

YORK-POQUOSON SHERIFF'S OFFICE	GENERAL ORDERS
SUBJECT: Emergency Substantial Risk/Substantial Risk Orders	NUMBER: GO 2-62
EFFECTIVE DATE: August 7, 2020	REVIEW DATE: New Policy
AMENDS/SUPERSEDES: New Policy	APPROVED:  Sheriff
VLEPSC STANDARDS:	

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18 **POLICY**

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20 It shall be the policy of the York-Poquoson Sheriff's Office to only seek and obtain Emergency

21 Substantial Risk Orders once all of the criteria defined by the Code of Virginia for issuance of

22 such orders is met.

23

24 **PURPOSE**

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26 The purpose of this policy is to provide guidance to deputy sheriff's for the procedures to be

27 used to obtain an Emergency Substantial Risk Order, the process for securing firearms from the

28 person subject to an Emergency Substantial Risk Order and the disposition of such firearms

29 when the order expires or is dismissed.

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32 **DEFENITIONS**

- 33
- 34 • Emergency Substantial Risk Order
 - 35 ○ An Emergency Substantial Risk Order is defined by Section [19.2-152.13](#), Code of
 - 36 Virginia as an order issued by judge or magistrate which prohibits the person subject
 - 37 to the order, for the duration of the order, from the following:
 - 38 ▪ Purchasing a Firearm;

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- Possessing a Firearm;
 - Transporting a Firearm.
- Criteria for Issuance of an Emergency Substantial Risk Order
 - An Emergency Substantial Risk Order may be issued by a judge or a magistrate upon finding of probable cause that person:
 - Poses a substantial risk of personal injury to himself, or
 - Poses a substantial risk to others, in the near future, and
 - By such persons possession or acquisition of a firearm.
 - Petitions for an Emergency Substantial Risk Order
 - An Emergency Substantial Risk Order may only be issued upon the petition of:
 - The Attorney for the Commonwealth;
 - A Law Enforcement Officer.
 - When Emergency Substantial Risk Order becomes effective
 - Emergency Substantial Risk Orders shall be effective upon personal service on the person who is subject to the order.
 - Expiration of Emergency Substantial Risk Orders
 - An Emergency Substantial Risk Order shall expire:
 - 11:59 PM on the fourteenth (14th) day following issuance of the order, or
 - 11:59 PM on the next day the Circuit Court for the jurisdiction where the order was issued if the fourteenth (14th) day falls on a day the Court is not in session.
 - Venue for issuance of an Emergency Substantial Risk Order
 - An Emergency Substantial Risk Order may be issued in the following jurisdictions:
 - Where the person who is subject to the order has his principal residence;
 - Where the person who is subject to the order has engaged in any conduct upon which the petition for the emergency substantial risk order is based.
 - Substantial Risk Order
 - No later than 14 days following the issuance of an Emergency Substantial Risk Order the Circuit Court shall hold a hearing to determine if a Substantial Risk Order should be entered.
 - A Substantial Risk Order is an order issued by the Circuit Court in the jurisdiction where an Emergency Substantial Risk Order has been issued.
 - A Substantial Risk Order shall prohibit the person subject to the order from the following during the duration of the order:
 - Purchasing a Firearm;
 - Possessing a Firearm;
 - Transporting a Firearm.
 - Criteria for issuance of a Substantial Risk Order

