

NOTICE TO THE BAR

PETITIONS FOR EXTREME RISK PROTECTIVE ORDERS – PROPOSED NEW COURT RULE 3:5B AND AMENDMENT TO RULE 7:1 – PUBLICATION FOR COMMENT

The Extreme Risk Protective Order Act of 2018 (L. 2018, c. 35; codified as N.J.S.A. 2C:58-20 et seq.), which becomes effective September 1, 2019, creates a process through which a family or household member, or a law enforcement officer, may apply for an Extreme Risk Protective Order ("ERPO") against a person who presents a significant danger of bodily injury to himself or others by possessing or purchasing a firearm. Under that statutorily established process, the court must hold a hearing on an expedited basis on the petition for issuance of a Temporary Extreme Risk Protective Order ("TERPO"), and then a hearing within 10 days of the filing date of the petition and on notice to the respondent before issuing a Final Extreme Risk Protection Order ("FERPO"). At both hearings, the prosecutor is to provide evidence in support of the petition, including any evidence regarding the eight statutory factors concerning the respondent's criminal and domestic violence history, history of threats, violence, use of force, drug and alcohol abuse, and recent acquisitions of firearms, ammunition or another deadly weapon. Issuance of a Temporary Extreme Risk Protective Order or a Final Extreme Risk Protective Order prohibits the respondent from possessing or purchasing a firearm or ammunition and from holding any firearms identification cards or permits.

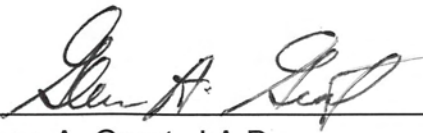
The Supreme Court invites written comments on proposed new Rule 3:5B, which sets forth procedures for obtaining Temporary Extreme Risk Protective Orders and Final Extreme Risk Protective Orders in the courts. The Court is also seeking comments on a related amendment to Rule 7:1 to clarify that Rule 3:5B governs the practice and procedure regarding the issuance of ERPOs.

Comments on the proposed rule should be submitted in writing by **April 15, 2019** to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attn: Comments on Proposed New Rule 3:5B
Hughes Justice Complex, P.O. Box 037
Trenton, New Jersey 08625-0037

Comments may also be submitted by email to: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by email should include their name and email address. Comments submitted in response to this notice are subject to public disclosure.

A handwritten signature in dark ink, appearing to read "Glenn A. Grant", is positioned above a solid horizontal line.

Glenn A. Grant, J.A.D.

Acting Administrative Director of the Courts

Dated: March 13, 2019

Rule 3:5B. Extreme Risk Protective Orders

(a) Filing a Petition for Temporary Extreme Risk Protective Order; General. A petitioner may file a petition, on a form prescribed by the Administrative Director of the Courts, for a temporary extreme risk protective order alleging that the respondent poses a significant danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm. For purposes of this rule, a "petitioner" is defined pursuant to N.J.S.A. 2C:58-21.

(1) Timing of Hearing. The court shall hear the petition in an expedited manner.

(2) Venue in Temporary Extreme Risk Protective Order Act Proceedings.

Venue in these actions shall be in the county where either the petitioner or the respondent resides or, if applicable, in the county where the offense occurred.

(3) Affidavit Required. A petition for a temporary extreme risk protective order shall include an affidavit setting forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist, and, to the extent available, the number, types, physical description, and locations of any firearms and ammunition that the petitioner believes to be currently controlled or possessed by the respondent.

(4) Petitioner's Appearance Before the Court. Except as provided in paragraph (b) of this rule, a petitioner for a temporary extreme risk protective order shall appear before a judge to personally testify on the record or by sworn complaint submitted pursuant to N.J.S.A. 2C:58-23. The court shall examine under oath the petitioner and any witnesses the petitioner may

produce. In lieu of examining the petitioner and any witnesses, the court may rely on an affidavit submitted in support of the petition.

(5) Evidence Supporting Issuance of Temporary Extreme Risk Protective Order.

