



ALBUQUERQUE POLICE DEPARTMENT
PROCEDURAL ORDERS

SOP 2-59

Effective: 09/06/2022 Review: 09/06/2023 Replaces: 09/22/2021

2-59 EXTREME RISK FIREARM PROTECTION ORDER

Related SOP(s), Form(s), Other Resource(s), and Rescinded Special Order(s):

A. Related SOP(s)

[2-80 Arrests, Arrest Warrants, and Booking Procedures \(Formerly 2-14\)](#)

B. Form(s)

Exhibit A: Affidavit in Support of a Petition for an Extreme Risk Firearm Protection Order

[PD 3029 Extreme Risk Firearm Protection Order Relinquishment Receipt](#)

Petition for Extreme Risk Firearm Protection Order

Return of Service

C. Other Resource(s)

NMSA 1978, §§ 40-17-1 to 40-17-13 Extreme Risk Firearm Protection Order Act
Rule 1-004(F) NMRA Process; Personal Service Upon Individual

D. Rescinded Special Order(s)

None

2-59-1 Purpose

The purpose of this policy is to set forth the procedures to comply with the Extreme Risk Firearm Protection Order (ERFPO) Act.

2-59-2 Policy

It is the policy of the Albuquerque Police Department (Department) to seek an ERFPO at the request of reporting parties and to otherwise comply with the ERFPO Act.

N/A 2-59-3 Definitions

A. Extreme Risk Firearm Protection Order (ERFPO)

Either a temporary or a one (1) year order, granted pursuant to the ERFPO Act that prohibits the respondent from possessing a firearm, or purchasing, receiving, or attempting to purchase a firearm while the order is in effect. Violations of the protection order are charged as misdemeanors. The order must be filed in the district court of the county where the respondent resides, but shall be enforced statewide. The order can either demand that the respondent immediately surrender all firearms when served or within forty-eight (48) hours of service.



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B. Firearm

Any weapon that is designed to expel a projectile by an explosion or the frame or receiver of any such weapon.

C. Petitioner

The Department officer who files an ERFPO petition. Normally, this will be a detective who is contacted by a Field Services Bureau (FSB) officer when a reporting party requests a petition, but could be any sworn personnel.

D. Reporting Party

A person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order. The reporting party could include a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, co-parent of a child, child, person with whom a respondent has or had a continuing personal relationship, employer or public or private school administrator.

E. Respondent

The person identified in or subject to an ERFPO petition or an ERFPO.

2-59-4 Rules and Responsibilities

A. A court-approved ERFPO allows law enforcement to seize and store the firearms of a respondent for up to one (1) year.

6 B. By statute, only a law enforcement officer, including an assistant district attorney, is permitted to file an ERFPO petition. An officer shall file a petition if they receive credible information from a reporting party that gives them probable cause to believe that the respondent poses a significant danger of imminent injury to self or others by having custody or control of, or by purchasing, possessing or receiving, a firearm.

2-59-5 FSB Sworn Personnel Responsibilities

A. An FSB officer will often be the first law enforcement officer to encounter a reporting party seeking an ERFPO.

6 B. The officer shall:

1. Advise the reporting party they will need to complete a sworn affidavit that will need to be notarized. Also, the officer shall advise the reporting party that the sworn affidavit is the first step in the filing process and the order is not active until approved by a judge;



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N/A

- a. The sworn affidavit form and a list of City notary publics are on the APD Protopage, in the ERFPO tab.
2. If a reporting party is willing to complete a sworn affidavit, provide a copy of the sworn affidavit to the reporting party and immediately contact the investigative unit that would normally handle the case (e.g., the Crisis Intervention Unit (CIU) for individuals with a documented or suspected mental health history, or the Crimes Against Children Unit (CACU) for crimes against children). If there is no underlying crime or known or suspected mental health issue, the officer shall contact the appropriate Impact Team; and
3. Determine if a domestic violence victim requires immediate protection. If so, the officer shall seek an emergency restraining order (ERO) in addition to filing a petition for an ERFPO because the district court will only accept filing of an ERFPO petition during normal court hours.

- 6 C. A detective from the investigative unit as outlined in Subsection 2-59-5 B.2. shall file the ERFPO petition.

