

Washtenaw County Sheriff's Office
Rule and Regulation
Extreme Risk Protections Orders (ERPO)
Reference Number: 8.46 RR



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I. INTRODUCTION

The purpose of Michigan's Extreme Risk Protection Order Act. MCL 691.1803 et seq. ("The Act"), is to keep guns out of the hands of those with intent to harm themselves or others and to save lives. The Act provides a mechanism, through court order, for temporarily removing firearms from individuals who pose a risk to themselves or others. The Act is also known as Michigan's "Red Flag Law."

This policy and procedure outlines the responsibilities and procedures of Washtenaw County Sheriff's Office (WCSO) staff in complying with the Act. As it is based upon statute, it is classified as a rule and regulation. I.e., it requires strict compliance and allows for little or no deviation from its terms.

II. PURPOSE

The purpose of this rule and regulation is to establish guidance for Sheriff's Office enforcement and application of the Act. It is intended to ensure WCSO's lawful compliance with The Act, maintain the public's trust and confidence in WCSO's enforcement of The Act, and fulfill WCSO's mission to protect life and property while enforcing The Act.

III. DEFINITIONS

- A. **Extreme Risk Protection Order (ERPO):** An order issued by a court when the court determines by a preponderance of the evidence that the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself or another individual by possessing a firearm and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation. The order prevents an individual from possessing or purchasing a firearm or possessing or applying for a concealed pistol license while in effect.
- B. **Corporation Counsel:** Washtenaw County's legal counsel. Corporation Counsel manages all County legal affairs including representing WCSO and petitioning LEOs in all proceedings related to Immediate Emergency ERPOs.
- C. **Ex Parte ERPO:** An ERPO issued without providing the respondent with notice or an opportunity to respond to the complaint before issuance by the court.

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- D. **Law Enforcement Agency:** A sheriff's office, department of state police, police department of a township, village, or incorporated city, or the public safety department of a community college, junior college, private college, or institution of higher education created under the state constitution.
- E. **LEO:** An acronym for Law Enforcement Officer as defined in section 2 of the Michigan commission on law enforcement standards act. See MCL 28.602(f).
- F. **Petitioner:** The individual who requests an ERPO.
- G. **Possession or Control:** Actual possession or constructive possession by which the individual has the right to control the firearm. Ownership is not a requirement for establishment of possession or control. Firearm may be in a different location than the individual.
- H. **Respondent:** The individual against whom an extreme risk protection order is requested.¹

IV. PROCEDURE

- A. Law Enforcement Initiated Petitions for ERPO
 - 1. Request for an Immediate Emergency ERPO: Issued verbally without notice or hearing upon verbal request.
 - a) The ERPO most commonly sought by a LEO will be an immediate emergency ERPO, which may be requested when a petitioning LEO is responding to an incident involving the respondent and the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm.
 - b) An Immediate Emergency ERPO requires the court find by clear and convincing evidence that: (1) immediate and irreparable injury, loss, or damage will result from the delay required to give notice, or (2) notice itself will precipitate

¹ This procedure also applies the term *Respondent* to individuals who have an ERPO, rather than switching to the term *Restrained Individual*.

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adverse action before an Immediate Emergency ERPO can be issued.

- c) A request for an Immediate Emergency ERPO must be approved by the petitioning LEO's on-duty command prior to the Immediate Emergency ERPO request being made.
- d) Once approved by on-duty command, an Immediate Emergency ERPO is requested via a telephone call with the on-duty or on-call judge. To determine the appropriate contact, consult the list maintained by Metro Dispatch.
- e) The petitioning LEO shall:
 - (1) inform the judge that they are recording the conversation,
 - (2) ensure speaker phone is activated,
 - (3) record the conversation on either the in-car camera, body worn camera, or other appropriate recording device and secure the recording as evidence, and
 - (4) document the Immediate Emergency ERPO request in the CLEMIS report.
- f) Upon issuance of an Immediate Emergency ERPO, the petitioning LEO shall personally serve the respondent with the ERPO in conformance with the procedures regarding [Service of an ERPO](#).
- g) If a search for firearms will be conducted, the LEO must complete the [Affidavit for Anticipatory Search Warrant](#) and obtain a signed [Anticipatory Search Warrant](#) from the judge authorizing the Immediate Emergency ERPO and Anticipatory Search Warrant
 - (1) If the request for an anticipatory search warrant is denied this must be documented in the CLEMIS report.
- h) All other procedures regarding tactical risk assessment and search warrants must be adhered to when executing an Anticipatory Search Warrant for non-compliance of an Immediate Emergency ERPO.

