



*Alexandria Police Department*  
Directive 11.29



# EMERGENCY SUBSTANTIAL RISK ORDER (ESRO) “Red Flag Law”

Effective Date: 10-19-2021	This is a new directive.	
Updated Date:	Section(s):	SME Review Date:
Updated Date:	Section(s):	2025
Updated Date:	Section(s):	

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<b>11.29.01</b>	<b>POLICY/PURPOSE</b>
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It is the policy of this Department to value life above all else. Ensuring the safe & legal removal of firearms from persons who pose a substantial risk to themselves or others is an important method in accomplishing our mission of preserving human life.

The purpose of this Directive is to provide guidance to departmental staff when dealing with persons who pose a substantial risk to themselves or others, and who are in possession or have access to firearms and may meet the requirements of an Emergency Substantial Risk Order (ESRO).

It is important to note that an ESRO, does not pertain exclusively to instances of Domestic Violence or Mental Health Cases.

### 11.29.02 AUTHORITY/BACKGROUND

An Emergency Substantial Risk Order (ESRO) or a Substantial Risk Order (SRO) are covered under Section 19.2-152.13 (ESRO), Section 19.2-152.14 (SRO), and Section 19.2-152.15 (Return & Disposal of Firearms) of the Virginia Code (as amended).

Other relevant departmental policy related to an ESRO or SRO are: Police Directives, 11.13 - Mental Health, 11.7- Domestic Violence, 10.28 - Property & Evidence, and 10.30 - Search Warrants.

### 11.29.03 DEFINITIONS

**Emergency Substantial Risk Order (ESRO)** – An order issued based on an independent investigation, supported by probable cause, which prohibits a person who poses a substantial risk of injury to himself or others from purchasing, possessing, or transporting a firearm. A court hearing must be held within 14 days after its issuance to determine the need for an SRO.

**Substantial Risk Order (SRO)** – An additional order, issued through a court hearing, no later than 14 days after an ESRO is issued. This order affirms that the subject who was previously issued an ESRO cannot possess, purchase, or transport a firearm.

1. The SRO may be issued for a specified time up to 180 days.
2. An extension will be sought by the Commonwealth Attorney's office to a specific date up to 180 days. There is no limit on the number of extensions sought.

**Violence, Force, or Threat** – Virginia code 19.2-152.7:1, defines an act of violence, force or threat as “any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault or bodily harm.” It is important to note that, in determining whether to issue an ESRO/ SRO, the judge or magistrate shall consider any relevant evidence, which may include evidence of violence, force or threats.

### 11.20.04 RESPONSIBILITIES

#### A. OFFICERS/ DETECTIVES

1. It is the responsibility of responding officers to conduct a thorough preliminary investigation to include the inquiry of firearms possessed or accessible by the subject of the investigation. The scope of accessibility should not include just the residence, but also storage units and vehicles.

- a. The types of calls associated with an ESRO are those that include, violence, force, or threats.
  - b. Responding officers should conduct interviews and collect evidence.
  - c. Responding officers should attempt to sketch the interior of the residence to assist the Special Operations Team with possible future warrant service.
  - d. Responding officers shall share the findings of their investigation with their supervisor.
2. It is the responsibility of officers/ detectives assigned to the case to conduct a thorough "independent investigation," as required by code.
  3. Officers/ Detectives will be required to petition for the ESRO and any associated search warrants needed to comply with the ESRO.

**B. SUPERVISORS**

1. Supervisors will ensure that officers conduct a full investigation into the incident and will provide the necessary information to the Watch Commander.

**C. COMMANDERS**

1. In conjunction with the on-scene supervisor, a decision will be made to contact the appropriate person from Criminal Investigations to assist in obtaining the ESRO.
2. In most cases, it may be prudent to contact Criminal Investigations to assist in making the determination if an ESRO should be sought.
3. In certain situations, the Watch Commander may decide to assign a patrol officer to complete all necessary paperwork (to include search warrants) related to the ESRO.

**D. CRIMINAL INVESTIGATIONS**

1. When contacted by the on-duty supervisor or Watch Commander, the Criminal Investigation's supervisor will initiate the call-back of detective(s) to assist with the investigation if needed.
2. The number of detectives needed will be based on the circumstances surrounding the incident. Given the search warrant procedures outline in Directive 10.30, Search Warrants, two detectives and a supervisor will likely be needed.