- 83 ○ A Substantial Risk Order may be issued by the Circuit Court Judge upon a finding of
84 clear and convincing evidence that, in the near future, by such persons possession or
85 acquisitions of a firearm, the person:
86 ■ Poses a substantial risk of personal injury to themselves, or
87 ■ Poses a substantial risk to other individuals.
88 ❖ In considering if clear and convincing evidence exists the Judge shall consider
89 any relevant evidence including following:
90 ➤ Recent acts of violence, force or threat as defined in Section [19.2-152.7:1.](#),
91 Code of Virginia, directed toward another person or himself.
92
- 93 ● When Substantial Risk Orders becomes effective
94 ○ A Substantial Risk Order is effective upon personal service on the person subject to
95 the order.
96 ■ Substantial Risk Orders may be issued for a specified period of time up to a
97 maximum of 180 days.
98 ■ Prior to the expiration of the order the Attorney for Commonwealth or law
99 enforcement officer may file a motion with the court to extend the order.
100 ❖ The Court may extend the order for a specified period of time or up to an
101 additional 180 days if no time is specified.
102 ➤ There is no limit on the number of extension that may be granted.
103 ➤ The same criteria that resulted in the initial order must continue to be
104 present in each subsequent extension of the order.
105
- 106 ● Expiration of Substantial Risk Orders
107 ○ Substantial Risk Orders expire at:
108 ■ 11:59 PM on the date specified in the order, or
109 ■ 11:59 PM on the last day of the 180 day period if not date is specified.
110
- 111 ● Substantial Risk
112 ○ For the purposes of this policy a person who poses a substantial risk shall be defined
113 as but not limited to:
114 ■ An individual who, in the near future, poses a risk of personal injury to himself or
115 others, by such person's possession or acquisitions of a firearm,
116 ■ A person has committed recent acts of violence, force or threat while using or
117 threatening the use of a firearm against himself or others,
118 ■ Based on a complaint that a threat of violence or force, either verbal or in writing,
119 has been made involving the use of a firearm,
120 ■ A complaint that the person has a history of recent acts of violence, force or
121 threats of such toward himself or others which involved the use of firearms.
122

123 **PROCEDURES**

- 124
- 125 ● Petitions for Emergency Substantial Risk Orders and Investigations
126 ○ Section [19.2-152.13.A.](#), Code of Virginia, requires that prior to the filing of petition
127 for an Emergency Substantial Risk order that an independent investigation shall be
128 conducted by law enforcement to determine that grounds for the petition exist.

- 129 ▪ The judge or magistrate considering the petition will consider the following:
130 ❖ Relevant evidence including;
131 ➤ Recent acts of violence, force or threat as defined in Section [19.2-152.7:1](#),
132 Code of Virginia, against himself or others.
133
- 134 ○ All complaints received that could potentially lead to the seeking and/or issuance of
135 an Emergency Substantial Risk Order shall be investigated.
136 ○ Complaints received that require an investigation into whether an Emergency
137 Substantial Risk Order is appropriate may be, but not limited to, the following:
138 ▪ Acts of or threats of violence against himself or another involving the use of a
139 firearm,
140 ▪ Third party complaints of the threat, either verbal or in writing, against that
141 person or another involving the use a firearm,
142 ▪ Workplace complaints from a co-worker that a person or co-worker in the
143 workplace is armed and acting unusual or displaying inappropriate anger,
144 ▪ Complaints from medical providers or mental health providers that a patient has
145 made threats against himself or others involving the use or suspected use of a
146 firearm
147
- 148 ○ All complaints that are investigated regarding the seeking and/or issuance of a
149 petition for an Emergency Substantial Risk Orders and details of the investigation
150 shall be documented in written report in the Sheriff’s RMS system whether a Petition
151 for an Emergency Substantial Risk Order is sought or not.
152 ▪ The affidavit completed following such investigations shall be attached to the
153 report in the RMS, whether the order is issued or not.
154 ▪ If the order sought is not issued the reason, if given, for denial of the order shall
155 be documented in the report.
156
- 157 ○ Investigations conducted pursuant to Emergency Substantial Risk orders shall focus
158 on the above listed criteria and based on probable cause.
159 ○ Emergency Substantial Risk Order petitions shall not be based solely on the
160 following:
161 ▪ The mere fact a person owns or possesses firearms;
162 ▪ A persons political affiliation or beliefs;
163 ▪ The fact that a person has pictures posted on social media with them holding or
164 shooting firearms.
165
- 166 ○ Deputy Sheriff’s petitioning for Emergency Substantial Risk Orders shall do so under
167 oath and supported by an affidavit.
168 ○ An independent law enforcement investigation is required even if the petition to be
169 filed is filed by the Commonwealth’s Attorney.
170 ▪ Requests by the Commonwealth’s Attorney for an investigation into a petition for
171 an Emergency Substantial Risk Order shall be directed to the highest ranking on
172 duty supervisor of the rank of sergeant or higher who shall assign the case for
173 investigation.
174