6 **2-59-6 Detective Responsibilities for Filing an ERFPO Petition**

A. Determining Probable Cause of Significant Danger

1. The detective shall evaluate whether probable cause of significant danger to file an ERFPO petition exists. Existence of the following factors could constitute probable cause of significant danger to file an ERFPO petition:
 - a. Any recent act or threats of violence by the respondent against self or others, regardless of whether the threat or act involved a firearm;
 - b. A pattern of acts or threats of violence to self or others by the respondent in the last twelve months;
 - c. The respondent's mental health history;
 - d. The respondent's abuse of controlled substances or alcohol;
 - e. The respondent's previous violations of any court order;
 - f. Previous ERFPOs issued against the respondent;
 - g. The respondent's criminal history, including arrests and convictions for violent felony and misdemeanor offenses, crimes involving domestic violence, and stalking;
 - h. The respondent's history of the use, attempted use, or threatened use of physical violence against another person, stalking another person, or of cruelty to animals; and
 - i. Any recent acquisition or attempted acquisition of a firearm by the respondent.

N/A

2. In situations where a reporting party is unwilling to complete a sworn affidavit, or is not available, and a detective believes that a respondent poses such a risk that an ERFPO is required to reduce the potential for violence, that detective may file for



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an ERFPO absent a reporting party.

a. Detectives shall document in their affidavit efforts to locate a reporting party in a filing of this type.

3. In situations where an individual requests an ERFPO and the detective feels there is not probable cause of significant danger, they are to contact an assistant city attorney for guidance. Should the assistant city attorney advise that no grounds for filing a petition exist, the detective shall complete a supplemental narrative report documenting this fact and deliver a copy to Bernalillo County Sheriff's Office (BCSO) Headquarters (5th floor) by the end of the officer's subsequent shift.

B. Filing an ERFPO petition

1. If an officer, detective, assistant district attorney, or assistant city attorney believes there is probable cause of significant danger, the detective shall complete the ERFPO petition and have the reporting party complete the Sworn Affidavit in Support of a Petition for an ERFPO. The sworn affidavit and ERFPO petition form are available on the APDProtopage.

2. After completing the forms, the petitioner (detective) will go to the district court's domestic violence clerk's office where a judge will be assigned to the case. The judge will review the Affidavit and ERFPO petition in their chambers and determine whether to issue a temporary ERFPO.

3. If the judge declines the petition, the detective shall complete a Uniform Incident Report documenting the incident and advise the reporting party of the judge's decision.

6 2-59-7 Hearings

A. If the judge grants the ERFPO petition and issues a temporary ERFPO, the judge will set a hearing within the next ten (10) days to determine whether to issue a one (1) year ERFPO. The detective who completed the petition is the petitioner and shall attend the hearing.

B. The detective who completed the petition shall attend all future hearings on the ERFPO unless the case responsibility has been reassigned by the unit supervisor.

C. A respondent may ask the court to terminate a one (1) year ERFPO at any time prior to the expiration of the order. The detective will attend any hearings on such a request as the detective is the petitioner.

D. Prior to any ERFPO hearing, the detective shall check the respondent's criminal and Uniform Incident Report history and be prepared to testify on the criminal history in court, including charges, convictions, and mental health history.



