
**IN THE
SUPREME COURT OF MARYLAND**

September Term, 2024
SCM-MISC-0005-2024

DONALD S. WILLEY and THE SECOND
AMENDMENT FOUNDATION

Appellants,

v.

ANTHONY G. BROWN, *et al.*,

Appellees.

CERTIFIED QUESTIONS OF LAW from the
United States District Court for the District of Maryland
Civil Case No. 23-2266-BAH
(The Honorable Brendan A. Hurson
United States District Judge)

BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

The certified questions before this Court involve Maryland’s version of what are commonly known as “red flag laws” (“RFLs”). Maryland’s red flag law was enacted by the General Assembly in 2018 as House Bill 1302, codified at MD Code Ann., Pub. Safety, §§ 601 *et seq.* (West 2018) (the “Maryland RFL”). The Maryland RFL authorizes Interim Extreme Risk Protection Orders (“ERPO”), MD Code Ann., Pub. Safety, § 5-603(a)(1), and Temporary Extreme Risk Protection Orders, MD Code Ann., Pub. Safety, § 5-604(a)(1), under which lawfully owned personal property (firearms and ammunition) may be seized upon a judicial finding “that there are reasonable grounds to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.” *Id.*

The certified questions request this Court to resolve the meaning of the phrase “reasonable grounds,” as used in these provisions, including whether that phrase is synonymous with “probable cause” as that term is used by the warrant requirement imposed by the Fourth Amendment. The Fourth Amendment provides that “[t]he right of the people to be secure *in their persons, houses, papers, and effects*, against unreasonable searches and seizures, shall not be violated, and *no Warrants shall issue, but upon probable cause, supported by Oath or affirmation . . .*” (emphases added). As interpreted

by this Court, Article 26 of the Maryland Declaration of Rights imposes the same requirements as the Fourth Amendment. M.D. CONST. art. XXVI. The certified questions thus implicate both the Fourth Amendment and Article 26. The Maryland RFL violates the requirement of “probable cause” because it authorizes the issuance of interim and temporary orders on a showing of the lower “reasonable grounds” standard rather than upon a showing of “probable cause,” as required by the United States Constitution and Article 26 of the Maryland Declaration of Rights.

I. The Maryland RFL Statutory Scheme

On April 24, 2018, Governor Hogan signed HB 1302 (the Maryland RFL) into law, permitting members of the judiciary of the state to issue ERPOs upon a determination that there are “reasonable grounds” to believe that the respondent poses a danger to themselves or others by possessing a firearm.¹ MD Code Ann., Pub. Safety, § 5-601(c) (West 2018). The Maryland RFL defines an ERPO as “a civil interim, temporary, or final protective order issued in accordance with this subtitle.” *Id.* It allows a wide range of individuals to petition for an ERPO, from medical providers and law enforcement officers, to spouses, family members, co-parents, dating or intimate partners, cohabitants, and guardians. *Id.* § 5-601(e)(2).

¹ https://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_250_hb1302E.pdf

Under the Maryland RFL, ERPOs are issued in three variations: Interim ERPOs, Temporary ERPOs, and Final ERPOs. Interim ERPOs are issued by district court commissioners after ordinary business hours, or during holidays or weekends, without a hearing and without the respondent present:

if the commissioner finds that there are **reasonable grounds** to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.

MD Code Ann., Pub. Safety, § 5-603(a)(1) (emphasis added). An Interim ERPO requires that a respondent:

surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and prohibit[s] the respondent from purchasing or possessing any firearm or ammunition for the duration of the interim [ERPO].

Id. § 5-603(a)(3). Once issued, an Interim ERPO (together with the petition seeking it) is “immediately” forwarded from the issuing court to the appropriate law enforcement agency and is then “immediately” served on the respondent by a law enforcement officer. *Id.* § 5-603(d)(1).

Temporary ERPOs are issued by a district court judge during ordinary business hours and can also be issued without the respondent present, but unlike an Interim ERPO, are issued “[a]fter a hearing . . . whether ex parte or otherwise” *Id.* § 5-604(a)(1). At this Temporary ERPO hearing, the judge is directed to consider only “(i) all relevant evidence presented by the petitioner; and (ii) the amount of time that has elapsed since any of the events

described in the petition.” *Id.*, §§ 5-604(a)(2)(i), (ii). The respondent has no statutory right to present evidence or to be heard either at the Interim ERPO proceeding or at the Temporary ERPO proceeding.

The standard for issuance of a Temporary ERPO is the same as for issuance of an Interim ERPO. That is, if the judge:

finds that there are **reasonable grounds** to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.

Id. § 5-604(a)(1)) (emphasis added). While Interim ERPOs remain in effect until the second day on which a district court is available to hold a Temporary ERPO hearing, *id.* § 5-603(b)(1)(ii), Temporary ERPOs “shall be effective for not more than 7 days after service of the order.” *Id.* § 5-604(c)(1). A Temporary ERPO may remain in effect for up to six months to effectuate service, or for “good cause.” *Id.* § 5-604(c)(2).

A Final ERPO hearing is conducted under MD Code Ann., Pub. Safety, § 5-605, which provides the respondent an “opportunity to be heard on the question of whether the judge should issue a final extreme risk protective order for a respondent.” *Id.* § 5-605(a). The judge may consider “all relevant evidence presented by the petitioner *and respondent.*” *Id.* § 5-605(c)(2)(i) (emphasis added). A Final ERPO may “prohibit the respondent from possessing a firearm if the judge finds by clear and convincing evidence that the respondent poses a

danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm,” *id.* § 5-605(c)(1)(ii), “not to exceed 1 year.” *Id.* § 5-605(b)(2)(iii).

In summary, Interim and Temporary ERPOs, *unlike* Final ERPOs, are issued if the judge or commissioner “finds that there are **reasonable grounds** to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.” *Id.* §§ 5-603(a)(1), 5-604(a)(1) (emphasis added). And both Interim and Temporary ERPOs “prohibit the respondent from possessing a firearm,” and purchasing firearms or ammunition. *Id.* Both Interim ERPOs and Temporary ERPOs require that the respondent immediately “surrender to law enforcement authorities any firearm and ammunition in the respondent’s possession.” *Id.* §§ 5-603(a)(3)(i), 5-604(a)(3)(i).