- 175 ○ Prior to submitting a petition and affidavit for an Emergency Substantial Risk Order,
176 the investigation, petition and affidavit shall be reviewed and approved by the highest
177 ranking on duty line supervisor at the minimum rank of sergeant.
178 ▪ This approval authority shall not be delegated to anyone below the rank of
179 sergeant.
180
- 181 • Service of Emergency Substantial Risk Orders
182 ○ Once issued, Emergency Substantial Risk Orders are only valid upon person service
183 of the order on the person subject to the order.
184 ▪ Emergency Substantial Risk Orders shall be served forthwith.
185
- 186 ○ Once the order is served and in accordance with Section [19.2-152.13.C.](#), Code of
187 Virginia, the person subject to the order shall be given the opportunity to voluntarily
188 surrender any firearms in their possession.
189
- 190 • Search Warrants Related to Emergency Substantial Risk Orders
191 ○ Nothing in this policy shall preclude a deputy sheriff from obtaining a search warrant,
192 to seize firearms possessed by the person subject to the order, immediately after
193 obtaining an Emergency Substantial Risk Order and prior to the service of the order,
194 if probable cause exists to believe the person subject to the order possesses firearms.
195 However, the person subject to the order shall be given the opportunity to voluntarily
196 surrender any firearms possessed prior to executing the search warrant.
197 ▪ The issuance of search warrant in relation to an Emergency Substantial Risk
198 Order shall not be sought or applied for prior to issuance of the Emergency
199 Substantial Risk Order.
200
- 201 ○ Only if probable cause exists to believe the person subject to the order has not
202 surrendered all firearms they possess shall the search warrant be executed.
203 ▪ Un-executed search warrants related to Emergency Substantial Risk Orders shall
204 be returned to and voided by the officer who issued such search warrant in
205 accordance with Section [19.2-56.](#), Code of Virginia.
206
- 207 ○ Search warrants after an Emergency Substantial Risk Order or Substantial Risk Order
208 has been served.
209 ▪ The possibility exists that information may come forth that a person subject to an
210 Emergency Substantial Risk Order or a Substantial Risk Order has not voluntarily
211 surrendered all firearms in their possession or subsequently acquired a firearm(s)
212 while the order is in effect. In these instances the following procedures will be
213 used.
214 ❖ A supervisor of the rank of sergeant or higher shall direct that an investigation
215 be conducted to determine if probable cause exists to obtain a search warrant
216 to seize the firearm(s).
217 ❖ A Command level officer shall be notified by the supervisor prior to a search
218 warrant being obtained.
219 ❖ Once a search warrant is obtained a threat assessment shall be completed
220 before the search warrant is executed.

- 221 ➤ A Command level officer shall determine if the ERT is to be used to
222 execute the search warrant.
223
224 ❖ Search warrants obtained under these circumstances shall not be served
225 between the hours of 9:00 PM and 7:00 AM without the authorization of the
226 Sheriff or his designee.
227

228 **FIREARMS**

- 229
- 230 • Firearms taken into Sheriff's Office possession related to an Emergency Substantial Risk
231 Order, Section [19.2-152.13.](#), Code of Virginia or Substantial Risk Order, Section [19.2-](#)
232 [152.14.](#), Code of Virginia, voluntarily, shall be handled as follows:
 - 233 ○ The deputy sheriff taking possession of the firearm(s) shall prepare a receipt
234 containing the following:
 - 235 ▪ Name of the person subject to the order;
 - 236 ▪ Firearm(s) manufacturer;
 - 237 ▪ Firearm(s) model;
 - 238 ▪ Firearm(s) condition;
 - 239 ▪ Serial Number of the firearm(s).
 - 240
 - 241 ○ The deputy shall provide a copy of the receipt, containing the above information, to
242 the person subject to the order.
 - 243 ○ A copy of the receipt, containing the above information, shall be attached to the
244 served order and filed with the Clerk of the Circuit Court.
245
 - 246 • Firearms taken into sheriff's office custody via a search warrant shall be handled in the
247 same manner as above with the firearm(s) information documented on the search warrant
248 return with a copy of the return left with the person subject to the order or at the locations
249 where the firearm(s) were seized.
 - 250 • All firearm(s) taken shall be vouchered in to property and evidence where they will be
251 held, returned or disposed of in accordance with Section [19.2-152.15.](#), Code of Virginia
252 and [GO 2-27, Disposal of Non Evidentiary Property.](#)
253
 - 254 • Firearms seized in connection with a criminal act where a subsequent Substantial Risk
255 Order is entered shall be handled in accordance with [GO 2-15, Evidence Procedures,](#)
256 until such time as the criminal case is disposed of.
 - 257 ○ If the criminal case results in a guilty verdict where the defendant is no longer
258 permitted to possess a firearm(s), the firearm shall be disposed of in accordance with
259 the order of the Court for the criminal case and/or [GO 2-15, Evidence Procedures.](#)
 - 260 ○ If the criminal case results in dismissal, a not guilty verdict or reduction of the charge
261 which does not preclude the defendant for possessing a firearm, the firearm(s) shall
262 be disposed of in accordance with Section [19.2-152.15.](#), Code of Virginia and [GO 2-](#)
263 [27, Disposal of Non Evidentiary Property.](#)
264
 - 265 • Transfer of firearms to another person designated by the person subject to a Substantial
266 Risk Order

