. N.J.S.A. 2C:58-23(*I*)(1). Like an ordinary TERPO, the agency shall advise the petitioner of the procedure for completing and signing a petition. Ibid.

If an individual presents at a law enforcement agency in New Jersey requesting to file a petition against a law enforcement officer as a respondent, the agency shall have the individual fill out a paper Petition for an Extreme Risk Protective Order. As soon as the agency receives this or any application for a petition for an ERPO against a law enforcement officer, it shall immediately send a copy of the application to the county prosecutor of the county in which the agency is located—except all state agencies, including New Jersey State Police and Department of Corrections, shall send a copy to the Division of Criminal Justice. The agency shall not enter or file a petition in the eCDR system at this time. If the law enforcement agency determines that the petitioner submitted the application to the incorrect agency, in other words, the respondent-officer is not employed by that agency, the agency shall contact the petitioner to determine the correct agency, and then forward the application to the correct agency.

#### 5.2 The ERPO Internal Affairs Investigation.

The Act mandates that upon receipt of the application for a petition, the law enforcement employer agency “shall immediately initiate an internal affairs investigation.” N.J.S.A. 2C:58-23(*I*)(2). To fulfill this statutory obligation in good faith, the agency must immediately, or as soon as possible, initiate an “ERPO internal affairs investigation,” which must be completed in 48 hours. An “ERPO internal affairs investigation” shall be an expedited process that requires,

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<sup>9</sup> The Act and AOC Guidelines define a “law enforcement officer” as “a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.” N.J.S.A. 2C:58-21 (emphasis added); AOC Guideline 1 (emphasis added). They also define a “law enforcement agency” as “a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.” N.J.S.A. 2C:58-21 (emphasis added); AOC Guideline 1 (emphasis added). Thus, the special procedures for filing a TERPO against a law enforcement officer, set forth in N.J.S.A. 2C:58-23(*I*), do not apply to law enforcement officers who are employed by federal, out-of-state, or other outside agencies.

but is not limited to, a review of the application for a petition, an in-person or telephone interview of the petitioner, a review of any internal agency files on the respondent-officer, and a consideration of the ERPO factors, see Section 4.1. The ERPO internal affairs investigation can also consist of any other action the agency deems appropriate, including an interview of the respondent-officer, as long as it is completed in 48 hours. The law enforcement employer agency may request from the county prosecutor's office or the Division of Criminal Justice an extension of time to complete the ERPO internal affairs investigation, which may be granted upon a showing of good cause. The ERPO internal affairs investigation must follow all confidentiality rules and procedures set forth in the Attorney General Internal Affairs and Procedures Guidelines, revised November 2017.

This ERPO internal affairs investigation does not replace any other internal affairs investigation the agency deems appropriate based on any information that is learned prior to, during, or after the course of the investigation, and those investigations shall be conducted according to their regular procedures and timeframe and in accordance with the Attorney General Internal Affairs and Procedures Guidelines. Likewise, these ERPO procedures do not replace law enforcement agencies' policies regarding domestic violence incidents involving law enforcement officers.

If a law enforcement agency is too small or otherwise unable to conduct an ERPO internal affairs investigation, the agency may request on a case-by-case basis that the county prosecutor of the county in which the agency is located, or the Division of Criminal Justice for state agencies, conduct the ERPO internal affairs investigation. The request shall be made immediately upon receiving the application for a petition.

### 5.3 Seizure and Storage of the Respondent-Officer's Weapons.

If the first law enforcement officer responding to or handling the ERPO internal affairs investigation has probable cause to believe that the presence of weapons would expose the respondent or others to a risk of bodily injury, the employer agency shall immediately seize all weapons the respondent-officer possesses—both department issued and personal. See Attorney General Directive Law Enforcement Directive No. 2000-3, Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers Involved in Domestic Violence Incidents, Issued August 1995, Revised September 2000. If there are extenuating or exigent circumstances rendering a law enforcement agency unable to seize the respondent-officer's firearms and ammunition, the agency may request that the local law enforcement agency where the respondent-officer resides, if a different agency, assist.