The Maryland RFL also imposes criminal penalties for non-compliance with Interim and Temporary ERPO surrender requirements. Respondents are warned that:

violation of an interim extreme risk protective order is a crime and that a law enforcement officer will arrest the respondent, with or without a warrant, and take the respondent into custody if the officer has **probable cause** to believe that the respondent has violated a provision of the [ERPO].

Id. § 5-603(b)(vi) (emphasis added). Additionally, once subject to an ERPO, respondents are subject to further search, criminal prosecution, imprisonment,

fine, or findings of contempt for failure to fully comply with the requirements of an ERPO. *Id.* §§ 5-607, 5-609.

II. Legislative History of the Maryland RFL

As first introduced, the Maryland RFL (introduced as HB 1302 on February 9, 2018), required that a court find “**reasonable cause** to believe that the respondent poses an immediate and present danger of causing injury to himself or herself or to another by having in the respondent’s custody or control or by owning, purchasing, possessing, or receiving a firearm or ammunition, the court shall issue an *ex parte* lethal violence protective order.”²

On March 10, 2018, the House Judiciary Committee extensively amended the original version of HB 1302 to require, *inter alia*, a finding by the judge “by a preponderance of the evidence” that there “are reasonable grounds” for the Order and amended the Bill to use that standard for the interim order and the temporary order.³ Under the Committee’s amendments, a Final ERPO Order could issue if the “judge finds by clear and convincing evidence that: (i) there are reasonable grounds” for the Order. The Committee’s report with

² <https://mgaleg.maryland.gov/2018RS/bills/hb/hb1302f.pdf> at 5 (emphasis added). Further, the “as introduced” version of HB 1302 also included a requirement that the government impose criminal penalties for violation of an ERPO only on a finding of “probable cause.”

³ See HB1302/822614/1 House Judiciary Committee Amendments, <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb1302/?ys=2018rs>

those amendments was submitted to the House of Delegates on March 14, 2018,⁴ and the text, as amended, was passed by the House on March 15, 2018.⁵

The burden of proof required for the issuance of an ERPO was the subject of extensive debate in the Maryland House of Delegates. On March 14, 2018, Delegate Kipke proposed amending the Maryland RFL to require judicial assessment under a “clear and convincing” evidence standard before ordering any removal of firearms from an individual’s residence,⁶ but that amendment was rejected by the House.⁷ Speaking in opposition to the amendment, Delegate Valentino-Smith—the Bill’s sponsor—acknowledged that the “probable cause” requirement for supporting the arrest of an individual for violating an ERPO was a higher burden than the reasonable grounds standard and the choice of “reasonable grounds” as the controlling standard was deliberate.⁸

⁴ See Text, Third Reading

<https://mgaleg.maryland.gov/mgaweb/Legislation/Details/hb1302/?ys=2018rs>

⁵ *Id.*

⁶ https://mgaleg.maryland.gov/2018RS/amds/bil_0002/HB1302_29392901.pdf, raising the standard for temporary ERPO to “clear and convincing” and proposing that the respondent be taken into civil custody upon service of a temporary ERPO.

⁷ <https://mgaleg.maryland.gov/mgaweb/FloorActions/Media/house-45-?year=2018RS> beginning at approximately 2:24:20.

⁸ See *id.* at approximately 2:31:20; HB1302/822614/1 House Judiciary Committee Amendment to HB 1302.

https://mgaleg.maryland.gov/2018RS/amds/bil_0002/HB1302_82261401.pdf

The version of HB 1302 that passed the House was revised by the Senate. On April 5, 2018, the Senate Judicial Proceedings Committee issued a report and amended language that struck the reference to the “preponderance of the evidence” standard. Instead, the Committee adopted the current language imposing only “reasonable grounds” as the standard for interim and temporary ERPO orders.⁹ On April 6, 2018, the Senate adopted the amended Bill as reported out by the Committee.¹⁰ On April 9, 2018, the House of Delegates concurred in the Senate amendments and the Bill was passed and enrolled by the General Assembly the same day.¹¹ As enacted, Maryland’s RFL requires only “reasonable grounds” for an ERPO Order and that standard does not require that the “reasonable grounds” be established by any “preponderance of the evidence” (as passed by the House) or by any other standard.

III. Procedural History of the Federal Case

On August 28, 2023, Donald S. Willey filed an amended complaint against Anthony G. Brown, Dorchester County, James W. Phillips Jr., Susan E. Webb, asserting claims for violation of the Fourth and Fourteenth

⁹ See HB1302/258778/1 Judicial Proceedings Committee Amendments to HB 1302.

<https://mgaleg.maryland.gov/mgawebbsite/Legislation/Details/hb1302/?ys=2018rs>

¹⁰ *Id.*

¹¹ *Id.*

Amendments, violation of the Second and Fourteenth Amendments, violation of the Fourteenth Amendment Equal Protection clause, violation of the Fourteenth Amendment “Stigma Plus,” retaliation under the First Amendment, and Malicious Use of Process. (E. 50-89).

Defendants moved to dismiss Plaintiffs’ amended complaint. (E. 7). And Plaintiffs moved for a preliminary injunction enjoining Defendants from enforcing the Maryland RFL. (E. 6). Defendants opposed the motion for preliminary injunction. (E. 7). The Court denied Plaintiffs’ motion for a preliminary injunction and denied the motions to dismiss on the basis that there “is no interpretation from the state’s highest court” on which a federal court could rely for a definition of “reasonable grounds” as used in the Maryland RFL. (E. 25, 49). Accordingly, the district court certified the two questions of law at issue to this court, “so that the Court may benefit from Maryland’s interpretation of its own law prior to ruling on the pending motions to dismiss.” (E. 1-2, 25).

