

DISTRICT COURT, WELD COUNTY, STATE OF COLORADO Court Address: 901 9 <sup>th</sup> Avenue, Greeley, Colorado 80631 Mailing Address: P.O. Box 2038, Greeley CO 80632-2038	
<hr/> <b>ADMINISTRATIVE ORDER 2020-02</b>	<b>▲ COURT USE ONLY ▲</b> <hr/> Case No. 2020 CV 01  Division: 1
<b>ORDER REGARDING THE PROCESS FOR THE TEMPORARY SEALING OF          TEMPORARY EXTREME RISK PROTECTION ORDER PROCEEDINGS FILED          PURSUANT TO C.R.S. §13-14.5-101, et seq.</b>	

On April 12, 2019, Governor Jared Polis signed into law the provisions of House Bill 19-1177 (the “Deputy Zackari Parrish III Violence Prevention Act”), which adds article 14.5 to title 13, C.R.S. and sets forth procedures for obtaining an extreme risk restraining order based on allegations that the respondent poses a significant risk of causing personal injury to self or others in the near future by having in his or her custody or control a firearm, or by purchasing, possessing, or receiving a firearm. C.R.S. §§13-14.5-103(1), -104(3). Colorado courts have been authorized to accept petitions requesting the issuance of an extreme risk protection since January 1, 2020. C.R.S. §13-14.5-114(4).

A petition for a temporary extreme risk protection order (“TERPO”) may be filed by a household member of the respondent, or a law enforcement officer or law enforcement agency. C.R.S. §13-14.5-103(1). If the petitioner is a law enforcement officer or law enforcement agency, the petitioner must concurrently file a sworn affidavit requesting issuance of a search warrant to search for any firearms in the possession or control of the respondent at a location or locations to be listed in the search warrant. *Id.*

A warrant to search for and take possession of firearms in the possession or control of a person against whom a TERPO has been entered may be issued by the court, under newly enacted C.R.S. §16-3-301.5, if all of the requirements of C.R.S. §16-3-303 have been met, and the affidavit and application for the TERPO search warrant establishes probable cause that: (1) the respondent is the person named in the extreme risk protection order or temporary extreme risk protection order; (2) the named person is in possession of one or more firearms; (3) the location of said firearms; and (4) any other information relied upon by the applicant and why the applicant considers this information credible and reliable. A request for a no-knock TERPO search warrant may be granted by the court, provided each of the statutory requirements for the issuance of a no-knock search warrant are met. C.R.S. §16-3-303(4).

Although the ERPO and TERPO statutes are silent on this issue, this court believes that law enforcement personnel are required to tender a return and inventory to the court, as well as provide to the restrained party a copy of the search warrant and a list of the property taken after executing a TERPO or ERPO search warrant, as is required for all other search warrants issued pursuant to Colorado law. *See* C.R.S. §16-3-305(5) (duty of all peace officers executing a search warrant to “make due return thereof” as provided for by rule of the supreme court) and Crim.P. 41(d)(5) (peace officers executing a search warrant must provide to the person from whom property was taken a copy of the warrant and receipt listing the property taken, and a return shall promptly be made by the officer to the issuing court with an inventory of the property taken).

The procedure that is utilized in the 19<sup>th</sup> Judicial District for the majority of warrants issued to search for evidence of criminal activity involves the affidavit and search warrant being uploaded to the miscellaneous criminal case file after the return and inventory is made to the court by the officer executing the search warrant. Because search warrants issued pursuant to C.R.S. §16-3-301.5 are tied directly to the TERPO or ERPO, the affidavit/application, search warrant, and return and inventory should be filed in the protection order case and not the miscellaneous criminal case file.

The petition for TERPO must be heard on the day the petition is filed or the day following the day the petition was filed. C.R.S. §13-14.5-103(4). Because a law enforcement officer/agency petitioner must concurrently file a request for a search warrant to search for and seize firearms with the petition for TERPO if the officer believes that sufficient grounds exist to support the search warrant request, the judge presiding over the TERPO will also review the application/affidavit for the search warrant. Law enforcement personnel is tasked with serving the respondent with the TERPO, C.R.S. §13-14.5-103(7), which may occur at the same time the search warrant is executed when the respondent is present at the location being searched.

