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TO: **Assignment Judges**
Criminal Presiding Judges
Municipal Court Presiding Judges

Directive # 19-19

FROM: **Glenn A. Grant, J.A.D.** GAG by SDB

SUBJ: **Guidelines for Extreme Risk Protective Orders**

DATE: **August 12, 2019**

This Directive promulgates the attached Guidelines for Extreme Risk Protective Orders, effective September 1, 2019, in accordance with the "Extreme Risk Protective Order Act of 2018," codified at N.J.S.A. 2C:58-20 to -32 (hereafter the Act). The legislative history indicates that the Act was modeled on the process for a victim of domestic violence to obtain a restraining order under the "Prevention of Domestic Violence Act of 1991" (N.J.S.A. 2C:25-17 et seq.), as well as similar laws in other states. Accordingly, the procedures for extreme risk protective orders are similar to the procedures for domestic violence proceedings. I have approved these Guidelines based on the recommendations in the "Response of the Supreme Court Criminal Practice Committee to Proposed Rule 3:5B 'Extreme Risk Protective Orders' (May 28, 2019)," with input from the Working Group on Extreme Risk Protective Orders.

The Guidelines establish a civil process and procedures for a "petitioner" (defined as a family or household member[1] or a law enforcement officer) to seek an extreme risk protective order. Specifically, an extreme risk protective order prohibits a person (hereafter respondent) from owning, purchasing, possessing, or receiving firearms or ammunition, or from securing or holding a firearms purchaser identification card, a 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.

Because the relief provided under an extreme risk protective order is limited to prohibiting the respondent from having firearms and or ammunition, such an order does not offer the range of relief provided by restraining orders issued pursuant to the "Prevention of Domestic Violence

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[1] A "family or household member" is defined as a spouse, domestic partner, partner in a civil union couple, 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. N.J.S.A. 2C:58-21.

Act of 1991." For example, a plaintiff or person protected under that statute[2] who has been subjected to an act of domestic violence[3] can apply for a temporary restraining order that not only authorizes the seizure of the defendant's firearms but also prohibits the defendant from returning to the scene of the domestic violence. A final domestic violence restraining order provides additional types of relief, such as exclusive possession of the residence or household, or prohibiting the defendant from entering the residence, property, school or place of employment of the victim. See N.J.S.A. 2C:25-29(b) for the specific reliefs that are available for restraining orders under the Prevention of Domestic Violence Act.

Therefore, based on the circumstances, it may be appropriate for a person seeking an extreme risk protective order to consider instead applying for a restraining order under the Prevention of Domestic Violence Act. The Family Division of the Superior Court at any county courthouse can be contacted for information on domestic violence restraining orders.

Petition for a Temporary Extreme Risk Protective Order

There are four types of civil petitions for temporary extreme risk protective orders, as set forth in Guideline 2 ("Petition for Temporary Extreme Risk Protective Order"). Specifically, the types of petitions are as follows:

(1) a family or household member can file a petition at the Criminal Division of the Superior Court, except for a petition against a law enforcement officer respondent, which must be filed as noted in (4) below, or may request a petition at a law enforcement agency for filing with the court;

(2) a law enforcement officer petitioner may file a petition with the court;

(3) other persons who are neither family or household members nor law enforcement officers may request at a law enforcement agency that a law enforcement officer file a petition with the court; and

(4) a petition against a law enforcement officer respondent must be filed at the law enforcement agency where the respondent officer is employed.

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[2] A "victim of domestic violence" means a person protected under the Prevention of Domestic Violence Act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present household member or was at any time a household member. "Victim of domestic violence" also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. "Victim of domestic violence" also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship. See N.J.S.A. 2C:25-19(d).

[3] An act of domestic violence means the occurrence of one or more of the enumerated acts inflicted upon a person protected under the Prevention of Domestic Violence Act by an adult or an emancipated minor pursuant to N.J.S.A. 2C:25-19(a).

There is no fee for applying for an extreme risk protective order pursuant to N.J.S.A. 2C:58-23(c).

Filing a Petition for a Temporary Extreme Risk Protective Order

Except for a petition against a law enforcement officer respondent, petitions can be filed by family or household members at the Criminal Division of the Superior Court during regular court business hours – between 8:30 a.m. and 4:30 p.m., Monday through Friday. Staff will interview these individuals and will enter the responses in the electronic petition contained in the Judiciary's computerized system entitled Protective Restraining Order System (PROS).