3. A detective assigned to the case will ensure that the appropriate Commonwealth Attorney and the Intelligence Unit Supervisor are notified via email regarding the discussion and execution of an ESRO.

**E. INFORMATION SERVICES SECTION (ISS)**

1. Upon receipt of an ESRO or SRO the ISS will enter the date and time of service, and other appropriate information into VCIN by teletype within 2 hours.

<b>11.29.05 PROCEDURES</b>
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**A. Obtaining the ESRO**

1. If the investigation reveals that the subject is not a substantial risk to themselves or others; the officer/ detective will supplement their findings and follow/up with the complainant.
2. If the investigation reveals that the subject is a substantial risk to themselves or others; the assigned officer/ detective will complete the DC-4060 form, supported by an affidavit and petition for an ESRO to a magistrate.
3. Simultaneously, the officer/ detective will also prepare a search warrant for the location to recover the firearms. The search warrant cannot be obtained and executed until the officer has reason to believe the respondent has not relinquished all firearms in his/her possession. This information must be articulated in the affidavit for the search warrant.
4. The detective(s), officers and supervisor will then attempt to serve the issued ESRO (form DC-4061).
5. If after the ESRO is served and the subject refuses to voluntarily surrender their firearms, the detective/ officer will then petition for a search warrant to recover the firearms.

**B. Additional Consideration**

1. The nature of the ESRO is to recover firearms. Therefore, a Threat Matrix needs to be completed. Consultation with the Special Operations Team commander is required to determine how the service will be completed.
2. There are circumstances where a Threat Matrix will not be needed (i.e., Officers are already in the home).

**C. Service of the ESRO**

1. Upon the successful service of the ESRO, by code the subject must be given the opportunity to voluntarily surrender their firearms.

2. Each firearm will be clearly and thoroughly documented with a disposition of "Safekeeping" indicated on the Evidence Sheet(s).
3. The subject will be provided with a copy of the ESRO and a written receipt containing the name of the respondent and the manufacturer, model, condition, and serial number of the firearm(s) surrendered.
4. The officer(s)/ detective(s) & supervisor(s) will also ensure all relevant Search Warrant procedures are followed.
5. A copy of the ESRO along with any attachments will be turned in to ISS no later than 2 hours after it was served on the subject, so that it may be entered.
6. A copy of the ESRO must be submitted with each evidence sheet at the time the firearms are stored for safekeeping.
7. A copy of the ESRO along with the petition and affidavit shall be sent to the appropriate Assistant Commonwealth Attorney & the Intel Unit Supervisor prior to the end of the officer/ detective's shift.
8. The original executed ESRO along with the petition and affidavit shall be returned to the Circuit Court immediately after issuance. If the court is closed, it will fall to the next day they are open.

**D. Refusal to Relinquish Firearms or Unable to Serve ESRO**

1. Officers will secure the scene.
2. An officer/ detective will petition the magistrate for a search warrant.
3. If the subject is present where the firearms are believed to be and refuses to voluntarily surrender their firearms, consultation with the SOT commander should be sought.
4. If the subject is not present to serve the ESRO and officers reasonably believe the subject is aware of the service attempt, the ESRO will be given to the Criminal Apprehension Unit (CAU) Sergeant to coordinate the service with the assigned officer/ detective.

<b>11.29.06      TRANSFER OR RETURN OF FIREARMS</b>
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- A.** Any firearm taken into custody pursuant to an ESRO/ SRO shall be returned to the person from whom the firearm was taken upon court order or the expiration or dissolution of an order issued pursuant to Section 19.2-152.13 or Section 19.2-152.14 of the Virginia Code.

- B.** The court may order that any firearms seized by law enforcement be transferred to another individual or returned to the individual subject to an ESRO/ SRO. The firearm may be transferred to another individual 21 years of age or older who is not otherwise prohibited by law from possessing such firearm, provided all conditions as outline in Virginia Code Section 19.1-152.14, are met. In addition, all Property and Evidence Section release requirements must be met.
- C.** If any such court order is issued, the firearms shall be transferred/ returned in accordance with the order, within five (5) days.
- D.** A firearm taken into custody pursuant to an ESRO/ SRO may be disposed of in accordance with Virginia Code, Section 15.2-1721, if the person from whom the firearm was taken provides written authorization for such disposal to the Department or the firearm remains in the possession of the Department more than 120 days after such person is no longer subject to an ESRO/ SRO, and they have not submitted a request in writing for the return of the firearm.
- E.** Prior to the return of any firearm, a Criminal History Check with both a "C" and "F" function for firearms check should be completed.