If the court denies the petitioner's request for a TERPO, then grounds would not exist for the issuance of a TERPO search warrant. C.R.S. §16-3-301(5)(a) (probable cause must exist that the named person is a respondent in an extreme risk protection order or a temporary extreme risk protection order). However, if the court grants the request for a TERPO, there must be a finding by the court, by a preponderance of the evidence standard, that the respondent "poses a significant risk of causing personal injury to self or others in the near future by having in his or her custody or control a firearm or by purchasing, possessing, or receiving a firearm...." To support the issuance of a search warrant, there must be a probable cause finding by the court that the respondent is in possession of one or more firearms.

The combination of the circumstances related to these findings—that the respondent poses a significant risk of self-harm or harming others and the respondent is in possession of a firearm—may require law enforcement personnel to take special precautions and employ particularized procedures when serving the search warrant to ensure the safety of the respondent, the officers, and others. Law enforcement officials are in the best position to assess these circumstances, including whether public access to the TERPO file prior to execution of the search warrant would pose a risk of harm to anyone.

If a law enforcement officer or agency is the petitioner in a TERPO proceeding and concurrently tenders an affidavit/application for a search warrant, the

officer/agency petitioner may request either verbally during the hearing or in writing in the affidavit/application for a search warrant that the file remain sealed until the search warrant is executed. The judge presiding over the TERPO hearing may consider the information presented by the officer/agency petitioner and balance the safety risks against the public interest in the immediate access to the contents of the TERPO file, when determining whether to seal the contents of the file. If the court determines that it is necessary to seal the file pending the execution of the search warrant, the court should limit the duration of the order to the amount of time reasonably necessary for law enforcement officials to execute the search warrant. Although not squarely on point, C.R.C.P. 121, sect. 1-5 provides authority to the court to limit access to court files upon the motion of any party to a civil action, if the court finds that the harm to the privacy of a person in interest outweighs the public interest. An order limiting access to a civil court file shall specify the nature of the limitation, the duration of the limitation, and the reason for the limitation. *Id.* Certainly, the risk of physical harm to persons presents an even higher need for protective measures than the protection of a person's privacy interest. In addition, C.R.S. 24-72-305(5) authorizes the custodian of criminal justice records to deny access to records of investigations or investigatory files "compiled for any other law enforcement purpose," and the affidavit/application for a TERPO search warrant appears to qualify under this section.

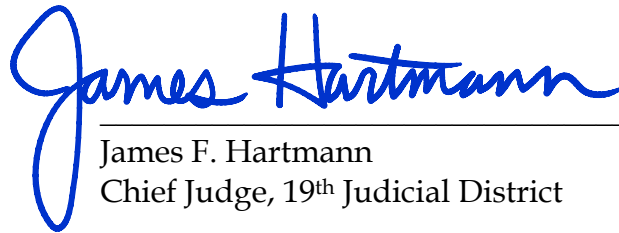
If the court orders the file to remain sealed, the order shall contain the nature of the limitation, the duration of the limitation, and the reasons for the limitation. The order to seal the file shall expire on the date listed in the order or as otherwise articulated by the court on the record, unless extended by the court for good cause.

The judge issuing the order to seal the file shall review the case on the date the order is scheduled to expire, and if an extension for the order sealing the case has not been requested or granted by the court, order any information in the file that is subject to public access to be unsealed. There may be information in the court file that must remain sealed, suppressed, or protected, such as mental health or psychological records,

and this order does not authorize release of information that is not subject to public access pursuant to Chief Justice Directive 05-01, or Colorado or federal law.

Dated: January 9, 2020

BY THE COURT:



James F. Hartmann  
Chief Judge, 19<sup>th</sup> Judicial District