A family or household member can also request a petition at any State, county, or municipal law enforcement agency. The Act provides that the assistance by law enforcement may include, but is not limited to, providing information related to the factors that are considered by the court, 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. N.J.S.A. 2C:58-23(a).

Persons who do not fall under the definition of a family or household member in Guideline 1 ("Definitions") must go to a law enforcement agency to request that a law enforcement officer file a petition with the court. However, the filing of these petitions is at the discretion of law enforcement as the petitioner. See "Attorney General Directive Pursuant to the Extreme Risk Protective Order Act of 2018" for the guidelines to law enforcement agencies and prosecutors' offices on the implementation of this Act at https://www.nj.gov/oag/dcj/directiv.htm.

When the respondent is a law enforcement officer, the Act provides an alternative procedure that does not permit the petition to be filed with the court until the conclusion of an internal affairs investigation and a determination by the county prosecutor to file a petition with the court.

Specifically, N.J.S.A. 2C:58-23(l) provides in part:

> (1) A petition for a temporary extreme risk protective order filed against a law enforcement officer shall be filed in the law enforcement agency in which the officer is employed. The law enforcement officer or employee receiving the petition shall advise the petitioner of the procedure for completing and signing a petition.
>
> (2) Upon receipt of the petition, the law enforcement officer's employer shall immediately initiate an internal affairs investigation.
>
> (3) 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.

As such, if a family or household member comes to the Superior Court to file a petition against a law enforcement officer, staff cannot file that petition. However, staff will provide the

person with the petition form and an information sheet on the statutory process for filing a petition against a law enforcement officer. See Attachment 2 for the Information Sheet for Filing a Petition Against a Law Enforcement Officer. That information sheet also will be available on the Judiciary's website at https://www.njcourts.gov/forms/12471_erpo_law_ofcr.pdf. The petition form can also be obtained as of September 1 at the Criminal Division or on the Judiciary's website at https://www.njcourts.gov/forms/12430_erpo_petition.pdf

Consequently, court staff will not have, and therefore will not be able to provide, any information on the status of the petition. Therefore, any questions concerning these petitions should be directed to the county prosecutor's office.

Contents of the Petition for a Temporary Extreme Risk Protective Order

As noted in Guideline 2(e), the petitioner must allege the facts that tend to establish whether the respondent poses an immediate and present danger of bodily injury to self or others by possessing, purchasing, owning, or receiving a firearm. Accordingly, the petition form contains questions based on the fifteen factors enumerated in Guideline 3(d) for the court to consider, along with other relevant evidence, to determine whether to issue a temporary or final extreme risk protective order.

Specifically, the questions on the fifteen factors address 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.);

(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 N.J.S.A. 2C:12-10, or domestic violence offense enumerated in 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;

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

(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.

It is important to note that the Act lists eight factors for the court to consider when making the determination for an extreme risk protective order. These are the first eight factors listed above and in Guideline 3(d). However, because N.J.S.A. 2C:58-23(f) contains non-exclusive language regarding the information to be submitted to the court by the prosecutor or designee ("including, but not limited to..."), and N.J.S.A. 2C:58-24 requires the court to consider the eight factors as well as "any other relevant evidence" for the final extreme risk protective order, Guideline 3(d) includes additional factors (factors 9 through 11) to provide guidance both to prosecutors (as to the information to be provided to the court) and to the court. Moreover, Guideline 3(d) permits the court to consider additional factors relating to the respondent's mental health (factors 12 through 15), but only after the court finds one or more of the behavioral factors (factors (1) through (11)).

The petition also includes questions concerning the firearms and ammunition possessed by the respondent, including the number, types, physical description, and the present location(s) of any firearm(s) and ammunition. See N.J.S.A. 2C:58-23(b). The petitioner may also provide relevant documentation to support the petition. Prior to the petition being filed or completed in the PROS system, the petitioner will be asked to certify that the statements in the petition are true and that, if any of the statements are willfully false, he or she is subject to punishment.

The Act requires county prosecutors or designees to provide certain information for the court to consider in determining whether to issue a temporary extreme risk protective order as set forth in Guideline 3(e). See N.J.S.A. 2C:58-23(f). As such, the county prosecutor and law enforcement agency where the respondent lives will be notified when the petition has been filed.