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7 2-59-8 Serving the ERFPO

- A. If the district court judge approves a temporary ERFPO and requires the respondent to surrender all possessed firearms, the detective shall attempt to serve the respondent. In addition to the order, the detective shall provide the respondent a copy of the petition, the affidavit, any other supporting documents, and notice of the hearing.
- B. If a judge issues a one (1) year ERFPO, sworn personnel shall attempt to serve the respondent if they reside within the Department's jurisdiction. If a respondent resides in the jurisdiction of Bernalillo County Sheriff's Office, the service will be completed by BCSO. Sworn personnel must notify the BCSO emergency communications center to serve this process.
- C. Personal service should be made consistent with civil court rules (Rule 1-004(F) NMRA).
 - 1. If the respondent refuses to accept service, sworn personnel may leave the documents at the location where the respondent was found.
 - 2. If the respondent is not at their residence or does not answer the door, sworn personnel should attempt to reach the respondent by phone to arrange for personal service.
 - 3. If sworn personnel are unable to serve the respondent personally, service can be made by leaving the documents with any person over fifteen (15) years old at the respondent's residence and sending them by first class mail to the respondent's residence.
 - 4. If there is no one at the respondent's residence to leave the documents with, service can be made by delivering a copy of the documents to a person apparently in charge of the respondent's place of business or employment and by mailing copies first class to the respondent's residence and place of business or employment.
- D. After successful service, sworn personnel shall complete an ERFPO Return of Service and file the ERFPO Return of Service with the court by the end of the personnel's subsequent shift.
 - 1. Sworn personnel shall immediately provide copies of the filed Return of Service to:
 - a. SOWarrants@bernco.gov;
 - b. ERFPO@cabq.gov; and
 - c. The respondent, either in-person or by mail.

6 2-59-9 Seized or Relinquished Firearms



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- A. When firearms are relinquished to the Department pursuant to an ERFPO, sworn personnel who take custody of the firearm shall:
 - 1. Complete an ERFPO Relinquishment Receipt identifying all firearms seized or relinquished;
 - 2. Provide the respondent with a copy of the receipt;
 - 3. Provide the receipt to the reporting party within seventy-two (72) hours;
 - 4. File the original receipt with the court within seventy-two (72) hours; and
 - 5. Send a copy of the receipt to the Records Division.
- B. There may be situations where a respondent contacts sworn personnel who were not the filing detective to relinquish firearms. In these situations, any sworn personnel shall take custody of the firearms and complete the steps in section A above.

6 2-59-10 **Transfer or Return of Firearms**

- A. Upon written request of the respondent, the firearm shall be transferred to the possession of a federally-licensed firearms dealer or lawful private party purchaser designated by the respondent, provided that:
 - 1. The transfer is the result of a sale. A purchaser must provide a copy of the bill of sale;
 - 2. The purchaser is the actual owner of the firearm thereafter; and
 - 3. A National Crime Information Center (NCIC) check confirms the purchaser is not prohibited from possessing a firearm pursuant to state or federal law. However, the detective does not need to check a federally-licensed firearms dealer through NCIC.
 - 4. No fee shall be charged for background checks required by this policy.
- B. A federally-licensed firearms dealer must provide proof of license and the purchaser must provide a bill of sale prior to transfer of a firearm. Prior to transferring possession of a firearm to a federally-licensed firearms dealer or private party purchaser, the detective shall notify the purchaser in writing that it is unlawful to transfer or return the firearm to the respondent while the ERFPO is in effect.
- C. Any firearm relinquished consistent with the ERFPO Act shall be returned to the respondent within ten (10) days following the expiration or termination of an ERFPO.



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If an ERFPO has expired, sworn personnel shall conduct an NCIC check for the respondent. The firearm will be returned to the respondent if they can legally possess a firearm pursuant to federal and state law.

6 2-59-11 **Failure to Relinquish**

A. If sworn personnel receive information establishing probable cause that a respondent is violating an ERFPO, but the personnel does not witness the violation, they shall issue a summons for a misdemeanor violation under NMSA 1978, § 40-17-11.

N/A B. If sworn personnel observe a respondent violating an ERFPO, they will determine whether to arrest the respondent (refer to SOP Arrests, Arrest Warrants, and Booking Procedures for sanction classifications and additional duties).

C. Sworn personnel shall report the residence of a respondent who fails to relinquish firearms pursuant to an ERFPO as a hazard to the Emergency Communications Center (ECC).

6 2-59-12 **Documenting**

A. All ERFPO petitions, orders, returns of service, dismissals, and terminations shall immediately be emailed to Bernalillo County Sheriff's Office, Warrants Section after service to SOWarrants@bernco.gov for NCIC entry. They shall also be sent to ERFPO@cabq.gov, which will be used to track ERFPOs and to inform when petitions to extend ERFPOs need to be filed.

B. A detective shall complete a Uniform Incident Report documenting all steps from receiving the request for an ERFPO petition, determining whether or not to file a petition, whether the judge granted the temporary ERFPO, and service of the temporary ERFPO.