<b>11.29.07    ATTACHMENTS</b>
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- A. See ESRO VCIN Return example.
- B. See Form DC-4060 (Petition for Emergency Substantial Risk Order)

**BY AUTHORITY OF:**

**Don Hayes  
Acting Chief of Police**

## ATTACHMENT A

### ESRO VCIN RETURN EXAMPLE

The below TEST VCIN return is an example of what officers will observe when a (Emergency) Substantive Risk Order is on file for an individual. **Such order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of the order.** Be aware that nowhere on the VCIN return does it explicitly state the above listed prohibitions, however, you can review 19.2-152.13 and 19.2-152.14 for authority on enforcing the prohibitions. Please further review the **Protocols Document** for how to handle these situations.

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*RESPONDENT POSES A SUBSTANTIAL RISK OF PERSONAL INJURY TO SELF OR*

*OTHERS IN THE NEAR FUTURE BY RESONDENT'S POSSESSION OR ACQUISITION OF A FIREARM*

*MKE/SUBSTANTIAL RISK ORDER*

*NOTICE/ORDER HAS NOT BEEN SERVED*

*NAM/STRINGBEAN*

*SEX/M RAC/W DOB/19480916*

*TYP/SUBSTANTIAL RISK ORDER*

*CLS/SUBSTANTIAL RISK*

*HGT/509 WGT/165 EYE/BRO HAI/BRO SMT/TAT L LEG*

*POB/VA*

*OLN/T11111111 OLS/VA OLY/UNKN*

*LIC/FPX302 LIS/VA LIY/NX LIT/PC*

*VIN/123456789TEST VYR/1970*

*VMA/PONT VMO/CAT VST/2D VCO/WHI/GRN*

*MIS/TEST RECORD ONLY*

*VIC/P01762760 CCN/840JA1234567890 PNO/P01762760*

*ISD/20200701 EXP/20201228*

*DTE/20200701*

*\*\* END OF RECORD - CONFIRM WITH ORI/VAVSP0000 VIRGINIA STATE POLICE - HEADQUARTERS*

**PETITION FOR EMERGENCY SUBSTANTIAL RISK ORDER**

Case No. ....

Commonwealth of Virginia VA. CODE § 19.2-152.13

General District Court  Circuit Court  
 Juvenile and Domestic Relations District Court

**RESPONDENT**

In re: 

LAST	FIRST	MIDDLE

  
.....  
RESPONDENT'S ADDRESS/LOCATION  
.....

**RESPONDENT IDENTIFIERS (IF KNOWN)**

RACE	SEX	BORN			HT.		WGT.	EYES	HAIR
		MO.	DAY	YR.	FT.	IN.			
		SSN							
DRIVER'S LICENSE NO.						STATE		EXP.	

I, the undersigned, assert under oath that an independent investigation has been conducted by law enforcement that determined that grounds for this petition exist, specifically that there is reason to believe that the Respondent poses a substantial risk of personal injury to self or others in the near future by the Respondent's possession or acquisition of a firearm and state the following in support of this Petition:

.....  
 See accompanying affidavit.

I further assert that this proceeding is being commenced where the Respondent  
 has his principal residence OR  
 has engaged in any conduct upon which this petition is based.

Therefore, I respectfully request the issuance of an emergency substantial risk order.

.....  
PRINTED NAME  ATTORNEY FOR THE COMMONWEALTH  LAW-ENFORCEMENT OFFICER DATE

.....  
NAME OF AGENCY (If law-enforcement officer, include badge and code no.) Subscribed and sworn to before me this day in person

.....  
DATE  JUDGE  MAGISTRATE

**FOR NOTARY PUBLIC'S USE ONLY:**  
State of .....  City  County of .....  
Acknowledged, subscribed and sworn to before me this ..... day of ....., 20 ....  
.....  
NOTARY REGISTRATION NUMBER NOTARY PUBLIC (My commission expires: .....)