Overview of the Proceedings for a Temporary Extreme Risk Protective Order

The court will hear the petition for a temporary order in an expedited manner in the respondent's county of residence pursuant to Guideline 3(a) and (b). If the petitioner files in a Criminal Division that is not in the respondent's county of residence, staff will contact the appropriate county to process the petition. Similarly, if the petitioner applies at a law enforcement agency in another county, that agency will contact the appropriate county or municipal law enforcement agency. However, if the respondent resides out-of-state, the hearing will be in the county where the petitioner resides.

Superior Court judges will hear petitions for temporary extreme risk protective orders filed at the Criminal Division during standard court business hours. Municipal Court judges will hear petitions requested on weekdays after standard court hours, weekends, holidays or any other special circumstance when the Superior Court is not in session. However, emergent duty Superior Court judges also will be available to hear temporary petitions requested after regular court hours, where appropriate. See Guideline 3(a).

The standard for the court to issue the temporary extreme risk protective order is if the petitioner establishes "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. See N.J.S.A. 2C:58-23(e). If the court orders the temporary order and the petition "indicates" that the respondent owns or possesses any firearms, then the Act mandates that the court shall issue a search warrant, N.J.S.A. 2C:58-26(b).

In light of the Supreme Court's decision in State v. Hemenway, __ N.J. __ (2019), decided July 24, 2019, Guideline 4(e) sets forth a different standard for issuance of a search warrant in conjunction with a temporary extreme risk protective order than the standard set forth in the Act. In Hemenway, the Supreme Court addressed the search warrant provision within the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-28(j). Specifically, the Supreme Court required that "before issuing a warrant to search for weapons under the Act, a court must find that there is (1) probable cause to believe that an act of domestic violence has been committed by the defendant, (2) probable cause to believe that a search for and seizure of weapons is 'necessary to protect the life, health or well being of a victim on whose behalf the relief is sought,' see N.J.S.A. 2C:25-28(f); and (3) probable cause to believe that the weapons are located in the place to be searched." Slip op. at 3-4. The Supreme Court further clarified that "The probable cause requirement for warrants is adaptable to civil and administrative search warrants to ensure that only reasonable searches are conducted under our Federal and State Constitutions, as the United States Supreme Court made clear" in Camera v. Mun. Court, 387 U.S. 523, 538-39 (1967). Slip op. at 24.

Accordingly, a search warrant for any firearms and ammunition which the respondent possesses or owns can only be issued in conjunction with a temporary extreme risk protective order 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. See Guideline 4(e).

If ordered by the court, a temporary extreme risk protective order shall 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. Additionally, the respondent will be ordered to surrender to law enforcement any firearms and any ammunition that the respondent possesses or owns, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent. Any such card or permit issued to the respondent shall be immediately revoked pursuant to N.J.S.A. 2C:58-3(f). See Guideline 4(b).

The temporary extreme risk protective order shall remain in effect until further order of the court. The temporary order will include the date for the hearing for a final extreme risk protective order, which must be scheduled to be held within 10 days after the petition is filed. There is no interim review of the decision to grant a temporary order. However, the respondent could request that the hearing for the final order be expedited.

Denials of a Temporary Extreme Risk Protective Order

Unlike the Prevention of Domestic Violence Act, which explicitly provides for emergent hearings on applications for temporary restraining orders and emergent de novo review by the Superior Court of denials of such orders (N.J.S.A. 2C:25-28(a) and -28(i)), the Extreme Risk Protective Order Act does not explicitly provide for emergent hearings on petitions for temporary extreme risk protective orders. Rather, the Act simply provides that hearings be conducted "in an expedited manner." N.J.S.A. 2C:58-23(a).

In light of the nature of the Act and its stated purpose to address "extreme" risks, procedures have been developed to address petitions for a temporary extreme risk protective order that are denied by a Municipal Court judge. The procedures were modeled on the recently established procedures, effective October 1, 2019, for a de novo review of denials of emergent applications for temporary domestic violence restraining orders promulgated by Directive #13-19 ("Municipal/Family – Immediate De Novo Hearing for the Municipal Court Denial of a Domestic Violence Temporary Restraining Order").

