

Emergency Substantial Risk Orders

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What is an Emergency Substantial Risk Order (ESRO)?

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- Established by Virginia Code § 19.2-152.13-152.17 which became effective July 1, 2020.
- An ESRO can be issued by a magistrate or judge when they've found probable cause to believe that "a person poses a substantial risk of personal injury to [themselves] or others in the near future by such person's possession or acquisition of a firearm."
- ESROs prohibit the person who poses that substantial risk (the "Respondent") from purchasing, possessing, or transporting a firearm for the duration of the order.
- The expiration on an ESRO is fourteen (14) days after issuance, at 11:59 p.m.

Okay, how does a judge or magistrate decide to issue one of these ESROs?

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- A law enforcement officer or Commonwealth's Attorney can petition for an ESRO.
- A petition must be made under oath with a written affidavit that lays out the probable cause to believe the Respondent poses a substantial risk to themselves or others by possession or acquisition of a firearm.
- In determining whether probable cause exists – or sufficient reason based on known information to believe that the standard is met - for the issuance of an ESRO, the statutes specify that the magistrate or judge must consider any recent act of violence, force, or threat by the individual directed toward another person or toward themselves.

An ESRO has been issued. What comes next?

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- The law enforcement officer who obtained the ESRO will serve it on the Respondent and direct that person to turn over or relinquish any firearms in their possession to law enforcement. Officers can seek a search warrant if they believe the person has not turned over firearms that they possess.
- The ESRO is also entered into the Virginia Criminal Information Network (VCIN) which provides other law enforcement agencies around the state (upon a search) with the information that the person is forbidden from possessing or purchasing a firearm.
- Not later than 14 days after the issuance of an emergency substantial risk order, the Arlington County Circuit Court will hold a hearing to determine whether a substantial risk order should be entered. If the court finds by clear and convincing evidence that the person poses a substantial risk of personal injury to himself or to other individuals in the near future by such person's possession or acquisition of a firearm, the court shall issue a substantial risk order, which prohibits the Respondent purchasing, possessing, or transporting a firearm for the duration of the order – up to 180 days or 6 months.
- The court can extend the order beyond the 180 days, on a motion from law enforcement or the Commonwealth filed before the expiration of the order.

What should I do if I believe that an ESRO may be necessary to protect myself or a loved one?

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- Call 911 in any situation where there is an imminent safety risk.
- If possible, always alert the 911 operator to the presence of firearms at a location, and any threats made by a person to harm themselves or others. This will help inform the response and aid in everyone's safety. When law enforcement personnel arrive, inform them of the presence and known locations/status of firearms as well.
- Advise responding personnel of the reason you believe an ESRO may be necessary, including mental health history or prior incidents. A law enforcement officer must then investigate and if appropriate, petition for an ESRO.