QUESTIONS PRESENTED

1. What legal standard does the term “reasonable grounds” connote in the Maryland RFL, codified in Title Five of the Public Safety Article of Maryland Annotated Code?

2. Does the statute permit an ERPO to issue upon a standard less than probable cause?

STATEMENT OF MATERIAL FACTS

The federal district court certified questions of law pursuant to MD Code, Courts and Judicial Proceedings, § 12-603, which provides that this Court “may answer a question of law certified to it by a court of the United States or by an appellate court of another state or of a tribe, if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision, or statute of this State.” Accordingly, while MD Rule 8-504(a)(4) requires that the Brief of Appellants contain a “Statement of Facts” that are “material to a determination of the questions presented,” the questions certified the federal district court are purely legal in nature and require only that the Court interpret Maryland law, as thus certified or reformulated by this Court. The underlying facts of the case in federal district court and the procedural posture of the case in that court are set forth above in the Statement of the Case.

STANDARD OF REVIEW

This Court reviews statutory interpretations *de novo*. See *Lawrence v. State*, 475 Md. 384, 398 (2021). When a case comes to this Court on a certified question without an opinion below, review is similarly *de novo*. *Williams v.*

Morgan State Univ., 484 Md. 534, 541 (2023). See *Lyles v. Santander Consumer USA Inc.*, 478 Md. 588, 602 (2022) (“We read the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.”) (cleaned up).

SUMMARY OF ARGUMENT

The Maryland RFL is a deliberate attempt by the Maryland Legislature to lower the standard for search and seizure and make it easier for law enforcement to confiscate firearms. The Maryland RFL uses the standard “reasonable grounds” in two instances (for the issuance of Interim and Temporary ERPOs), while using the standard “probable cause” in *six instances*: the standard required to compel a mental health evaluation after an Interim or Temporary ERPO is served (thrice), the standard required with or without a warrant to arrest a respondent for violating an ERPO (twice), and the standard required to obtain a warrant for seizure of a firearm where a respondent failed to initially surrender a firearm (once). MD Code Ann., Pub. Safety, §§ 5-603(a)(4) & (b)(2)(vi), 5-604(a)(4), 5-605(c)(4), 5-607, 5-610(b).

This different usage makes clear that the RFL’s drafters did not intend for “reasonable grounds” and “probable cause” to be interchangeable or synonymous but rather intended for the terms to have different meanings. Otherwise, the General Assembly would not have used the “probable cause”

standard in certain instances, while using the “reasonable grounds” standard for issuance of Interim and Temporary ERPOs and still a third standard, “clear and convincing evidence” for Final ERPOs. This intent to impose different standards is confirmed by the legislative history of HB 1302. Precedent from this Court and from the United States Supreme Court makes clear that “reasonable grounds” is a substantively different and lower standard than “probable cause.” The Court should apply that precedent and answer the certified questions by holding that “reasonable grounds” as used in MD Code Ann., Pub. Safety, § 5-603 (Interim orders) and MD Code Ann., Pub. Safety, § 5-604 (Temporary orders) does not require any showing of probable cause and is a standard lower than probable cause. The federal district court will then apply this Court’s ruling in adjudicating the constitutionality of these provisions.

ARGUMENT

I. Introduction and Constitutional Provisions Involved

This case presents important issues involving the Fourth Amendment, the Fourteenth Amendment, and Article 26 of the Maryland Declaration of Rights. The Fourth Amendment is applicable to the States as incorporated by the Due Process Clause of the Fourteenth Amendment and “Article 26 of the Maryland Declaration of Rights provides the same protections as the Fourth

Amendment.” *Rovin v. State*, --- Md. ---, 2024 WL 3820064, at *14 (Aug. 24, 2024).

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, . . . and effects, against unreasonable searches and seizures, shall not be violated, and **no Warrants shall issue, but upon probable cause**, supported by Oath or affirmation

U.S. CONST. amend. IV (emphasis added).

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

nor shall any State deprive any person of life, liberty, or property, without due process of Law [the Due Process Clause of the Fourteenth Amendment].

U.S. CONST. amend. XIV, § 1.

Article 26 of the Maryland Declaration of Rights provides:

That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

The Fourth Amendment expressly applies not only to seizures of persons but also protects against seizures of “effects” and that obviously includes personal property. Article 26 likewise expressly protects “any person or property.” As stated in *United States v. Place*, 462 U.S. 696, 701 (1983), “the Court has viewed a seizure of personal property as *per se* unreasonable within

the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized.” *See also United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (“A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.”). A warrant based on probable cause is therefore indisputably required for the seizure of property unless some recognized exception applies. *See Illinois v. McArthur*, 531 U.S. 326, 331 (2001).

“[T]his Court has never interpreted the warrant requirement of the Fourth Amendment to require a particular label.” *Whittington v. State*, 474 Md. 1, 25 (2021). The United States Supreme Court has determined that a valid “warrant” satisfies three criteria. First, a warrant be issued by a neutral, disinterested magistrate. *Lo-ji Sales, Inc. v. New York*, 442 U.S. 319, 326 (1979). Second, the party seeking the warrant must demonstrate to the magistrate probable cause to believe that “the evidence sought will aid in a particular apprehension or conviction” for a particular offense. *Warden v. Hayden*, 387 U.S. 294, 307 (1967). Finally, “warrants must particularly describe the ‘things to be seized,’ ” as well as the place to be searched. *Dalia v. United States*, 441 U.S. 238, 255 (1979) (citations omitted). Courts in Maryland have held that the failure to use the word “warrant” does not absolve a court order of its “probable cause” burden. *Whittington*, 474 Md. at 27 (holding that

a court order directing placing a GPS tracker on a vehicle was a warrant for constitutional purposes). ERPOs are warrants.

In *United States v. Carpenter*, the United States Supreme Court addressed this very issue. 585 U.S. 296 (2018). There, the Court held that a court order failed to comply with the Fourth Amendment where the statute under which the order issued only required “‘reasonable grounds’ for believing records were ‘relevant and material to an ongoing investigation,’” a standard that the Court ruled “falls well short of the probable cause required for a warrant.” *Id.* at 317 (emphasis added). That the statute at issue authorized “orders” instead of “warrants” was immaterial. *See Whittington*, 474 Md. at 27.