Specifically, effective October 1, 2019, if a Municipal Court judge denies the petition for a temporary extreme risk protective order, the petitioner can request an immediate de novo hearing by an emergent duty Superior Court judge. Similar to the process for denials for temporary restraining orders, 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. If the person wishes to exercise this right, law enforcement shall contact an on-call Superior Court judge. That Superior Court judge will review the petition and conduct a hearing telephonically to determine whether to grant or deny the temporary extreme risk protective order. If the person does not want to have an immediate review hearing, the order denying the petition will reflect this decision. To address denials of a petition for a temporary extreme risk protective order by a Municipal Court judge prior to October 1, the petitioner will 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. A Superior Court judge will make a determination to grant or deny the petition that same day.

If a Superior Court judge denies the temporary extreme risk protective order, 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). To obtain information on filing an appeal, a pro se packet entitled "How to Appeal a Trial Court, Tax Court, or State Agency Decision" is available at https://www.njcourts.gov/forms/10837_appl_prose_kit.pdf.

Overview of Proceedings for a Final Extreme Risk Protective Order

Guideline 5(a) provides that the hearing for a final extreme risk protective order will be scheduled to be held in the Superior Court within 10 days after the petition is filed. The actual hearing date could be adjusted to allow sufficient time for the respondent to be served with the petition and temporary order or to prepare for the hearing. At the hearing, the respondent shall be afforded the right to testify, to present witnesses, to submit documents, to cross-examine any witnesses who may appear at the hearing, and to present information. See Guideline 5(c). The court will consider all relevant information, including the factors listed in Guideline 3(d), as well as any information provided by the county prosecutor or designee pursuant to Guideline 5(e).

A final extreme risk protective order will be ordered by the court upon a finding 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. Specifically, the final extreme risk protective order shall prohibit the respondent from owning, purchasing, possessing, 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 that the order is in effect. Additionally, the respondent will be ordered to surrender to law enforcement any firearms or ammunition that the respondent possesses or owns, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent. Any such card or permit issued to the respondent shall be immediately revoked pursuant to N.J.S.A. 2C:58-3(f).

As noted above, in accordance with the Supreme Court's decision in Hemenway, the standard for issuance of a search warrant in conjunction with a final extreme risk protective order departs from the statutory language by requiring the court to find probable cause. Specifically, a search warrant will be issued for any firearms and ammunition that the respondent possesses or owns if the court determines that probable cause exists to believe that (1) the respondent owns or possesses any firearms or ammunition, (2) the respondent poses a significant 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. See Guideline 6(d).

If the petitioner or the respondent wishes to appeal the decision by a Superior Court judge to grant or to deny the final extreme risk protective order, their appeal must be filed within 45 days of the entry of that decision pursuant to R. 2:2-3(a)(1).

Termination of a Final Extreme Risk Protective Order

In accordance with the Act, Guideline 7 provides that the petitioner or the respondent may apply for termination of a final extreme risk protective order at any time following issuance of the order. See N.J.S.A. 2C:58-25. The court, on notice to the petitioner and the respondent, the appropriate law enforcement agency, and the county prosecutor, may terminate the final extreme risk protective order after a hearing.

In making the determination to terminate a final extreme risk protective order, the court shall consider the factors or information enumerated in Guideline 3(d), as well as any other relevant evidence, including, but not limited to, whether the respondent has received, or is receiving, mental health treatment. If the respondent filed the petition for termination, he or she must establish by a preponderance of the evidence that he or she no longer poses a significant danger of causing bodily injury to self or to other persons by owning, possessing, purchasing, or receiving a firearm.

The forms to file for termination of a final extreme risk protective order can be obtained, effective September 1, 2019, at the Criminal Division or on the Judiciary's website at https://www.njcourts.gov/forms/12433_erpo_petition_for_term.pdf

Confidentiality of Records for Extreme Risk Protective Orders

All records related to proceedings for extreme risk protective orders are confidential and may not be disclosed to anyone other than the respondent for use in proceedings under the Act, except if good cause is found by the court to release such records. See Guideline 8(a). However, the petitioner will receive copies of the court orders in accordance with N.J.S.A. 2C:58-23(i).