- 267 ○ Any person whose firearm(s) have been voluntarily relinquished pursuant to Section
268 19.2-152.13., Code of Virginia or Section 19.2-152.14., Code of Virginia, or such
269 persons legal representative, may transfer the firearm(s) to another individual under
270 the following conditions:
- 271 ▪ The person subject to the order and the transferee both appear at the hearing, and
 - 272 ▪ The transferee is at least 21 years of age, and
 - 273 ▪ The transferee is not otherwise prohibited from possessing or transporting a
274 firearm, and
 - 275 ▪ The transferee does not reside with the person subject to the order, and
 - 276 ▪ At the hearing, the Commonwealth Attorney advises the court that law
277 enforcement has determined the transferee is not prohibited from possessing or
278 transporting a firearm, and
 - 279 ▪ The court informs the transferee of the requirements and penalties under Section
280 18.2-308.2:1., Code of Virginia, and
 - 281 ▪ The court approves the transfer, subject to such restrictions as the court deems
282 necessary.
- 283
- 284 ○ The law enforcement agency holding the firearm(s) shall deliver the firearm(s) to the
285 transferee within five (5) days of receiving a copy of the court’s approval of the
286 transfer.
- 287

FALSE STATEMENTS TO LAW ENFORCEMENT OFFICERS

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- 290 • In accordance with Section 19.2-152.16., Code of Virginia. Any person who knowingly
291 and willfully makes any materially false statement or representation to a law enforcement
292 officer or Attorney for the Commonwealth in the course of conducting an investigation
293 undertaken pursuant to Emergency Substantial Risk Orders or Substantial Risk Orders is
294 guilty of a Class 1 misdemeanor.
 - 295 ○ In all instances where an Emergency Substantial Risk Order or Substantial Risk Order
296 has been issued and it is later determined that a witness made a knowingly and willful
297 false statement or representation that led to the probable cause to obtain such order,
298 the deputy sheriff shall:
 - 299 ▪ Immediately notify the Commonwealth Attorney, and
 - 300 ▪ Without exception charge the individual making such statement or representation
301 under this code section, unless advised otherwise by the Sheriff or his designee.
- 302