How to determine whether search will be conducted?

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- i) The petitioning LEO must file a Sworn Written Petition with the court detailing the facts and circumstances of the request within one (1) business day after issuance of the Immediate Emergency ERPO. A copy of the Sworn Written Petition shall also be attached to the CLEMIS report. Filing of the Sworn Written Petition shall be done in consultation with Corporation Counsel as follows:
 - (1) The petitioning LEO shall fill out the Sworn Written Petition and Confidential Information form as completely and accurately as possible with all information known about the request and any relevant information from CLEMIS, LEIN, court records, and any other accessible law enforcement records management system to ensure all relevant information is included in the Sworn Written Petition.
 - (2) Upon completion, the petitioning LEO shall send the Sworn Written Petition and Confidential Information form to on-duty command, the Police Services Captain, and the D/Lieutenant **prior to end of their shift.**
 - (3) The Police Services Captain, or D/Lieutenant in case of absence, shall forward the Sworn Written Petition and the Confidential Information form to Corporation Counsel as soon as possible. **Time is of the essence as the Sworn Written Petition and Confidential Information form must be filed within one (1) business day of the ERPO's issuance.**
- j) **The Washtenaw County Office of Corporation Counsel shall represent WCSO and the petitioning LEO in all proceedings related to the Immediate Emergency ERPO.**
- k) Per the Act, a due process hearing may be requested by the respondent.
 - (1) **The petitioning LEO must attend the hearing with Corporation Counsel.**
 - (2) **If the requesting officer is unable to attend, another WSCO LEO who was on the scene and has direct**

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knowledge of the Immediate Emergency ERPO shall attend instead.

- l) Request for a traditional ERPO: issued with notice and hearing after filing a complaint.
2. Request for a traditional ERPO: issued with notice and a hearing after filing a complaint.
- a) A LEO who believes an ERPO should be initiated shall seek approval from on-duty command prior to initiating any ERPO action.
 - b) Upon approval, an ERPO shall be sought by filing a complaint with the Family Division of the Circuit Court.
 - (1) The complaint shall be filed on forms approved by the State Court Administrative Office (“SCAO”). There is a [Complaint for Adult Respondents](#) and a [Complaint for Minor Respondents](#).
 - (2) A [Confidential Information](#) form shall be filed with the complaint.
 - c) **All complaints shall be reviewed and filed with the court by Corporation Counsel.** The process for review shall be as follows:
 - (1) Upon approval by on-duty command, the petitioning LEO shall fill out a complaint and confidential information form as completely and accurately as possible with all information known about the request and any relevant information from CLEMIS, LEIN, court records, and any other accessible law enforcement information or records management system to ensure all relevant information is included in the complaint.
 - (2) Upon completion, the petitioning LEO shall send the complaint and confidential information form to on-duty command, the Police Services Captain, and the D/Lieutenant.

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- (3) The Police Services Captain, or D/Lieutenant in case of absence, shall forward the complaint and the Confidential Information form to Corporation Counsel.
 - d) Corporation Counsel shall represent WCSO and the petitioning LEO in all proceedings related to the complaint both before, during, and after issuance of the ERPO or denial by the Court.
 - e) For an ERPO to be issued the complaint must:
 - (1) state facts showing the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm, and
 - (2) has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
 - f) **A respondent need not own a firearm** for an ERPO to be sought and issued. An ERPO will prohibit respondent from possessing and purchasing a firearm, surrendering a current CPL, or obtaining a License to Purchase Permit.
 - g) The complaint shall be filled out as completely and accurately as possible with all information known by the petitioning LEO who shall use CLEMIS, LEIN, court records, and any other accessible law enforcement information or records management system to ensure all relevant information is added to the complaint.
 - h) Upon filing of the complaint, in consultation with Corporation Counsel, the petitioning LEO shall ensure the respondent is served with the complaint. See [Service of an ERPO Complaint](#)
3. Request for an Ex Parte ERPO: issued without notice or a hearing after filing a complaint.
 - a) When appropriate, as determined by on-duty command, a LEO may seek an Ex Parte ERPO, which is sought and issued without written or oral notice to the respondent.