Pursuant to the Act, the Administrative Office of the Courts is required to create and maintain an electronic central registry for extreme risk protective orders. Therefore, the registry will include all persons who have had a temporary or final extreme risk protective order entered against them and all persons who have been charged with a violation of a temporary or final extreme risk protective order. See Guideline 8(b). All records in the registry are confidential and subject to release only to a police or other law enforcement agency investigating a report of a crime, offense, or act of domestic violence, or conducting a background investigation involving a person's application for a firearms purchaser identification card or permit to purchase a handgun or employment as a police or law enforcement officer, or for purposes of an extreme risk protective order proceeding, or for any other purpose authorized by law or the Supreme Court pursuant to N.J.S.A. 2C:58-30. A respondent's information, other than information related to a violation of a temporary or final extreme risk protective order, will be removed from the registry upon the termination of the extreme risk protective order. See Guideline 8(b).

Any questions regarding Directive # 19-19 may be directed to Assistant Director Sue Callaghan (Criminal Practice Division) via email at sue.callaghan@njcourts.gov or by phone at

609-815-2900 ext. 55300 or Assistant Director Steven A. Somogyi (Municipal Court Services Division) via email at steven.somogyi@njcourts.gov or via phone at 609-815-2900 ext. 54850.

G.A.G.

Attachments – (1) Guidelines for Extreme Risk Protective Orders
(2) Information Sheet for a Petition for an Extreme Risk Protective Order Against a Law Enforcement Officer

cc: Chief Justice Stuart Rabner
Attorney General Gurbir S. Grewal
Public Defender Joseph E. Krakora
Criminal Division Judges
Family Division Judges
Municipal Court Judges
Veronica Allende, Director, DCJ
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AOC Directors and Assistant Directors
Clerks of Courts
Trial Court Administrators
Special Assistants to the Administrative Director
Criminal Division Managers and Assistants
Family Division Managers
Municipal Division Managers
Vance Hagins, Chief
Rhonda Crimi, Chief
Julie Higgs, Chief
Amelia Wachter-Smith, Chief
Maria Pogue, Assistant Chief

ATTACHMENT 1

GUIDELINES FOR EXTREME RISK PROTECTIVE ORDERS

Guidelines for Extreme Risk Protective Orders Promulgated by Directive #19-19

Guideline 1. Definitions

"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.

"Deadly weapon" shall have the same meaning as in subsection c. of N.J.S.A. 2C:11-1.

"Family or Household Member" means a spouse, domestic partner, partner in a civil union couple, 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.

"Firearm" shall have the same meaning as in N.J.S.A. 2C:39-1.

"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.

"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.

"Petitioner" means a family or household member or law enforcement officer who seeks an order.

"Recent" means within six months prior to the date the petition was filed.

"Respondent" means a person against whom an order is sought.

Guideline 2. Petition for Temporary Extreme Risk Protective Order

(a) Family or Household Member Petitioners. Except for a petition filed against a law enforcement officer respondent, a family or household member petitioner may file a petition for a temporary extreme risk protective order in the Superior Court or may request a petition at a law enforcement agency for filing with the court.

(b) Law Enforcement Officer Petitioners. A law enforcement officer may file a petition for a temporary extreme risk protective order with the court.

(c) Other Persons. Other persons who are neither family or household members nor law enforcement officers may request at a law enforcement agency that a law enforcement officer file a petition for a temporary extreme risk protective order with the court.

(d) Petition Against a Law Enforcement Officer Respondent. A petition for a temporary extreme risk protective order against a law enforcement respondent may be filed in the law enforcement agency in which the officer is employed as provided in N.J.S.A. 2C:58-23(l).

(e) Contents of Petition. This petition shall contain an allegation 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 an affidavit setting forth the 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.

This affidavit shall set forth the affiant's basis of knowledge for these alleged facts and may reference or attach documents relevant to the petition. This affidavit shall be sworn and under oath, subject to punishment if any statements are willfully false.

Guideline 3. Hearing on Petition for Temporary Extreme Risk Protective Order

(a) Timing. The court shall hear the petition in an expedited manner. For emergent relief requested on weekdays after standard court hours, weekends, holidays or any other special circumstance when the Superior Court is not in session, Municipal Court judges or emergent duty Superior Court judges shall hear the petition.

(b) Venue. Venue shall be in the county where the respondent resides, unless the respondent resides out of state then venue shall be in the county where the petitioner resides.

(c) Evidence. In determining whether to issue a temporary extreme risk protective order, the court may examine under oath the petitioner and any witnesses the petitioner may produce. The court may consider the sworn oral testimony of a petitioner or witness who, although not physically present in court, identifies himself or herself, specifies the purpose of the request, and disclose the basis of the petition. Such sworn oral testimony may be communicated to the court by telephone, radio or other means of electronic communication. 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. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of an order. In lieu of examining the petitioner or any witnesses in court or by electronic communication, the court may rely on an affidavit submitted pursuant to Guideline 2 in support of the petition and may also rely upon any

information provided by the county prosecutor or designee pursuant to paragraph (e) of this Guideline.

