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Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2019-2

TO: All Law Enforcement Chief Executives

FROM: Gurbir S. Grewal, Attorney General

DATE: August 15, 2019

SUBJECT: Attorney General Directive Pursuant to the Extreme Risk Protective Order Act of 2018

1. INTRODUCTION AND OVERVIEW

1.1 The Statute and its Purpose.

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

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

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



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

1.2 Applicability of Directive.

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

1.3 Non-Enforceability of Rights by Third Parties.

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

1.4 Attorney General Order Issuing Directive.

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

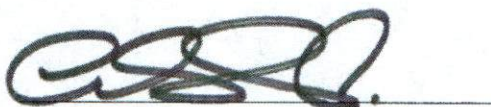
¹ Statement of Bill Introduced A.1217 at 7.

County Prosecutors to the Attorney General (as required by Section II.I, above) also shall be made available to the public upon request and shall be posted on the agency's website.

All written reports created or submitted pursuant to this Directive that identify specific officers are confidential and not subject to public disclosure.

IV. Effective Date

This Directive shall take effect immediately upon issuance. All EW System policies shall be adopted and/or revised in accordance with this Directive within 60 days.



Gurbir S. Grewal
Attorney General

ATTEST:

Elie Honig
Director, Division of Criminal Justice
Issued on: March 20, 2018