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- b) An ex parte ERPO requires the court find by clear and convincing evidence that:
 - (1) immediate and irreparable injury, loss, or damage will result from the delay required to give notice, or
 - (2) notice itself will precipitate adverse action before an ERPO can be issued.
- c) An ex parte ERPO is sought using the same [Complaint for Adult Respondents](#) or [Complaint for Minor Respondents](#) forms, but marking ex parte at the top of the complaint.
 - (1) Additionally, the petitioning LEO must:
 - (a) mark that the complaint is being sought ex parte in paragraph 8, and
 - (b) state specific facts to support the need for an ex parte ERPO.
- d) All complaints shall be reviewed by Corporation Counsel prior to filing. The process for review shall be as follows:
 - (1) Upon approval by on-duty command, the petitioning LEO shall fill out a complaint and confidential information form as completely and accurately as possible with all information known about the request and any relevant information from CLEMIS, LEIN, court records, and any other accessible law enforcement records management system to ensure all relevant information is included in the complaint.
 - (2) Upon completion, the petitioning LEO shall send the complaint and confidential information form to on-duty command, the Police Services Captain, and the D/Lieutenant prior to the end of their shift.
 - (3) The Police Services Captain, or D/Lieutenant in case of absence, shall forward the complaint and the confidential information form to Corporation Counsel.
- e) Corporation Counsel shall represent WCSO and the petitioning LEO in all proceedings related to the complaint both before and after issuance of the ERPO.

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- f) The Court shall determine whether an ERPO will be issued ex parte within one (1) business day of filing.
4. ERPO Extension
- a) An ERPO may be extended if the preponderance of the evidence shows the respondent can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure themselves or another individual by possessing a firearm and has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
 - b) A petitioning LEO, in consultation with Corporation Counsel, may file a [Motion to Extend](#) an ERPO if it is determined that the evidentiary standard can be met using information known by the petitioning LEO. The petitioning LEO shall use CLEMIS, LEIN, court records, and any other accessible law enforcement information or records management system to draft the motion.
 - (1) The Detective Bureau (DB) Office Specialist will keep a Smartsheet that tracks all ERPO's filed by the Sheriff's Office.
 - (2) A reminder will be sent to the Police Services Captain and D/Lieutenant 45 days before an ERPO is set to expire to consider whether a Motion to Extend should be filed.
5. Enforcement of ERPO
- a) An ERPO is effective and enforceable immediately after it is issued by the court.
 - b) The order may be enforced anywhere in this state by a law enforcement agency that:
 - (1) receives a true copy of the order,
 - (2) is shown a copy of the order, or
 - (3) has verified its existence in LEIN.

B. LEIN Entry and FBI Notification

1. ERPO Petitioned by WCSO

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- a) When an ERPO is initiated by a WCSO LEO, whether as a written complaint or request for an Immediate Emergency ERPO, entry of the ERPO into LEIN and with the FBI is the responsibility of Metro Dispatch.
 - b) The petitioning LEO is responsible for notifying Metro Dispatch when the ERPO is issued and if they become aware of any changes to the ERPO as outlined in subsection b) and c).
 - c) LEIN entry shall be updated if any of the following information is received:
 - (1) the respondent is served with the ERPO;
 - (2) the ERPO is rescinded, modified, or extended;
 - (3) the ERPO expires.
2. ERPO Not Petitioned by WCSO
 - a) The Extreme Risk Protection Order designates the law enforcement agency that shall be responsible for entering the ERPO with the FBI and entering the ERPO into LEIN.
 - (1) WCSO may be responsible for entering the information even though it did not petition the ERPO.
 - (2) Metro dispatch is responsible for entering an ERPO that was not petitioned by WCSO.
 - b) The above procedure in B. i. b) and c) shall be followed for LEIN entry and FBI notification.
- C. Service
1. Standard Service Responsibilities of the Petitioning LEO
 - a) In consultation with Corporation Counsel, the petitioning LEO shall ensure the respondent is properly served with any filed [complaint](#) or [motion](#) and any [ERPO](#).
 - b) Service can be effectuated by personal service, registered or certified mail with a return receipt to the respondent's last known address, or by any other means allowable under the Michigan Court Rules.