As the federal district court here noted, “Defendants have not argued for the applicability of any recognized exception to the warrant requirement, nor do they contest that the ERPO is effectively a warrant.” (E. 24). That concession is well taken for the reasons noted by the district court *See* E. 24-25 & n.10. Interim and Temporary ERPOs are plainly “Warrants” within the meaning of the Fourth Amendment and Article 26. They are judicially issued writs that direct and authorize law enforcement to serve and enforce an ERPO on a Maryland RFL respondent, and seize the respondent’s firearms and ammunition. The Maryland RFL identifies two authorities that can receive and assess petitions for interim ERPOs: judges of district courts and district court commissioners. Md. Code Ann., Pub Safety, §§ 5-602(b)(1), (2). Similarly,

temporary ERPOs can be ordered by district court judges. *Id.* § 5-604(a). District Court judges and commissioners are “neutral detached magistrate[s]” who routinely issue warrants for other purposes.

Moreover, an ERPO issued under the Maryland RFL describes both the things to be seized and the place to be searched. Both interim and temporary ERPOs authorize the seizure of specified “effects” (firearms and ammunition) by law enforcement authorities, and they describe, at a minimum, the address at which a respondent is being served. (E. 185). The Fourth Amendment and Article 26 flatly prohibit ERPO warrants without a fully justified showing of “probable cause.”

II. The Impact of the Maryland RFL

The scale of the constitutional problem posed by the “reasonable grounds” standard under the Maryland RFL is immense. Maryland Courts compiled detailed ERPO statistics by judicial district for every month in 2021¹² and 2022.¹³ These statistics show that ERPO petitions were filed at a rate of over two per day in both years with over 1,000 combined Interim and Temporary ERPOs issued each year. *Supra* n.12, 13. In 2021, 754 ERPO

¹²

https://www.courts.state.md.us/sites/default/files/import/district/statistics/ERPO_2021.pdf

¹³

https://www.courts.state.md.us/sites/default/files/import/district/statistics/ERPO_2022.pdf

petitions were filed, resulting in 540 Interim ERPOs and 554 Temporary ERPOs issued. *Id.* In 2022, 741 ERPO petitions were filed, resulting in 508 Interim ERPOs and 548 Temporary ERPOs issued. *Id.* Critically, under the Maryland RFL, all these ERPOs were issued on “reasonable grounds”—not “probable cause.”

Tellingly, **Final** ERPOs are far fewer in number than petitions or Interim ERPOs. In May of 2022, for example, 74 ERPO cases were filed State-wide, of which 48 Interim ERPOs were granted. But only 26 Final ERPOs were granted in these cases. *Id.* Stated differently, Final ERPOs that month were granted in only 54 percent of the cases in which Interim ERPOs were issued and in only 35 percent of cases in which an ERPO petition was filed. Those numbers suggest that “reasonable grounds” standard for Interim ERPOs encourage the filing of many petitions that are found to lack “reasonable grounds” at the Interim ERPO stage and many more of those petitions are ultimately dismissed at the Final ERPO stage. The standard obviously makes a difference. But more importantly, the respondents in each of the 48 percent of the cases in which the respondent ultimately prevailed were deprived of their constitutionally protected firearms and subjected to the cost and stigma of red flag proceedings.

As discussed in detail below, “reasonable grounds” and “probable cause” are different standards. The plain text of the Maryland RFL indicates that the

General Assembly fully intended to require only “reasonable grounds” and not “probable cause” for Interim and Temporary ERPOs. That conclusion is confirmed by the legislative history and canons of statutory interpretation. The burden of proof imposed by a “reasonable grounds” requirement pales in comparison to the “probable cause” that is constitutionally required to support the issuance of a warrant (in this case, an ERPO). Since Interim and Temporary ERPOs are issued on a “reasonable grounds” basis rather than “probable cause,” they violate the warrant clause of the Fourth Amendment and Article 26 of the Maryland Declaration of Rights.

A. “Reasonable Grounds” and “Probable Cause” are Different Standards

The Maryland RFL, §§ 5-603(a)(1) and 5-604(a)(1), authorizes the issuance of warrants (ERPOs) for the seizure of property based on “reasonable grounds,” a standard less than “probable cause,” contrary to the Fourth Amendment. As countless Maryland cases have explained, the process of statutory interpretation always begins by examining the words used by the General Assembly, giving them their ordinary meaning. *Howling v. State*, 478 Md. 472, 498 (2022) (citations omitted); *Westminster Mgmt., LLC v. Smith*, 486 Md. 616, 644 (2024) (“[W]e therefore take the language as we find it, neither adding to nor deleting from it”) (citations omitted); *see also Matter of McCloy*, --- Md. ---, 2024 WL 3869384, at *9 (Aug, 20, 2024) (“If the statute is

ambiguous, we may examine the legislative history to ascertain the General Assembly's intent.” (citation omitted)).

B. Previous Interpretations of this Court

This Court has repeatedly held that “the term ‘reasonable grounds’ . . . means ‘reasonable articulable suspicion’ and *not preponderance of the evidence or probable cause.*” *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 254 (2007) (emphasis added). This point was stressed in *Motor Vehicle Admin. v. Krafft*, 452 Md. 589, 607 (2017), where this Court stated that it “has interpreted the ‘reasonable grounds’ standard to mean ‘reasonable articulable suspicion’ *and to be a lower standard than preponderance of the evidence or probable cause.*” *Id.* (quoting *Shepard*, 399 Md. at 254; citing *Motor Vehicle Admin. v. Dove*, 413 Md. 70, 95 (2010); *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 19 (2010)); *see also Motor Vehicle Admin. v. Usan*, 486 Md. 352, 365 n.4 (2024) (“We have explained that “reasonable suspicion requires less in the way of quantity and quality of evidence than is required for probable cause and it falls considerably short of satisfying a preponderance of the evidence standard.”) (quoting *Shea*, 415 Md. at 19); *Motor Vehicle Admin. v. Medvedeff*, 466 Md. 455, 468 (2019) (“reasonable grounds . . . is a considerably lower burden than the probable cause required for an arrest”).