The county prosecutor or designee shall produce for the court's consideration any available evidence, including, but not limited to, whether the respondent: (a) has any history of threats or acts of violence directed toward self or others; (b) has any history of use, attempted use, or threatened use of physical force against another person; (c) is the subject of a temporary or final restraining order or has violated a temporary or final restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991"; (d) is the subject of a temporary or final protective order or has violated a temporary or final protective order issued pursuant to the "Sexual Assault Survivor Protection Act of 2015"; (e) has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, stalking offense pursuant to N.J.S.A. 2C:12-10, or domestic violence enumerated in N.J.S.A. 2C:25-19; (f) has any prior arrests, pending charges, or convictions for any offense involving cruelty to animals or any history of acts involving cruelty to animals; (g) has any history of drug or alcohol abuse and/or recovery from this abuse; or (h) has recently acquired a firearm, ammunition, or other deadly weapon.

(6) Emergent Relief. If it appears that the respondent poses a significant danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm, the court shall, upon consideration of the petitioner's affidavit, complaint or testimony, order

emergency relief, including ex parte relief, in the nature of a temporary extreme risk protective order as authorized by N.J.S.A. 2C:58-20 et seq.

(b) Issuance of Temporary Extreme Risk Protection Order by Electronic Communication. A court may issue a temporary extreme risk protective order upon sworn oral testimony of a petitioner who is not physically present. After taking the oath, the petitioner must identify himself or herself, specify the purpose of the request, and disclose the basis of the petition. Such sworn oral testimony may be communicated to the court by telephone, radio or other means of electronic communication. The court or law enforcement officer assisting the petitioner shall contemporaneously record such sworn oral testimony. The court shall also make long hand notes summarizing the sworn oral testimony. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a temporary extreme risk protective order.

(c) Use of Electronic Form of Order Where Available. In vicinages having an approved electronic form of temporary extreme risk protective order, the temporary extreme risk protective order may be prepared electronically by the court on a computer or other device and transmitted electronically. In all other respects, the method of issuance and contents of the order shall be that required by paragraph (a) of this rule.

(d) Issuance of Temporary Extreme Risk Protective Order.

(1) Standard for Issuance of Temporary Extreme Risk Protective Order. The court shall issue a temporary extreme risk protective order if it finds good cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the petitioner, to the respondent, or to

others by having custody or control of, owning, possessing, purchasing or receiving a firearm.

- (2) Nature of Temporary Extreme Risk Protective Order. The temporary extreme risk protective order (A) shall prohibit the respondent from having custody or control of, owning, purchasing, possessing, or receiving firearms or ammunition, or from securing or holding a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.A. 2C:58-3, or a permit to carry a handgun pursuant to N.J.S.A. 2C:58-4 during the period the protective order is in effect, and (B) shall order the respondent to surrender to law enforcement (i) any firearms and any ammunition respondent's custody or control, or which the respondent possesses or owns, and (ii) any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent. Any such card or permit issued to the respondent shall be immediately revoked pursuant to N.J.S.A. 2C:58-3(f). The temporary extreme risk protective order shall be in effect statewide and shall remain in effect until a court issues a further order.
- (3) Forwarding and Service of Temporary Extreme Risk Protective Order. The court issuing the temporary extreme risk protective order shall immediately forward a copy of the order and the petition to the appropriate law enforcement agency for service on the respondent and to the police of the municipality in which the petitioner resides. The temporary extreme risk protective order shall immediately be served on the respondent by the police, except that an order issued during regular court hours may be

forwarded to the sheriff for immediate service on the respondent in accordance with the Rules of Court. If personal service cannot be effected on the respondent, the court may order appropriate substituted service. Unless the petitioner is a law enforcement officer, at no time shall the petitioner be asked or required to themselves serve any such order on the respondent.

- (4) Issuance of Search Warrant. If the petition for the temporary extreme risk protective order indicates that the respondent owns or possesses any firearms and/or ammunition, the court, in conjunction with the temporary extreme risk protective order, shall issue a search warrant for any firearms and ammunition in the respondent's custody or control, or which he or she possesses or owns.

(e) Final Extreme Risk Protective Order.