Any department-issued weapon that is seized or surrendered in connection with an ERPO is to be returned to the custody and control of the department that issued that weapon. See *ibid.* All other weapons owned, possessed, or controlled by the respondent-officer that are seized or surrendered are to be promptly forwarded to the county prosecutor's office of the county in which the law enforcement agency conducting the ERPO internal affairs investigation is located, or for State agencies, where the respondent resides, in accordance with the county prosecutor's procedures for the seizure and transportation of weapons. See *ibid.*

#### 5.4 Providing the ERPO Internal Affairs Investigation to the County Prosecutor.

The Act requires that the disposition of the internal affairs investigation “shall immediately be served upon the county prosecutor who shall make a determination whether to refer the matter to the courts.” N.J.S.A. 2C:58-23(l)(3). So at the conclusion of the ERPO internal affairs investigation, the agency shall immediately forward its findings and any conclusions to the county prosecutor of the county in which the agency is located—except all state agencies, including New Jersey State Police and Department of Corrections, shall send it to the Division of Criminal Justice. In making its findings to the county prosecutor’s office or the Division of Criminal Justice, the agency shall consider the ERPO factors, see Section 4.1, and whether there is probable cause to believe that the respondent-officer poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.

#### 5.5 Prosecutor Review of the ERPO Internal Affairs Investigation.

Upon receipt of the ERPO internal affairs investigation from the law enforcement employer agency, the prosecutor shall make a determination within one business day whether to file the TERPO petition in the Superior Court. The standard for this determination is, considering the ERPO factors, see Section 4.1, whether the prosecutor has probable cause to believe that the respondent-officer poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.

If the prosecutor determines to file the petition in the court, the prosecutor shall be the petitioner—entered in eCDR by a law enforcement officer employed by their agency, see Section 3.5—and shall be responsible for providing the information to the court required under AOC Guidelines 3(e) and 5(e), and N.J.S.A. 2C:58-3(f). The prosecutor shall also notify immediately the family- or household-member petitioner that originally filed the ERPO petition in the agency, in order for the family or household-member to be able to be present at the TERPO hearing.

If the prosecutor determines not to file the TERPO petition in the court, the prosecutor immediately shall send a notice in writing to the family- or household-member petitioner that originally filed the application for an ERPO petition in the agency, detailing the conclusion and summary of reasoning. A copy of the notice shall also be sent to the employer agency, which shall return any firearms seized from the respondent as soon as practicable, unless there is another pending investigation or other compelling safety interests that would warrant the employer agency not returning the weapon. No weapons are to be returned to the respondent-officer without written notice of the prosecutor or a court order. All county prosecutors’ offices and the Division of Criminal Justice shall keep track of all applications for ERPO petitions received, those petitions filed with the court, and those declined to be filed, and shall make these statistics available to the Attorney General upon request.

## 6. THE ISSUANCE OF THE TERPO AND FERPO, SERVING THE TERPO, AND EXECUTING THE SEARCH WARRANT

### 6.1 Issuance of the TERPO or the FERPO.

The Act and the AOC Guidelines provide that if at the TERPO hearing the court finds good cause to believe that the respondent poses an immediate and present danger of bodily injury to self or others by possessing, purchasing, owning, or receiving a firearm, the court shall order the TERPO. N.J.S.A. 2C:58-23(e); AOC Guideline 4(a). But see Section 3.3 (discussing that search warrant shall be issued under standard of probable cause).

And if at the FERPO hearing the court finds by a preponderance of evidence that the respondent poses a significant danger of bodily injury to self or others by owning, possessing, purchasing, or receiving a firearm, the court shall order the FERPO. N.J.S.A. 2C:58-24(b); AOC Guideline 6. But see Section 3.3 (discussing that search warrant shall be issued under standard of probable cause).

The TERPO or the FERPO shall (1) prohibit the respondent from possessing, purchasing, owning, or receiving firearms or ammunition, or from securing or holding a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.A. 2C:58-3, or a permit to carry a handgun pursuant to N.J.S.A. 2C:58-4 during the period the order is in effect; and (2) order the respondent to surrender to law enforcement any firearms, ammunition, firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun possessed, owned, or held by the respondent. AOC Guideline 4(b). Any such card or permit issued to the respondent shall be immediately revoked pursuant to N.J.S.A. 2C:58-3(f). Ibid. The TERPO (or the FERPO) also classifies the respondent as a “certain person” under N.J.S.A. 2C:39-7(b)(4), and is prohibited from purchasing, acquiring, owning, possessing, or controlling a firearm or ammunition, subject to a third-degree crime. N.J.S.A. 2C:39-7(b)(4).