In *Shepard*, an individual's driver's license was suspended pursuant to Maryland Transportation Article § 16-205.1 after he refused to take an alcohol

concentration test after a traffic stop. An administrative law judge upheld the suspension, but the Circuit Court vacated the suspension. 399 Md. at 243. Reversing, this Court considered and rejected the respondent’s argument that “‘reasonable grounds’ as used in the statute means ‘probable cause.’” *Id.* The Court held:

[Respondent] argues that “reasonable grounds” means “a preponderance of the evidence standard” or at the very least, probable cause. We disagree and hold that the term “reasonable grounds” as used in § 16-205.1 means “reasonable articulable suspicion” and not preponderance of the evidence or probable cause.

Id. at 254 (emphasis added). The Court unequivocally reiterated its holding: “As we have indicated, reasonable grounds means less than probable cause.” *Id.* at 259 (emphasis added).

It is well-settled that this Court is unwilling to either “add []or delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute and [it] do[es] not construe a statute with forced or subtle interpretations that limit or extend its application.” *Wheeling v. Selene Film*, 473 Md. 356, 376-77 (2021) (quoting *Lockshin v. Semsker*, 412 Md. 257, 274 (2010)) (cleaned up); see also *Matthews v. State*, 486 Md. 685, 698 (2024) (citing *Taylor v. NationsBank, N.A.*, 365 Md. 166, 181 (2001)). Accordingly, this Court should conclude that the plain and unambiguous language of the Maryland RFL—requiring “reasonable grounds” for issuance of certain ERPOs

and “probable cause” for other actions—indicates an intent to employ two different standards. It should decline any invitation to modify the language that was “carefully crafted” by the Maryland General Assembly¹⁴ and find that “reasonable grounds” and “probable cause” are not synonymous. *See McCloy*, 2024 WL 3869384 at *9 (“If the text is unambiguous, we apply the plain meaning, and our inquiry is over.”).

C. Legislative History of the Maryland RFL

1. Applicability

The General Assembly is presumed to be aware of this Court’s decisions in crafting legislation. *See, e.g., Berry v. Queen*, 469 Md. 674, 698 (2020) (“This Court presumes that the General Assembly is aware of our jurisprudence when it enacts new legislation.”). Accordingly, such decisions should be the starting point in interpreting the legislative language and discerning the legislative “intent” of the General Assembly. *Westminster*, 486 Md. at 644. If the language is ambiguous because it is susceptible to more than one construction, Maryland courts look to legislative intent to resolve the ambiguity. *See State v. Pair*, 416 Md. 157,168 (2010); *Melton v. State*, 379 Md. 471, 477 (2004); *see also Langston*

¹⁴ <https://mgaleg.maryland.gov/mgaweb/Actions/FloorActions/Media/house-45-?year=2018RS> beginning at approximately 2:31:35 (In discussing burdens of proof, Delegate Valentino-Smith stating “it’s a very carefully crafted bill . . .”).

v. Riffe, 359 Md. 396, 406, 418 (2000) (“In the absence of clear legislative intent to the contrary, a statute is not given retrospective effect.”) (citations omitted).

When conducting a statutory construction analysis, this Court begins “with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology.” *Schreyer v. Chaplain*, 416 Md. 94, 116 (2010) (quoting *Adventist Health Care Inc. v. Maryland Health Care Comm’n*, 392 Md. 103 (2006)). When the “words of a statute are ambiguous and subject to more than one reasonable interpretation, or where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme, a court *must* resolve the ambiguity by searching for legislative intent in other indicia[.]” *State v. Bey*, 452 Md. 255, 266 (2017).

As discussed above, the Maryland RFL in unambiguous and plainly uses two differing standards—“reasonable grounds” and “probable cause.” However, even in cases where the plain language of a statute is unambiguous, “the modern tendency of this Court is to continue the analysis of the statute beyond the plain meaning to examine ‘extrinsic sources of legislative intent’ in order to ‘check [] our reading of a statute’s plain language’ through examining ‘the context of a statute, the overall statutory scheme, and archival legislative history of relevant enactments.’ ” *In re S.K.*, 466 Md. 31, 50 (2019) (citing *Brown v. State*, 454 Md. 546, 551 (2017)); *see also Shealer v. Straka*, 459 Md.

68, 83-85 (2018) (“Even in instances “when the language is unambiguous, it is useful to review legislative history of the statute to confirm that interpretation and to eliminate another version of legislative intent alleged to be latent in the language.”).¹⁵ The legislative history of the Maryland RFL clearly supports the conclusion that “reasonable grounds” is a standard lower than “probable cause.”

2. The Legislative History of the Maryland RFL Confirms Intent to Permit The Issuance of ERPOs on a Basis Less than Probable Cause

Legislative history “consists of the hearings, committee reports, and debate leading up to the enactment in question.” *Gateway Terry, LLC v. Prince George’s Cnty.*, 253 Md. App. 457, 471 (2022) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 265 (2012); *Hackley v. State*, 161 Md. App. 1, 14 (2005), *aff’d*, 389 Md. 387 (2005) (“legislative history refers to ‘the derivation of the statute, comments and explanations regarding it by authoritative sources during the legislative process, and amendments proposed or added to it’ ”)); *see also S.K.*, 466 Md. at 50.

¹⁵ *Accord Phillips v. State*, 451 Md. 180, 196–97 (2017); *Ingram v. State*, 461 Md. 650 (2018); *Balt. City Det. Ctr. v. Foy*, 461 Md. 627 (2018); *C&B Constr., Inc. v. Dashiell*, 460 Md. 272 (2018); *Watts v. State*, 457 Md. 419 (2018); *Ben-Davies v. Blibaum and Assocs. P.A.*, 457 Md. 228 (2018); *Comm’r of Fin. Regulation v. Brown, Brown & Brown P.C.*, 449 Md. 345 (2016); *see also State v. Roshchin*, 466 Md. 128 (2016).