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- (1) Service of the ERPO does not need to be completed by the petitioning LEO, it may be served by any LEO.
2. Service of an ERPO Ordering the Immediate Surrender of Firearms
- a) An ERPO ordering the immediate surrender of firearms is statutorily required to be personally served on the respondent by any LEO.
- b) The petitioning LEO shall immediately notify on-duty command that an ERPO for immediate surrender of firearms has been issued and must be personally served on the respondent by an LEO.
- Is this for civilian-filed petitions? c) If unrelated to any current WCSO investigation, a new CFS number shall be generated.
- (1) Offense code C3359 shall be verified in Clemis.
- d) Complete the Affidavit for an Anticipatory Search Warrant for the residence where the individual resides and/or where the search will be conducted in the event of non-compliance with the ERPO for Immediate Surrender of Firearms.
- e) Procedure for tactical risk assessment shall be followed for service of the ERPO for Immediate Surrender of Firearms.
- D. Notice
1. Verbal Notification to Respondent
- a) If a respondent has not been served with an ERPO, any LEO who makes contact with the respondent *should* advise the respondent of the existence of the ERPO, the specific conduct enjoined, the penalties for violating the ERPO, and where a copy of the ERPO can be obtained.
- b) When a LEO verbally notifies a respondent of an ERPO, the LEO shall file a [Proof of Oral Notice](#) with the court that issued the ERPO within one (1) business day after the notice was given. This form shall also be attached to the CLEMIS report.
- E. Surrender and Release of Items
1. Assigning LEO to Handle Surrender

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- a) Generally, a respondent is given 24 hours to surrender any firearms, concealed pistol license, or licenses to purchase (collectively, "items").
 - b) If a WCSO LEO requested the ERPO, the **petitioning LEO shall be alerted and will handle the surrender**, if immediately available to do so.
 - c) **In all other situations, a LEO shall be assigned by on-duty command to immediately handle the surrender.** When possible, a LEO familiar with the ERPO should be assigned to handle the surrender.
 - d) The assigned LEO will check the ERPO to determine who is listed as the designated agency to receive the items and proceed under the applicable portion of this section.
2. WCSO is the Designated Agency
- a) The LEO assigned to handle the surrender shall:
 - (1) Secure and make any weapons safe.
 - (2) Draw a Call for Service (CFS) number.
 - (3) Use Clemis Code C3359 as the verified offense and the CLEMIS report template for the report.
 - (4) Complete the Weapon(s) Collection Form (Appendix A) and provide a copy to the respondent.
 - (5) Check all surrendered firearms in LEIN.
 - (6) Individually photograph all items being surrendered and attach photographs to the report.
 - (7) Surrendered CPL's and License to Purchase Permits shall be returned to the D/Lieutenant.
 - (a) If a CPL is surrendered a copy of the ERPO shall be sent by the D/Lieutenant to the Clerk's Office at mccoolj@washtenaw.org
 - (8) Follow applicable procedure for logging the items in the WCSO property and evidence system and room.
 - (9) NIBIN and e-trace must be completed for all firearms surrendered.