(d) Factors. In determining whether to issue a temporary extreme risk protective order, the court shall 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.);

(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 N.J.S.A. 2C:12-10, or domestic violence offense enumerated in 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.

If the court finds one or more of the factors listed in paragraph (d)(1) to (11) of this Guideline, then the court may consider 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.

Records provided to the court concerning any of the factors listed in paragraph (d) of this Guideline are confidential and may not be disclosed except as provided in Guideline 8(a).

(e) Information from Prosecutor. If the petitioner is a family or household member, the county prosecutor or designee shall produce for the court's consideration any readily available information or evidence pertaining to the factors listed in paragraph (d) of this Guideline. If the petitioner is a law enforcement officer, then the county prosecutor or designee shall produce for the court's consideration any statements or reports pertaining to the factors listed in paragraph (d) of this Guideline upon which the officer relies in the petition.

Guideline 4. Temporary Relief

(a) Court's Determination. If the court determines that the petitioner established 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 ex parte emergency relief in the form of a temporary extreme risk protective order. The court shall place on the record the reasons supporting its decision to grant or deny the order.

(b) Contents of Order. If ordered by the court, a temporary extreme risk protective order (1) shall 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) shall order the respondent to surrender to law enforcement any firearms and any ammunition which the respondent possesses or owns, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent. Any such card or permit issued to the respondent shall be immediately revoked pursuant to N.J.S.A. 2C:58-3(f). The order shall state the time, date, and place of the hearing for a final extreme risk protective order.

(c) Service of Order. The court issuing the temporary extreme risk protective order shall immediately forward a copy of the order and the petition to the county prosecutor in the county in which the respondent resides for service by the appropriate law enforcement agency upon the respondent. At no time shall the family or household

member petitioner be asked to serve any temporary extreme risk protective order on the respondent. Service by the county prosecutor or law enforcement petitioner upon the respondent shall be immediate or as soon as practicable.

(d) Duration of Order. The temporary extreme risk protective order shall remain in effect until a court issues a further order.

(e) Search Warrant. If the court determines, based upon consideration of information provided in the temporary extreme risk protective order petition, and during the temporary extreme risk protective order 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 temporary extreme risk protective order, shall issue a search warrant for any firearms and ammunition which the respondent possesses or owns at that specified location.

Guideline 5. Final Extreme Risk Protective Order Hearing

(a) Timing. A final extreme risk protective order hearing shall be scheduled to be held in the Superior Court within 10 days after the petition is filed pursuant to Guideline 2.

(b) Venue. Venue shall be in the county where the temporary extreme risk protective order was issued, unless good cause is shown for the hearing to be held elsewhere.

(c) Evidence. In determining whether to issue a final extreme risk protective order, the court may examine under oath the petitioner and any witnesses the petitioner may produce, may consider an affidavit and documents submitted in support of the petition, and may consider any information provided by the county prosecutor or designee pursuant to Guideline 3(e) and paragraph (e) of this Guideline. The respondent shall be afforded the right to testify, to present witnesses, to submit documents, to cross-examine any witnesses who may appear at the hearing, and to otherwise present information. The respondent shall have the right to be present at the hearing. The rules governing admissibility of evidence at trial shall not apply to the presentation and consideration of information at the hearing.

(d) Factors. In determining whether to issue a final extreme risk protective order, the court shall consider all relevant evidence, including the factors referenced in Guideline 3(d)(1) to (11). If the court finds one or more of those factors, then the court may consider the factors referenced in Guideline 3(d)(12) to (15). Records provided to

the court concerning any of the factors listed in Guideline 3(d) are confidential and may not be disclosed except as provided in Guideline 8(a).

(e) Information from Prosecutor. In addition to information referenced in Guideline 3(e), 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 N.J.S.A. 2C:58-20 et seq.

Guideline 6. Final Relief.

(a) Court's Determination. The court shall issue a final extreme risk protective order if it finds by a preponderance of evidence at the hearing 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 place on the record the reasons supporting its decision to grant or deny the order.