Accordingly, this Court should consider the context of the bill, including the amendments to the legislation during the legislative process.

Here, the legislative history further clarifies the intent to outline two different burdens of proof for ERPO Orders. As stated by the sponsor of HB 1302, Delegate Valentino-Smith, the burden of proof increases as the ERPO process moves forward in time, starting with a requirement of “reasonable grounds” for the Interim and Temporary ERPO Orders, and later rising to a “clear and convincing evidence” level of proof for a Final ERPO Order.

This Court’s precedent, discussed above, establishes that “reasonable grounds” is a different and lower burden of proof than “probable cause.” The Supreme Court’s decision in *Carpenter* likewise so holds. 585 U.S. at 317. The General Assembly is presumed to know and be guided by this well-established body of law. *Berry*, 469 Md. at 698. The General Assembly understood the difference. Indeed, as noted above, the Senate amendments removed all doubt on this point as those amendments deleted House language that would have required that “reasonable grounds” be established by the “preponderance of the evidence.”¹⁶ The Senate amendments became law. That means that Maryland district court judge (or commissioner) is not constrained by any statutory

¹⁶ See note 9 and accompanying text, *supra*.

standard or by probable cause in making the “reasonable grounds” determination or weighing petitioner’s evidence.

D. Canons of Construction As a Guide to Determining the Legislative Intent Expressed by the Maryland RFL

1. Applicability

In interpreting a statute, this Court’s review is holistic, “seeking to give effect to all of what the General Assembly included and not to add anything that the General Assembly omitted.” *Bethesda Afr. Cemetery Coal. v. Hous. Opportunities Comm’n of Montgomery Cnty.*, --- Md. ---, 2024 WL 4000209, at *25 (Md. Aug. 30, 2024) (citing *Westminster*, 486 Md. at 644).

“[T]o understand the meaning of statutory language, we must look beyond individual words and clauses to the larger context, including other surrounding provisions and the apparent purpose of the enactment.” *Gateway Terry, LLC v. Prince George’s Cnty.*, 253 Md. App. 457, 467 (2022) (citing *Martinez v. Ross*, 245 Md. App. 581, 591 (2020)). Further, this Court has held that it does ‘not read statutory language in a vacuum, nor do[es it] confine strictly [its] interpretation of a statute’s plain language to the isolated section alone.’” *Lockshin v. Semsker*, 412 Md. 257, 275 (2010). As in *Lockett*, this Court should turn to “normal tools of statutory construction” to interpret a term. *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 421 (2016).

2. The Canon of Consistent Usage: Identical Words Within the Same Statute Have the Same Meaning

Maryland courts may not arbitrarily forgo the structure of the statute from one subsection to the next so that the definition of a term varies within the statute. *S.K.*, 466 Md. at 68 (interpreting criminal statute's use of "person" and "minor" to require involvement of two different individuals). It is a basic canon of statutory construction that "when a legislature uses different words, especially in the same section or in a part of the statute that deals with the same subject, it usually intends different things." *Lawrence v. State*, 475 Md. 384, 406 (2021) (quoting *Toler v. Motor Vehicle Admin.*, 373 Md. 214, 223 (2003)). See also *Drew v. First Guar. Mortg. Corp.*, 379 Md. 318, 332 (2003). Although similar terms may sometimes be deemed "synonymous," *Chevy Chase Land Co. v. United States*, 355 Md. 110, 126 (1999), there is nothing similar about the terms "probable cause" and "reasonable grounds." As *Carpenter* and this Court's cases confirm, these terms are of critical importance to the scope of the rights protected by the Fourth Amendment and Article 26.

The canon of consistent usage dictates that "identical words used in different parts of the same act are intended to have the same meaning." *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934). See also *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) ("[The] normal rule of statutory construction [is] that identical words used in different parts of the same act

are intended to have the same meaning.”) (internal citations omitted). The corollary principle to this canon is that, “where the document has used one term in one place, and a materially different term in another, the presumption is that the different term *denotes a different idea.*” Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* at 170 (emphasis added). *See also United States DOL v. N.C. Growers Ass’n*, 377 F.3d 345, 352 n.8 (4th Cir. 2004) (same).

The Maryland RFL uses “probable cause” as the standard of proof throughout the text *except* the law uses “reasonable grounds” for the issuance of Interim and Temporary ERPOs and a “clear and convincing evidence” standard for the Final ERPO. Specifically, “reasonable grounds” is the standard for issuance of an ERPO under §§ 5-603(a)(1) and 5-604(a)(1), while “probable cause” is the standard used in §§ 5-603(a)(4), 5-604(a)(4), 5-605(c)(4), 5-607, and 5-610(b). It must be presumed that the General Assembly intended to adopt different standards of proof in adopting these terms in order to make it easier to confiscate firearms in these initial orders while imposing the higher standard of “clear and convincing evidence” along with additional procedural protections for the respondent for Final ERPO proceedings. The General Assembly then employed a “probable cause” standard for still other matters. No other reading makes any sense of the language used.

This construction of the Maryland RFL conforms with this Court’s approach to statutory interpretation, avoiding a construction that is “illogical, unreasonable, or inconsistent with common sense.” *Frost v. State*, 336 Md. 125, 127 (1994). Thus, there can be no doubt that the General Assembly “meant what it said and said what it meant” when it authorized certain ERPOs to issue on a finding of “reasonable grounds” rather than one of “probable cause.” *Peterson v. State*, 467 Md. 713, 727 254 (2020) (quoting *Bellard v. State*, 452 Md. 467, 481 (2017)). Accordingly, this Court should find that the distinct standards chosen by the General Assembly are intentional and that “reasonable grounds” is a standard less demanding than “probable cause.”

CONCLUSION

For the foregoing reasons, the Court should answer the certified questions by holding that that “reasonable grounds” is a standard of proof lower than “probable cause,” and accordingly, that the Maryland RFL authorizes issuance of an ERPO on a standard less than “probable cause.”