The TERPO order will also state the time, date, and place of the hearing for the FERPO. AOC Guideline 4(b).

### 6.2 Service of the TERPO.

Once issued, the court will immediately forward a copy of the TERPO to both the county prosecutor and the appropriate law enforcement agency in the county and municipality, respectively, in which the respondent resides. This copy shall be served by the appropriate law enforcement agency upon the respondent. N.J.S.A. 2C:58-23(i); AOC Guideline 4(c).

The law enforcement agency shall serve the TERPO upon the respondent immediately or as soon as practicable. Ibid. At no time shall the family- or household-member petitioner be asked to serve any TERPO upon the respondent. Ibid. The law enforcement agency serving the order shall not charge a fee or seek reimbursement from the petitioner for service of the order. N.J.S.A. 2C:58-23(i).



The county prosecutor shall send notice of TERPOs issued to the appropriate chiefs of police, members of the State Police, and any other appropriate law enforcement agency or court. N.J.S.A. 2C:58-23(j).

Any TERPO issued shall remain in effect throughout the State until a court issues a further order, and shall be enforced by all law enforcement officers. N.J.S.A. 2C:58-23(h) and (k).

### 6.3 Search Warrant Execution.

According to the AOC Guidelines, in addition to issuing the TERPO or the FERPO, if the court determines, based upon consideration of information provided in the TERPO petition and during the TERPO or FERPO hearing, that probable cause exists to believe that (1) the respondent owns or possesses any firearms or ammunition, (2) the respondent poses an immediate and present danger of bodily injury to self or others by owning or possessing any such firearms or ammunition, and (3) such firearms or ammunition are presently at a specifically described location, then the court, in conjunction with the TERPO or the FERPO, shall issue a search warrant for any firearms and ammunition which the respondent possesses or owns at that specified location. AOC Guidelines 4(e) and 6(c). The agency shall execute the search warrant immediately or as soon as possible and seize all firearms and ammunition within the possession, custody, or control of the respondent, or that could be in the respondent's possession.

The Act also states, in addition to a search warrant being issued, that the respondent immediately shall surrender in a safe manner all firearms and ammunition in the respondent's custody or control, or which the respondent owns or possesses, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent to the control of the law enforcement officer. N.J.S.A. 2C:58-26(b)(1). Allowing a respondent to surrender a firearm to law enforcement presents a number of safety concerns. The respondent, at this point in the process, is an individual who has been determined by a court as presenting an "immediate and present danger of causing bodily injury" to self or others by having custody or control of a firearm. Thus, officers have at least reasonable and articulable suspicion to believe that their safety is in danger. And if the surrender occurs at a respondent's home, business, or other property, officers face a greater "risk of danger" because they are "at the disadvantage of being on [their] adversary's 'turf.'" State v. Cope, 224 N.J. 530, 546-47 (2016) (quoting Maryland v. Buie, 494 U.S. 325, 333 (1990)).

Accordingly, if a law enforcement officer has a search warrant to seize a respondent's firearms or ammunition, it shall be within the highest ranking officer's discretion on the scene to determine whether a respondent can surrender the firearms or ammunition, and how they may do so. Similar to executing arrests, officers need to ensure their own safety and the safety of others—as well as the integrity of the search and seizure. See Washington v. Chrisman, 455 U.S. 1, 7 (1982). Thus, officers have the right to remain literally at the respondent's elbow at all times and such action is reasonable under the Fourth Amendment of the United States Constitution and Article 1, paragraph 7 of the New Jersey Constitution. See State v. Bruzzese, 94 N.J. 210, 230 (1983).

Nothing in this Directive or in the ERPO Act shall be interpreted as limiting any other lawful procedure done by law enforcement to ensure officer safety, the safety of others, or the integrity of the process. See, e.g., State v. Davila, 203 N.J. 97, 116–17 (2010) (upholding protective sweeps in cases involving in-home arrests and in non-arrest cases in which police officers are legitimately in a home and have reasonable and articulable suspicion to believe that their safety is in danger); State v. Robinson, 200 N.J. 1, 17 (2009) (finding that factors to determine reasonableness of delay between knocking and announcing and forcible entry include, but not limited, to suspect’s violent criminal history, information that weapons will be present, and risks to officers’ lives and safety); State v. Diloreto, 180 N.J. 264, 276 (2004) (permitting officer to pat down citizen’s outer clothing during community-caretaking investigation where officer has reason to believe that he is dealing with armed and dangerous individual); State v. Johnson, 168 N.J. 608, 619 (2001) (explaining that police officer may apply for no-knock warrant if there is reasonable, particularized suspicion that no-knock entry is required to protect officer’s safety).