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3. WCSO is not the Designated Agency
 - a) The LEO assigned to handle the surrender shall:
 - (1) Secure and make any weapons safe.
 - (2) Draw a Call for Service (CFS) number.
 - (3) Use Clemis Code C3359 as the verified offense and the CLEMIS report template for the report.
 - (4) Complete the Weapon(s) Collection Form (Appendix A), including the designated agency as listed in the ERPO.
 - (5) Inform the respondent that:
 - (a) WCSO is not the designated agency but is accepting the weapons on behalf of the designated agency.
 - (b) The items will be turned over to the designated agency.
 - (c) Respondent will need to retrieve the items from the designated agency when the time comes.
 - (6) Provide a copy of the Weapon(s) Collection Form (Appendix A) to the respondent.
 - (7) Check all surrendered firearms in LEIN.
 - (8) Individually photograph all items being surrendered and attach photographs to the report.
 - (9) Log the items in the WCSO property and evidence system and room.
 - (10) Contact the designated agency to convey that WCSO has taken possession of items subject to an ERPO in which they were listed as the designated agency.
 - (11) Arrange for pick-up of items by the designated agency. Alternatively, arrange for drop-off of the items if the designated agency is unable or unwilling to retrieve the items.
 - (12) Follow applicable procedure for logging the items in the WCSO property and evidence system and room.

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4. Release or Destruction of Items
 - a) Respondent may reclaim items with a court order upon expiration or termination of the ERPO, unless otherwise prohibited by law.
 - b) Before releasing any items, a LEIN and NICS check shall be conducted to determine whether respondent is prohibited from owning or possessing firearms.
 - c) Release of the firearms, including the name of individual to whom the firearms were released, shall be documented in CLEMIS.
 - d) A court order may also allow release of firearms to an FFL or individual other than the respondent if ownership can be shown.
 - e) If a court order is received authorizing release of the firearms, but the respondent fails to reclaim the firearms within 90 days after expiration or termination of the ERPO, the firearms may be destroyed.
 - (1) All other procedures for destruction of seized property shall be followed.

F. ERPO Violation

1. Show Cause Motion
 - a) A [Motion to Show Cause for Violating ERPO](#) may be filed by an LEO if there is probable cause to believe respondent is violating an ERPO.
 - b) The LEO should use an [Affidavit of Probable Cause](#) to set forth the facts establishing probable cause of the violation.
 - c) If the court finds the motion and affidavit establish probable cause the court will issue an Order Regarding Motion to Show Cause for Violating ERPO either by setting a contempt hearing or issuing an arrest warrant.
2. Contempt Hearing when WCSO LEO is Petitioner
 - a) If the court sets a hearing, the motion and order shall be served on respondent in the manner set forth above for

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[Standard Service Responsibilities of the Petitioning LEO](#) in section III. B. i. of this rule and regulation.

- b) The hearing will be held within five (5) days. The LEO shall be responsible for appearing at the hearing. Corporation Counsel shall represent WCSO and the petitioning LEO at the hearing.
3. Contempt Hearing When Petitioner is not WCSO LEO
 - a) WCSO may receive notice of a respondent's failure to comply with an ERPO that a WCSO LEO did not petition. The Act requires WCSO to make a good-faith effort to determine whether there is evidence that the respondent failed to comply.
 - b) When notice is received from the court the Police Services Captain or D/Lieutenant shall assign an LEO to investigate the alleged failure to comply. The LEO shall use CLEMIS, LEIN, court records, and any other accessible law enforcement records management system to make a good-faith effort to determine if respondent complied with the ERPO.
 - c) The assigned LEO shall appear at the compliance hearing, which per the Act shall be held no later than five (5) days after the ERPO is served.
 - d) If at the hearing the court determines the respondent failed to comply and issues a bench warrant and search warrant, the LEO will alert on-duty command and proceed in accordance with the [Search Warrant](#) procedures outlined in section E. iv of this procedure.
4. Search Warrant
 - a) If the court issues a search warrant for an ERPO violation all other procedures regarding tactical risk assessment and search warrants must be adhered to when the search is executed.
 - b) Any items seized pursuant to a search warrant for an ERPO violation shall be processed and handled in accordance with the procedures for [Voluntary Surrender](#) as outlined above in section III. C. of this procedure.