Respectfully submitted,

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**CERTIFICATION OF COMPLIANCE WITH RULES 8-112
AND 8-504(a)(9)**

1. This brief contains 6,651 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112 as it was prepared with proportionally spaced type, using Century Schoolbook font and 13pt type size.

/s/ Mark W. Pennak
Attorney

CERTIFICATE OF SERVICE

I, Mark W. Pennak, certify that, on September 23, 2024, I caused copies of the Appellants' Brief and the Record Extracts to be served via the MDEC System on all counsel of record and, pursuant to MD Rules 20-403 and 20-404, two printed copies of the Appellants' Brief and the Record Extracts to be served on all counsel of record via overnight courier no later than by September 24, 2024.

/s/ Mark W. Pennak
Attorney

STATUTORY ADDENDUM

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Maryland Declaration of Rights, Article 26

That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

United States Constitution, amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, amend. XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Maryland Code Public Safety Section 5-601:

(a) In this subtitle the following words have the meanings indicated.

(b) “Ammunition” has the meaning stated in § 5–133.1 of this title.

(c) “Extreme risk protective order” means a civil interim, temporary, or final protective order issued in accordance with this subtitle.

(d) “Firearm” has the meaning stated in § 5–101 of this title.

(e) (1) “Petitioner” means an individual who files a petition for an extreme risk protective order under this subtitle.

(2) “Petitioner” includes:

(i) a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage or family therapist, or health officer or designee of a health officer who has examined the individual;

(ii) a law enforcement officer;

(iii) the spouse of the respondent;

(iv) a cohabitant of the respondent;

- (v) a person related to the respondent by blood, marriage, or adoption;
- (vi) an individual who has a child in common with the respondent;
- (vii) a current dating or intimate partner of the respondent; and
- (viii) a current or former legal guardian of the respondent.

(f) “Respondent” means a person against whom a petition for an extreme risk protective order is filed.

Maryland Code Public Safety Section 5-603

(a) (1) When a petition is filed with a District Court commissioner under § 5–602(b)(2) of this subtitle, the commissioner may enter an interim extreme risk protective order to prohibit the respondent from possessing a firearm if the commissioner finds that there are reasonable grounds to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.

(2) In determining whether to enter an interim extreme risk protective order under this section, the commissioner shall consider:

(i) all relevant evidence presented by the petitioner; and

(ii) the amount of time that has elapsed since any of the events described in the petition.

(3) The interim extreme risk protective order shall:

(i) order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and

(ii) prohibit the respondent from purchasing or possessing any firearm or ammunition for the duration of the interim extreme risk protective order.

(4) If, based on the petition, the commissioner finds probable cause to believe that the respondent meets the requirements for emergency evaluation under Title 10, Subtitle 6 of the Health – General Article, the commissioner shall refer the respondent to law enforcement for a determination of whether the respondent should be taken for an emergency evaluation.

(b)(1)(i) An interim extreme risk protective order shall state the date, time, and location for a temporary extreme risk protective order hearing and a tentative date, time, and location for a final extreme risk protective order hearing.

(ii) Except as provided in subsection (e) of this section, or unless the judge continues the hearing for good cause, a temporary extreme risk protective order hearing shall be held on the first or second day on which a District Court judge is sitting after issuance of the interim extreme risk protective order.

(2) An interim extreme risk protective order shall include in at least 10 point bold type:

(i) notice to the respondent that:

1. the respondent must give the court written notice of each change of address;

2. if the respondent fails to appear at the temporary extreme risk protective order hearing or any later hearing, the respondent may be served with any orders or notices in the case by first-class mail at the respondent's last known address;

3. the date, time, and location of the final extreme risk protective order hearing is tentative only and subject to change;

4. if the respondent does not attend the temporary extreme risk protective order hearing, the respondent may call the Office of the District Court Clerk at the number provided in the order to find out the actual date, time, and location of any final extreme risk protective order hearing; and

5. if the respondent fails to appear at the final extreme risk protective order hearing, a final extreme risk protective order may be entered in the respondent's absence and served on the respondent by first-class mail;

(ii) a statement that the respondent may consult an attorney regarding any matter related to the order, and that an attorney should be contacted promptly so that the attorney may assist the respondent;

(iii) a statement specifying the contents and duration of a temporary extreme risk protective order;

(iv) notice to the petitioner and respondent that, at the hearing, a judge may issue a temporary extreme risk protective order prohibiting the respondent from possessing a firearm or may deny the petition, whether or not the respondent is in court;

(v) notice of:

1. the requirements for surrendering firearms and ammunition in the respondent's possession to law enforcement authorities; and

2. the process for reclaiming firearms and ammunition on the expiration or termination of the order;

(vi) a warning to the respondent that violation of an interim extreme risk protective order is a crime and that a law enforcement officer will arrest the respondent, with or without a warrant, and take the respondent into custody if the officer has probable cause to believe that the respondent has violated a provision of the interim extreme risk protective order; and

(vii) the phone number of the Office of the District Court Clerk.

(c) Whenever a commissioner issues an interim extreme risk protective order, the commissioner shall:

(1) immediately forward a copy of the petition and interim extreme risk protective order to the appropriate law enforcement agency for service on the respondent; and

(2) before the hearing scheduled for the temporary extreme risk protective order, transfer the case file to the clerk of court.

(d) A law enforcement officer shall:

(1) immediately on receipt of an interim extreme risk protective order, serve it on the respondent named in the order;

(2) make a return of service to the clerk of court; and

(3) within 2 hours after service of the order on the respondent, electronically notify the Department of Public Safety and Correctional Services of the service using an electronic system approved and provided by the Department of Public Safety and Correctional Services.

(e) (1) Except as provided in paragraph (2) of this subsection, an interim extreme risk protective order shall be effective until the earlier of:

(i) the temporary extreme risk protective order hearing under § 5–604 of this subtitle; or

(ii) the end of the second business day the Office of the District Court Clerk is open following the issuance of the interim extreme risk protective order.