- (1) Timing of Hearing. A hearing for a final extreme risk protective order shall be held in the Superior Court within 10 days after the filing of a petition pursuant to N.J.S.A. 2C:58-23(a).
- (2) Venue in Final Extreme Risk Protective Order Proceedings. The hearing on the final extreme risk protective order is to be held in the county where the temporary ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere.
- (3) Notice to Respondent. The court shall notify the respondent of the date, time and place of the hearing on the final extreme risk protective order. A copy of the petition shall be served on the respondent.

- (4) Evidence Supporting Issuance of Final Extreme Risk Protective Order. The county prosecutor at the hearing shall produce any and all available evidence, including, but not limited to, evidence related to the factors enumerated in subparagraph (a)(5) of this rule.
- (5) Rights of Respondent at Hearing on Final Extreme Risk Protective Order. The respondent shall be provided all available discovery. The respondent shall be afforded the right to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to otherwise present information. The respondent shall have the right to be present at the hearing. The rules governing admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing.
- (6) Standard for Issuance of Final Extreme Risk Protective Order. The court shall issue a final extreme risk protective order if it finds by a preponderance of evidence at the hearing that the respondent poses a significant danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.
- (7) Nature of Final Extreme Risk Protective Order. The final extreme risk protective order (A) shall prohibit the respondent from having custody or control of, owning, purchasing, possessing, or receiving firearms or ammunition, or from securing or holding a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.A. 2C:58-3, or a permit to carry a handgun pursuant to N.J.S.A. 2C:58-4 during the period the protective order is in effect, and (B) shall order the respondent to surrender to law enforcement (i) any firearms and/or ammunition in respondent's

custody or control, or which the respondent possesses or owns, and (ii) any firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun held by the respondent. Any such card or permit issued to the respondent shall be immediately revoked pursuant to N.J.S.A. 2C:58-3(f). The final extreme risk protective order shall be in effect statewide and shall remain in effect until a court issues a further order.

- (8) Issuance of Search Warrant. If the petition for the temporary extreme risk protective order indicates that the respondent owns or possesses any firearms or ammunition, the court, in conjunction with the final extreme risk protective order, shall issue a search warrant for any firearms and/or ammunition in the respondent's custody or control, or which he or she possesses or owns.

(f) Termination of Final Extreme Risk Protective Order. The petitioner or respondent may file a petition for termination of a final extreme risk protective order at any time following issuance of the order. The court, on notice (1) to the petitioner and the respondent, (2) to the appropriate law enforcement agency, and (3) to the county prosecutor, may terminate the final extreme risk protective order after a hearing. During the termination hearing, the court shall consider the factors enumerated in subparagraph (a)(5) of this rule, as well as any other relevant evidence, including, but not limited to, whether the respondent has received, or is receiving, mental health treatment. If the respondent petitioned for termination, respondent shall bear the burden at the hearing of proving by a preponderance of the evidence that he or she no longer poses a significant danger of causing bodily injury to self or to other persons by having custody or control of, owning, possessing, purchasing, or receiving a firearm.

Note: Adopted xxxxxxxx, 2019 to be effective September 1, 2019.

7:1. Scope

The rules in Part VII govern the practice and procedure in the municipal courts in all matters within their statutory jurisdiction, including disorderly and petty disorderly persons offenses; other non-indictable offenses not within the exclusive jurisdiction of the Superior Court; violations of motor vehicle and traffic, fish and game, and boating laws; proceedings to collect penalties where jurisdiction is granted by statute; violations of county and municipal ordinances; and all other proceedings in which jurisdiction is granted by statute. The rules in Part III govern the practice and procedure in indictable actions; [, and] Rule 5:7A governs the practice and procedure in the issuance of temporary restraining orders pursuant to the Prevention of Domestic Violence Act of 1990; and Rule 3:5B governs the practice and procedure in the issuance of Extreme Risk Protective Orders pursuant to the Extreme Risk Protective Order Act of 2018 (N.J.S.A. 2C:58-20 et seq.).

Note: Source-R. (1969) 7:1. Adopted October 6, 1997 to be effective February 1, 1998; amended xxxxxxx, 2019 to be effective September 1, 2019.