



Telephone (703) 971-6262
Fax (703) 971-3032
E-mail: leedist@fairfaxcounty.gov
Web site: www.fairfaxcounty.gov/lee

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX



6121 Franconia Road
Alexandria, VA 22310

Rodney L. Lusk
LEE DISTRICT SUPERVISOR

Board Matter

July 27, 2021

Mr. Chairman—on July 1, 2020, the Commonwealth of Virginia’s Emergency Substantial Risk Order (ESRO) law, commonly referred to as a “red flag law,” went into effect, making Virginia the 19th state to enact such legislation.

Virginia’s ESRO law enables the police to investigate and seek a court order to temporarily remove a gun or guns from individuals who have been determined to be an imminent danger to themselves or others. Such investigations are predicated upon the reporting of a credible concern to the Office of the Commonwealth Attorney, law-enforcement officer, circuit court judge, general district court, juvenile and domestic relations district court, or a magistrate.

The law requires that an independent investigation be conducted by law enforcement which determines that grounds for the petition exist, and that the petition shall expire within fourteen days of issuance. Additionally, the law allows for the subject of an order to file an appeal to dissolve the order at any time.

While Supervisor Walkinshaw, yourself, and I recognize and applaud the actions taken by the legislature to enact this life-saving legislation, we also recognize that public awareness around

this legislation remains low. Recognizing that fact, we make the following motions:

- That the County Executive Direct the Office of Public Affairs (OPA) to undertake a public awareness campaign to educate the residents of Fairfax County about the details of Virginia's ESRO law;
- that OPA liaise with the Office of the Commonwealth Attorney, as well as any other appropriate body designated to issue emergency petitions, in order to ensure that all resources shared by OPA are accurate, clear and accessible;
- and that OPA report back to the Board on the outcome of the public outreach campaign so that relevant information could potentially be presented at a future Public Safety Committee meeting if deemed appropriate.

These motions have been vetted through the Office of Public Affairs, as well as the Office of the Commonwealth Attorney, and have been brought forward without objection.

Additionally, we have attached the relevant Virginia Code (19.2-152.13) for the record.

Thank you, Mr. Chairman.

§ 19.2-152.13. Emergency substantial risk order.

A. Upon the petition of an attorney for the Commonwealth or a law-enforcement officer, a judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate, upon a finding that there is probable cause to believe that a person 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, shall issue an ex parte emergency substantial risk order. Such order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of the order. In determining whether probable cause for the issuance of an order exists, the judge or magistrate shall consider any relevant evidence, including any recent act of violence, force, or threat as defined in § [19.2-152.7:1](#) by such person directed toward another person or toward himself. No petition shall be filed unless an independent investigation has been conducted by law enforcement that determines that grounds for the petition exist. The order shall contain a statement (i) informing the person who is subject to the order of the requirements and penalties under § [18.2-308.1:6](#), including that it is unlawful for such person to purchase, possess, or transport a firearm for the duration of the order and that such person is required to surrender his concealed handgun permit if he possesses such permit, and (ii) advising such person to voluntarily relinquish any firearm within his custody to the law-enforcement agency that serves the order.

B. The petition for an emergency substantial risk order shall be made under oath and shall be supported by an affidavit.

C. Upon service of an emergency substantial risk order, the person who is subject to the order shall be given the opportunity to voluntarily relinquish any firearm in his possession. The law-enforcement agency that executed the emergency substantial risk order shall take custody of all firearms that are voluntarily relinquished by such person. The law-enforcement agency that takes into custody a firearm pursuant to the order shall prepare a written receipt containing the name of the person who is subject to the order and the manufacturer, model, condition, and serial number of the firearm and shall provide a copy thereof to such person. Nothing in this subsection precludes a law-enforcement officer from later obtaining a search warrant for any firearms if the law-enforcement officer has reason to believe that the person who is subject to an emergency substantial risk order has not relinquished all firearms in his possession.

D. An emergency substantial risk order issued pursuant to this section shall expire at 11:59 p.m. on the fourteenth day following issuance of the order. If the expiration occurs on a day that the circuit court for the jurisdiction where the order was issued is not in session, the order shall be extended until 11:59 p.m. on the next day that the circuit court is in session. The person who is subject to the order may at any time file with the circuit court a motion to dissolve the order.

E. An emergency substantial risk order issued pursuant to this section is effective upon personal service on the person who is subject to the order. The order shall be served forthwith after issuance. A copy of the order, petition, and supporting affidavit shall be given to the person who is subject to the order together with a notice informing the person that he has a right to a hearing under § [19.2-152.14](#) and may be represented by counsel at the hearing.

F. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the emergency substantial risk order was issued, enter and transfer electronically to the Virginia Criminal Information Network (VCIN) established and maintained by the Department of State Police (Department) pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 the identifying information of the person who is subject to the order provided to the court or magistrate. A copy of an order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department into the VCIN, and the order shall be served forthwith upon the person who is subject to the order. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the identifying information of the person who is subject to the order provided to the court to the primary law-enforcement agency providing service and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department into the VCIN and the order shall be served forthwith upon the person who is subject to the order. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the VCIN and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested and forwarded forthwith to the primary 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 forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department into the VCIN and the order shall be served forthwith.

G. The law-enforcement agency that serves the emergency substantial risk order shall make due return to the circuit court, which shall be accompanied by a written inventory of all firearms relinquished.

H. Proceedings in which an emergency substantial risk order is sought pursuant to this section shall be commenced where the person who is subject to the order (i) has his principal residence or (ii) has engaged in any conduct upon which the petition for the emergency substantial risk order is based.

I. A proceeding for a substantial risk order shall be a separate civil legal proceeding subject to the same rules as civil proceedings.

2020, cc. [887](#), [888](#).