#### 6.4 Weapons Belonging to Someone Other Than the Respondent.

During the execution of the search warrant, law enforcement shall seize all firearms and ammunition within the possession, custody, or control of the respondent. Such firearms include any that the respondent could access or possess. If a person other than the respondent claims title to any firearm or ammunition, law enforcement shall direct the person claiming title to request a return of the weapons to the law enforcement agency pursuant to N.J.S.A. 2C:58-26(e). If the agency determines that the person claiming title is the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to that person. See N.J.S.A. 2C:58-26(e). Nothing herein, however, shall affect the authority of the prosecutor or the law enforcement agency to maintain possession of any firearm as otherwise authorized by law.

#### 6.5 Discovery of Criminal Evidence.

If, during the execution of the search warrant, law enforcement finds evidence of criminality in accordance with the plain view exception, or any other legally permissible basis under the Fourth Amendment of the United States Constitution and Article 1, paragraph 7 of the New Jersey Constitution, the evidence is admissible in a future criminal proceeding. See State v. Harris, 211 N.J. 566, 587 (2012).

### 7. **STORING, SELLING, AND TRANSFER OF FIREARMS**

Upon surrender or seizure of any and all firearms and ammunition, a law enforcement agency shall store the firearms or ammunition. See N.J.S.A. 2C:58-22, -26(d), -27, and -28.

Unless the respondent is a law enforcement officer, see Section 5.3, all firearms and ammunition in the respondent’s custody or control, or which the respondent owns or possesses, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun that are seized by or surrendered to law enforcement are to be promptly forwarded to the county prosecutor’s office of the county in which the ERPO is venued. Nonetheless, nothing in this Directive shall prohibit the county prosecutor from issuing a separate directive or policy requiring local law enforcement, except State Police, to store the seized firearms if necessary for

adequate firearm storage and with consideration to the storage capabilities of each individual local department. All weapons seized by State Police shall be forwarded to the county prosecutor's office of the county in which the ERPO is venued.

If a person other than the respondent claims title to any firearm or ammunition surrendered, and the law enforcement agency confirms that the person is the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to that person. N.J.S.A. 2C:58-26(e). The respondent can also request that the firearm or ammunition be sold or the title of the firearm or ammunition be transferred to a federally licensed firearms dealer, even if they no longer are eligible to own or possess a firearm or ammunition. N.J.S.A. 2C:58-27.

Neither the ERPO Act nor the AOC Guidelines require the law enforcement agency to store the firearm or ammunition indefinitely. It does not affect the authority of a prosecutor to file an action to forfeit a respondent's firearm as authorized by law or prevent a respondent that owned a firearm prior to the issuance of an ERPO from entering into an agreement, as approved by the prosecutor, to sell that firearm to a licensed dealer or transfer the firearm to a third party authorized to own or possess a firearm. See N.J.S.A. 2C:58-23(d) (confirming that nothing in the ERPO Act "shall prohibit revocation and seizure of a person's firearms purchaser identification card, permit to purchase a handgun, permit to carry a handgun, and weapons as authorized pursuant to applicable law"); CPC Report at 47 (noting that this legal regime does "not affect the ability of the State to file an action to forfeit a respondent's firearm, or the respondent to enter into an approved agreement, prior to issuance of the extreme risk protective order, to sell that firearm to a licensed dealer or transfer the firearm to an authorized third party").

## **8. RELEASE OF ERPO RECORDS TO NON-LAW ENFORCEMENT PERSONS OR AGENCIES**

ERPO petitions, supporting documentation, and ERPO internal affairs records contain sensitive and confidential information, including criminal and mental health records, that raise privacy concerns. In response to this concern, the AOC Guidelines on the handling of this information clarify that the information provided by law enforcement for the ERPO is only for the court's consideration, not other parties' inspection, and only the respondent has the right to this information. AOC Guideline 8(a). Even the petitioner does not have an automatic right to see the information provided by the prosecutor or designee, and can only request that the court order that they may see it, on good cause shown. Ibid.; see also CPC Report at 16–17. Thus, any records created or submitted pursuant to the ERPO Act and this Directive are confidential and not subject to public disclosure.