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- G. Request for ERPO Petition from those outside WCSO
1. Other Washtenaw County Agency
 - a) Requests for an ERPO from another agency of Washtenaw County shall be directed to the Police Services Captain or D/Lieutenant.
 - b) The Act specifically allows Law Enforcement Agencies to seek an ERPO, but does not allow other types of government agencies to do so.
 - c) All requests will be taken under advisement, but it will be the ultimate authority of the Police Services Captain, D/Lieutenant or higher ranking command authority to determine whether an ERPO request from another government agency of Washtenaw County warrants any action by WCSO.
 - d) Other government agencies of Washtenaw County include by way of example but not limitation, the Prosecutor's office, Community Mental Health, Public Health, etc.
 - e) In all situations, the facts being sworn to in the complaint must be facts known by WCSO or verified through [law enforcement information or records management systems](#) as outlined above.
 - f) If it is determined that a complaint should be filed, Corporation Counsel will assist in drafting the complaint.
 - g) Corporation Counsel shall represent WCSO and the Petitioning LEO in all proceedings related to the complaint both before, during, and after issuance of the ERPO or denial by the court.
 2. Other Law Enforcement Agency
 - a) Requests for an ERPO from another Law Enforcement Agency shall be directed to the D/Lieutenant. Generally, WCSO will not seek an ERPO on behalf of another Law Enforcement Agency.
 - b) In all situations, the facts being sworn to in the complaint must be facts known by WCSO or verified through [law](#)

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[enforcement information or records management systems](#) as outlined above.

- c) If it is determined that a complaint should be filed, Corporation Counsel will assist in drafting the complaint.
3. Request from Citizen
- a) An LEO shall not complete a petition solely at the request of a citizen or on a citizen's behalf.
 - b) Citizens with questions about ERPOs should be referred to the trial court.²

V. MODIFICATION

- A. The Sheriff or Undersheriff may modify the provisions of this policy and procedure.

VI. COMPLIANCE

- A. All employees shall comply with all provisions of this rule and regulation. A violation of any section is a Class 1 offense and may result in corrective discipline.
- B. A violation of this policy and procedure may also be a violation of other Sheriff's Office professional conduct standards which may result in corrective disciplinary action up to and including discharge.

VII. State Court Administrative Office Forms

- A. Affidavit for Anticipatory Search Warrant:
<https://www.courts.michigan.gov/490907/siteassets/forms/scao-approved/cc458a.pdf>
- B. Affidavit of Probable Cause:
<https://www.courts.michigan.gov/499eb1/siteassets/forms/scao-approved/mc522.pdf>
- C. Anticipatory Search Warrant:
<https://www.courts.michigan.gov/490923/siteassets/forms/scao-approved/cc458.pdf>

² <https://www.washtenaw.org/4015/Extreme-Risk-Protection-Orders>

Washtenaw County Sheriff's Office
Rule and Regulation
Extreme Risk Protections Orders (ERPO)
Reference Number: 8.46 RR



- D. Complaint – Adult Respondent:
<https://www.courts.michigan.gov/4908f2/siteassets/forms/scao-approved/cc452.pdf>
- E. Complaint – Minor Respondent:
<https://www.courts.michigan.gov/4908d8/siteassets/forms/scao-approved/cc452m.pdf>
- F. Confidential Information:
<https://www.courts.michigan.gov/4908e8/siteassets/forms/scao-approved/cc450.pdf>
- G. Order – Adult Respondent:
<https://www.courts.michigan.gov/4908e0/siteassets/forms/scao-approved/cc453.pdf>
- H. Order – Minor Respondent:
<https://www.courts.michigan.gov/4908e9/siteassets/forms/scao-approved/cc453m.pdf>
- I. Immediate Emergency Ex Parte Order:
<https://www.courts.michigan.gov/492a1e/siteassets/forms/scao-approved/cc454.pdf>
- J. Motion to Modify, Terminate, or Extend Order:
<https://www.courts.michigan.gov/490917/siteassets/forms/scao-approved/cc460.pdf>
- K. Motion to Show Cause For Violating Order:
<https://www.courts.michigan.gov/49092e/siteassets/forms/scao-approved/cc462.pdf>
- L. Proof of Service/Oral Notice:
<https://www.courts.michigan.gov/490665/siteassets/forms/scao-approved/cc457.pdf>
- M. Sworn Written Petition After Immediate Emergency Ex Parte Order:
<https://www.courts.michigan.gov/490813/siteassets/forms/scao-approved/cc455.pdf>