



VIRGINIA

SUBSTANTIAL RISK ORDERS

A GUIDE TO THE PROCESS



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VIRGINIA

Substantial Risk Orders Process

Authorized petitioners/complainants for a substantial risk order in Virginia:

- One attorney for the Commonwealth
- One law enforcement officer

EMERGENCY SRO INDEPENDENT INVESTIGATION

Law enforcement shall evaluate whether grounds for an Emergency SRO petition exist.

LAW ENFORCEMENT DETERMINES GROUNDS TO ISSUE AN EMERGENCY SRO EXIST AND PETITIONER FILES COMPLAINT FOR AN EMERGENCY SRO

If law enforcement determines that the grounds for an Emergency SRO petition exist, a law enforcement officer or attorney for the Commonwealth may file a petition for an Emergency SRO from a judge of a district court, general district court, or juvenile and domestic relations district court or a magistrate describing how the respondent poses a substantial risk of personal injury to himself or others in the near future by such person's possession or acquisition of a firearm. The petition must be made under oath and supported by an affidavit.

LAW ENFORCEMENT DETERMINES GROUNDS TO ISSUE AN EMERGENCY SRO DO NOT EXIST

If law enforcement determines that grounds for issuance of an Emergency SRO do not exist, the petitioner must not file a petition for an Emergency SRO.

ASSESS EMERGENCY SRO PETITION ON AN EX PARTE BASIS

Upon filing of the petition, a judge of a district court, general district court, or juvenile and domestic relations district court or a magistrate decides whether probable cause exists to issue an Emergency SRO.

IF AN EMERGENCY SRO IS ISSUED BY A COURT OR MAGISTRATE, UPDATE THE BACKGROUND CHECK SYSTEM.

By the end of the business day of which the Emergency SRO was issued, the court or magistrate enters and transfers electronically the identifying information of the petitioner to the Virginia Criminal Information Network (VCIN).

The court or magistrate shall forward a copy of the Emergency SRO to the primary law-enforcement agency responsible for service and entry of the Emergency SRO. Upon receipt of this identifying information and a copy of the Emergency SRO, the law-enforcement agency shall verify and modify the identifying information and other information required by the Department of State Police in the VCIN.

IF AN EMERGENCY SRO IS ISSUED BY A CIRCUIT COURT, UPDATE THE BACKGROUND CHECK SYSTEM.

By the end of the business day of which the Emergency SRO was issued, the clerk of the circuit court shall forward an attested copy of the order containing the identifying information of the petitioner to the primary law-enforcement agency providing service and entry of the order.

Upon receipt of the Emergency SRO, the law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department into the VCIN.

EMERGENCY SRO IS NOT ISSUED

If the judge finds no probable cause and declines to issue a temporary order, the judge may decline to issue an Emergency SRO.

LAW ENFORCEMENT SERVES THE EMERGENCY SRO

Within a reasonable time after the issuance of the order law enforcement personally serves the respondent with a copy of the Emergency SRO, petition, supporting affidavit, and notice of the respondent's right to a hearing and the right to be represented by counsel at such hearing.

RELINQUISHMENT OF FIREARM(S) AND CONCEALED HANDGUN PERMIT AND REVOCATION OF CONCEALED HANDGUN PERMIT

The law-enforcement agency executing the Emergency SRO shall give the respondent an opportunity to voluntarily relinquish any firearm in their possession and shall take all firearms that are voluntarily relinquished by the respondent into custody.

The respondent must surrender their concealed handgun permit, if they have one, to the court that issued the Emergency SRO.

Upon receipt of record of the Emergency SRO, the Central Criminal Records Exchange notifies the court that the respondent's concealed handgun permit was revoked. The court shall revoke the respondent's permit and notify State Police and the respondent that the permit was revoked.

Flowchart continued on page 3

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Substantial Risk Orders Process (continued)

UPDATE THE BACKGROUND CHECK SYSTEM

Upon serving the respondent, the law-enforcement agency shall enter the date and time of service and other appropriate information required into the VCIN and make due return to the court.

PROCEED WITH A HEARING TO DETERMINE WHETHER AN SRO SHOULD BE ENTERED

Within 14 days of the issuance of the Emergency SRO, the circuit court for the jurisdiction in which the Emergency SRO was issued determines whether to issue an SRO for up to 180 days.

If the respondent did not appear at the hearing because law enforcement did not personally served notice of the hearing or the respondent was incarcerated and not transported to the hearing, the court may extend the ESRO for a maximum of 14 days and specify a date for the hearing. Law enforcement must serve the extended ESRO on the respondent and make due return to the court.

COURT ISSUES AN SRO

The court shall order that the previously relinquished firearm(s) be held by the agency that has custody of the firearm(s) for the duration of the SRO. The court also advises the respondent to voluntarily relinquish any firearm not previously taken into custody.

COURT DETERMINES NOT TO ISSUE AN SRO

If the court does not issue an SRO, the respondent may file a written request for the return of any firearm relinquished. If the law enforcement agency holding the firearms confirms that the respondent is no longer subject to an Emergency SRO or SRO and is not otherwise prohibited from possessing firearms, the agency shall return the firearms within five days of receiving the written request.

UPDATE THE BACKGROUND CHECK SYSTEM

By the end of the business day of which the SRO was issued, the circuit court shall enter and transfer electronically the respondent's identifying information to the VCIN. The circuit court shall forward an attested copy of the order containing the identifying information of the petitioner to the primary law-enforcement agency providing service and entry of the order.

Upon receipt of the SRO, the law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department into the VCIN.

LAW ENFORCEMENT SERVES THE SRO

Within a reasonable time after the issuance of the order law enforcement personally serves the respondent with a copy of the order.

UPDATE THE BACKGROUND CHECK SYSTEM

Upon serving the respondent, the law-enforcement agency shall enter the date and time of service and other appropriate information required into the VCIN and make due return to the court.

SRO MAY BE EXTENDED OR DISSOLVED

At any time before the expiration of an SRO, an attorney for the Commonwealth or a law enforcement officer may petition the court to extend the SRO for up to 180 days. There is no limit to how many times an SRO extension can be requested or issued.

No sooner than 30 days from the date the order was issued, the respondent may file a motion to dissolve the order. The respondent may do so only one time during the duration of the order.

Upon the expiration or dissolution of an SRO, the respondent may file a written request for the return of any firearm relinquished. If the law enforcement agency holding the firearms confirms that the respondent is no longer subject to an Emergency SRO or SRO and is not otherwise prohibited from possessing firearms, the agency shall return the firearms within five days of receiving the written request.

UPDATE BACKGROUND CHECK SYSTEM

Upon dissolution or modification of the SRO, the court will share an attested copy of the dissolution or modification order with the law-enforcement agency responsible for service and entry of the order. Upon receipt of the dissolution or modification order by the primary law-enforcement agency, the agency shall verify and enter any modification as necessary to the identifying information and other required information into the VCIN, serve the order and make due return to the court.

No sooner than 30 days from the date the order was issued, the respondent may file a motion to dissolve the order. The respondent may do so only one time during the duration of the order.

Upon the expiration or dissolution of an SRO, the respondent may file a written request for the return of any firearm relinquished. If the law enforcement agency holding the firearms confirms that the respondent is no longer subject to an Emergency SRO or SRO and is not otherwise prohibited from possessing firearms, the agency shall return the firearms within five days of receiving the written request.