EMERGENCY SUBSTANTIAL RISK ORDERS AND SUBSTANTIAL RISK ORDERS INVOLVING LAW ENFORCEMENT PERSONNEL

- 303
- 304 • Complaints received which may result in an Emergency Substantial Risk Order with a
305 sworn member, of the York-Poquoson Sheriff’ Office, may be subject to the order shall
306 be handled as follows:
 - 307 ○ The Division Commander for the deputy’s assigned division shall be notified prior to
308 any investigation commencing.
 - 309 ○ The Division Commander shall immediately respond to the scene, if applicable, and
310 notify the Chief Deputy.
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- The Chief Deputy shall immediately notify the Sheriff.
 - The Chief Deputy shall initiate an internal affairs investigation in accordance with [RR 1-9 Complaints-Internal Affairs](#).
 - The Chief Deputy at his discretion may suspend the deputy being investigated either with or without pay, based on facts known at the time, pending the results of the investigation.
 - The Chief Deputy shall designate the agency member to conduct the Emergency Substantial Risk Order investigation who shall be at a least the rank of lieutenant or higher.
 - Deputy Sheriffs of the York-Poquoson Sheriff’s Office who are subject to an Emergency Substantial Risk Order or Substantial Risk Order issued for the York County Circuit Court shall be ordered to surrender all firearms, both agency issued and personal.
 - Failure to surrender all firearms, both agency issued and personal, when ordered to do so shall subject the deputy sheriff to disciplinary action up to and including termination.
 - Sheriff’s Office issued firearms surrendered shall be secured in the Sheriff’s Office Armory safe pending disposition of the order.
 - Personal weapons surrendered shall be handled in accordance with Section [19.2-152.15.](#), Code of Virginia.
 - Deputy Sheriffs of the York-Poquoson Sheriff’s Office who become subject to an Emergency Substantial Risk Order issued and/or served in another jurisdiction shall immediately notify their supervisor.
 - Supervisor who becomes aware that one of their deputy sheriffs has been served an Emergency Substantial Risk Order or Substantial Risk Order shall:
 - Immediately notify their Division Commander who in turn shall immediately notify the Chief Deputy who shall notify the Sheriff.
 - The Chief Deputy shall initiate an internal affairs investigation in accordance with [RR 1-9 Complaints-Internal Affairs](#).
 - The Chief Deputy at his discretion may suspend the deputy being investigated either with or without pay, based on facts known at the time, pending the results of the internal affairs investigation.
 - Supervisors who are notified and requested by another jurisdiction to respond to that jurisdiction for service of an Emergency Substantial Risk Order or Substantial Risk Order on a sworn member of the York-Poquoson Sheriff’s Office shall follow the procedures above regarding notifications.
 - Unless directed otherwise the supervisor shall respond to the jurisdiction where the order is being served, and
 - The supervisor shall order the deputy sheriff subject to the order to surrender all agency issued and personal firearms, and
 - The supervisor shall take possession of all agency issued firearms, if permitted by the jurisdiction serving the order, and return such firearms to the Sheriff’s Office for safe keeping.

- 359 ❖ If the jurisdiction serving the order does not permit the supervisor to take
360 possession of agency issued firearms, they shall inquire about the process to
361 obtain the agency issued weapons and forward that information to their
362 Division Commander.
363
- 364 • In the event the person subject to an Emergency Substantial Risk Order is a sworn law
365 enforcement officer from another jurisdiction the following procedures shall be followed:
 - 366 ○ The deputy receiving the complaint shall notify their supervisor prior to initiating any
367 investigation or seeking an Emergency Substantial Risk Order.
 - 368 ○ The supervisor shall notify their Division Commander of the complaint.
 - 369 ○ The Division Commander shall notify a supervisor from the law enforcement
370 officer's jurisdiction.
 - 371 ○ The Division Commander shall notify the Chief Deputy who in turn shall notify the
372 Sheriff.
 - 373 ○ The Division Commander shall designate who shall conduct the investigation and
374 apply for the Emergency Substantial Risk Order if justified.
375
 - 376 • If an Emergency Substantial Risk order issued, with the subject of the order being a
377 sworn law enforcement officer from another jurisdiction, a York-Poquoson Sheriff's
378 Office supervisor shall notify a supervisor from the officer's jurisdiction prior to service
379 of the order and request they accompany the Sheriff's Office during service of the order
380 and order the surrender of all firearms by their officer.
 - 381 ○ If the jurisdiction declines to accompany the Sheriff's Office or order the officer to
382 surrender all firearms in their possession then the person subject to the order shall be
383 asked to voluntarily surrender all firearms in their possession and if they decline a
384 search warrant shall be obtained and executed.
 - 385 ○ If the officer voluntarily surrenders the firearms in their possession the firearms shall
386 be handled as follows:
 - 387 ▪ All firearms received shall be documented and a receipt prepared in accordance
388 with the firearms portion of this policy.
 - 389 ▪ Agency issued firearms shall be turned over the officer's agency representative if
390 present.
 - 391 ❖ The full name and rank of the person the firearms were turned over to shall be
392 noted on the receipt.
 - 393 ▪ Agency issued firearms shall be handled in accordance with the documentation
394 and receipt requirements found in the firearms section of this policy if the
395 officer's agency declines to be present during service of the order or search
396 warrant.
 - 397 ▪ Personal firearms surrendered shall be handled in accordance with the document
398 and receipt requirement of the firearms section of this policy.
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