(b) Contents of Order. If ordered by the court, the final extreme risk protective order (1) shall prohibit the respondent from owning, purchasing, possessing, 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 that the order is in effect, and (2) shall order the respondent to surrender to law enforcement any firearms or ammunition which the respondent possesses or owns, and any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent. Any such card or permit issued to the respondent shall be immediately revoked pursuant to N.J.S.A. 2C:58-3(f).

(c) Duration of Order. The final extreme risk protective order shall remain in effect until a court issues a further order.

(d) Search Warrant. If the court determines, based upon consideration of all information pursuant to N.J.S.A. 2C:58-20 et seq., such as the petition filed pursuant to Guideline 2, information presented during the hearings conducted pursuant to Guideline 3 and Guideline 5, and any other information presented that probable cause exists to

believe that (1) the respondent owns or possesses any firearms or ammunition, (2) the respondent poses a significant 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 final extreme risk protective order, shall issue a search warrant for any firearms and ammunition which the respondent possesses or owns at that specified location.

Guideline 7. Termination of Final Extreme Risk Protective Order

The petitioner or respondent may file a petition for termination of a final extreme risk protective order at any time following issuance of the order. The court, on notice to the petitioner and the respondent, the appropriate law enforcement agency, and the county prosecutor, may terminate the final extreme risk protective order after a hearing. During the termination hearing, the court shall consider the factors enumerated in Guideline 3(d), as well as any other relevant evidence, including, but not limited to, whether the respondent has received, or is receiving, mental health treatment. If the respondent petitioned for termination, the respondent shall bear the burden at the hearing of proving by a preponderance of the evidence that the respondent no longer poses a significant danger of causing bodily injury to self or to other persons by owning, possessing, purchasing, or receiving a firearm.

Guideline 8. Confidentiality of Records

(a) Records. Any records related to proceedings for extreme risk protective orders are confidential and may not be disclosed, by subpoena or otherwise, to anyone other than the respondent for use in the extreme risk protective order proceeding, except by order of the court on good cause shown. However, the petitioner will receive copies of the orders.

(b) Electronic Central Registry. The Administrative Office of the Courts shall maintain a registry of all persons who have had a temporary or final extreme risk protective order entered against them and all persons who have been charged with a violation of a temporary or final extreme risk protective order.

All records made pursuant to this section shall be kept confidential and shall be released only to a police or other law enforcement agency investigating a report of a crime, offense, or act of domestic violence, or conducting a background investigation involving a person's application for a firearms purchaser identification card or permit to purchase a handgun or employment as a police or law enforcement officer, or for purposes of an extreme risk protective order proceeding, or for any other purpose authorized by law or the Supreme Court of the State of New Jersey.

A respondent's information, other than information related to a violation of a temporary or final order issued pursuant to this law, shall be removed from the registry upon the termination of the extreme risk protective order.

ATTACHMENT 2

INFORMATION SHEET FOR A PETITION FOR AN EXTREME RISK PROTECTIVE ORDER AGAINST A LAW ENFORCEMENT OFFICER

New Jersey Courts
www.njcourts.gov
Independence • Integrity
Fairness • Quality Service

Information Sheet for a

Petition for an Extreme Risk Protective Order Against a Law Enforcement Officer

The Extreme Risk Protective Order Act (*N.J.S.A.* 2C:58-20 to -32) requires that when the respondent is a law enforcement officer, the petition cannot be filed with the court until the conclusion of an internal affairs investigation, and a determination by the county prosecutor to file a petition with the court.

Specifically, *N.J.S.A.* 2C:58-23(l) provides:

(1) A petition for a temporary extreme risk protective order filed against a law enforcement officer **shall be filed** in the law enforcement agency in which the officer is employed. The law enforcement officer or employee receiving the petition shall advise the petitioner of the procedure for completing and signing a petition.

(2) Upon receipt of the petition, the law enforcement officer's employer shall immediately initiate an internal affairs investigation.

(3) 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.**

Attached is the petition form if you want to file a petition for an extreme risk protective order against a law enforcement officer. To file the petition, you must complete the form and provide it to the law enforcement agency where the law enforcement officer is employed. If you have any questions, you can contact that law enforcement agency or the county prosecutor's office. The contact information for the county prosecutor's office is listed below:

(To be completed by staff)

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Promulgated via Directive #19-19 (effective 09/01/2019), CN 12471