Moreover, when the respondent is a law enforcement officer, the ERPO internal affairs investigation and any other internal affairs or personnel records are confidential and not subject to public disclosure because they consist of long-recognized privileged information and are individualized personnel records. See N.J.S.A. 2A:84A-27; N.J.S.A. 47:1A-10; N.J.R.E. 515; N.J.A.C. 13:1E-3.2(a)(4); Loigman v. Kimmelman, 102 N.J. 98, 107–08 (1986). Pursuant to the Attorney General Guidelines for Internal Affairs Policy & Procedures, the nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are

restricted and deemed confidential information. Attorney General Internal Affairs and Procedures Guidelines, revised November 2017 at 42.

Also, any ERPO records that pertain to an event or encounter that involves an investigation of a criminal offense shall be considered a “criminal investigatory record” exempt from disclosure under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. See Paff v. Ocean County Prosecutor’s Office, 235 N.J. 1, 20–21 (2018). Thus, except as otherwise provided in this Directive, ERPO records or documents shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, the United States or New Jersey Constitutions or statutes, or by a court order.

Neither this Directive, nor the release of any document or information pursuant to this Directive, shall constitute a waiver of any privilege to maintain the confidentiality of a record that a law enforcement agency may have under OPRA, any other statute, or the common law right of access. Nothing in this Directive shall be construed to create any promises or any rights beyond those established under the Constitution, statutes, regulations, and decisional law of New Jersey. This Directive creates no promises or rights that other persons or entities may enforce.

## **9. TERMINATION OF FERPOS**

The Act and the AOC Guidelines state that a petition for termination of a FERPO can be filed at any time by either the petitioner or the respondent. N.J.S.A. 2C:58-25; AOC Guideline 7. A court may terminate a FERPO if the opposing party has received notice, if the appropriate law enforcement agency and county prosecutor have been notified, and if a hearing has been held by the court. Ibid. It shall be in the prosecutor’s discretion whether to object to a termination of a FERPO. If the prosecutor is not involved, then it is in the law enforcement agency’s discretion. In determining whether to object, the law enforcement agency or county prosecutor should consider the ERPO factors, as well as any other relevant evidence including, but not limited to, whether the respondent has received, or is receiving, mental health treatment, and the petitioner’s opinion as to termination. If the respondent petitioned for termination, the respondent shall bear the burden at the termination hearing of proving by a preponderance of the evidence that they no longer poses a significant danger of causing bodily injury to the self or to other by having custody or control of, owning, possessing, purchasing, or receiving a firearm. Ibid.

Upon the termination of an ERPO, the respondent may petition the agency to return their firearms or ammunition. N.J.S.A. 2C:58-26(d). This shall be done within 30 days unless the firearm or ammunition has been reported as stolen or the respondent is prohibited from possessing a firearm or ammunition under State or federal law. Ibid. The Act also provides that after one year after the ERPO is terminated, the law enforcement agency may destroy the firearm or ammunition in accordance with the policies and procedures of the agency for destruction of firearms or ammunition. N.J.S.A. 2C:58-28. The agency or prosecutor shall give notice to the former respondent prior to destruction of the firearms or ammunition.

**10. COMMUNITY RELATIONS AND OUTREACH PROGRAMS**

To protect both public safety and law enforcement safety in New Jersey, all law enforcement agencies—including the Division of Criminal Justice, county prosecutors’ offices, and local police departments—must help educate the public on the ability to file ERPOs and on the procedures for doing so. To further this objective, each county prosecutor shall engage in public education efforts, community outreach events, social media awareness, and publicity on their office website.

**11. QUESTIONS**

All questions concerning the meaning or implementation of this Directive should be addressed to the Director of the Division of Criminal Justice, or their designee.

**12. EFFECTIVE DATE**

This Directive shall take effect on September 1, 2019, the day the ERPO Act goes into effect. Once effective, this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Directive of the Attorney General.



Gurbir S. Grewal  
Attorney General

ATTEST:



Veronica Allende  
Director, Division of Criminal Justice  
Dated: August 15, 2019