(2) If the court is closed on the day on which the interim extreme risk protective order is due to expire, the interim extreme risk protective order shall be effective until the next day on which the court is open, at which time the court shall hold a temporary extreme risk protective order hearing.

Maryland Code Public Safety Section 5-604

(a)(1) After a hearing on a petition, whether ex parte or otherwise, a judge may enter a temporary extreme risk protective order to prohibit the respondent from possessing a firearm if the judge finds that there are reasonable grounds to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.

(2) In determining whether to enter a temporary extreme risk protective order under this section, the judge shall consider:

(i) all relevant evidence presented by the petitioner; and

(ii) the amount of time that has elapsed since any of the events described in the petition.

(3) The temporary extreme risk protective order shall:

(i) order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and

(ii) prohibit the respondent from purchasing or possessing any firearm or ammunition for the duration of the temporary extreme risk protective order.

(4) If the judge finds probable cause to believe that the respondent meets the requirements for emergency evaluation under Title 10, Subtitle 6 of the Health—General Article, the judge shall refer the respondent for emergency evaluation.

(b)(1) Except as provided in paragraph (2) of this subsection, a law enforcement officer shall:

(i) immediately serve the temporary extreme risk protective order on the respondent under this section; and

(ii) within 2 hours after service of the order on the respondent, electronically notify the Department of Public Safety and Correctional Services of the service using an electronic system approved and provided by the Department of Public Safety and Correctional Services.

(2) A respondent who has been served with an interim extreme risk protective order under § 5-603 of this subtitle shall be served with the temporary extreme risk protective order in open court or, if the respondent is not present at the temporary extreme risk protective order hearing, by first-class mail at the respondent's last known address.

(3) There shall be no cost to the petitioner for service of the temporary extreme risk protective order.

(c)(1) Except as otherwise provided in this subsection, the temporary extreme risk protective order shall be effective for not more than 7 days after service of the order.

(2) The judge may extend the temporary extreme risk protective order as needed, but not to exceed 6 months, to effectuate service of the order where necessary to provide protection or for other good cause.

(3) If the court is closed on the day on which the temporary extreme risk protective order is due to expire, the temporary extreme risk protective order shall be effective until the second day on which the court is open, by which time the court shall hold a final extreme risk protective order hearing.

(d) The judge may proceed with a final extreme risk protective order hearing instead of a temporary extreme risk protective order hearing if:

(1)(i) the respondent appears at the hearing;

(ii) the respondent has been served with an interim extreme risk protective order; or

(iii) the court otherwise has personal jurisdiction over the respondent; and

(2) the petitioner and the respondent expressly consent to waive the temporary extreme risk protective order hearing.

Maryland Code Public Safety Section 5-605

(a) A respondent under § 5-604 of this subtitle shall have an opportunity to be heard on the question of whether the judge should issue a final extreme risk protective order.

(b)(1)(i) The temporary extreme risk protective order shall state the date and time of the final extreme risk protective order hearing.

(ii) Except as provided in § 5-604(c) of this subtitle and subparagraph (iii) of this paragraph, or unless continued for good cause, the final extreme risk protective order hearing shall be held not later than 7 days after the temporary extreme risk protective order is served on the respondent.

(iii) On request of the respondent, a final extreme risk protective order hearing may be rescheduled for a date not later than 30 days after the date on which the hearing was initially scheduled.

(2) The temporary extreme risk protective order shall include notice to the respondent:

(i) in at least 10 point bold type, that if the respondent fails to appear at the final extreme risk protective order hearing, a final

extreme risk protective order may be entered in the respondent's absence and the respondent may be served by first-class mail at the respondent's last known address with the final extreme risk protective order and all other notices concerning the final extreme risk protective order;

(ii) of the contents of a final extreme risk protective order;

(iii) that the final extreme risk protective order shall be effective for the period stated in the order, not to exceed 1 year, unless the judge extends the term of the order under § 5-606(a)(2) of this subtitle;

(iv) that the respondent may consult an attorney regarding any matter related to the order, and that an attorney should be contacted promptly so that the attorney may assist the respondent;

(v) of the requirements for surrendering firearms and ammunition in the respondent's possession to law enforcement authorities;

(vi) of the process for reclaiming firearms and ammunition on the expiration or termination of the order; and

(vii) in at least 10 point bold type, that the respondent must notify the court in writing of any change of address.

(c)(1) If the respondent appears before the court at a final extreme risk protective order hearing or has been served with an interim or temporary

extreme risk protective order or if the court otherwise has personal jurisdiction over the respondent, the judge:

(i) may proceed with the final extreme risk protective order hearing; and

(ii) may enter a final extreme risk protective order to prohibit the respondent from possessing a firearm if the judge finds by clear and convincing evidence that the respondent poses a danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm.

(2) In determining whether to enter a final extreme risk protective order under this section, the judge shall consider:

(i) all relevant evidence presented by the petitioner and respondent; and

(ii) the amount of time that has elapsed since any of the events described in the petition.

(3) The final extreme risk protective order shall:

(i) order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession; and

(ii) prohibit the respondent from purchasing or possessing any firearm or ammunition for the duration of the interim extreme risk protective order.

(4) If the judge finds probable cause to believe that the respondent meets the requirements for emergency evaluation under Title 10, Subtitle 6 of the Health—General Article, the judge may refer the respondent for emergency evaluation.

(d)(1) Before granting, denying, or modifying a final extreme risk protective order under this section, the court may review all relevant open and shielded court records involving the petitioner and the respondent, including records of proceedings under:

- (i) the Criminal Law Article;
- (ii) Title 3, Subtitle 15 of the Courts Article;
- (iii) Title 4, Subtitle 5 of the Family Law Article;
- (iv) Title 10, Subtitle 6 of the Health—General Article; and
- (v) this article.

(2) The court's failure to review records under this subsection does not affect the validity of an order issued under this section.

(e)(1) A copy of the final extreme risk protective order shall be served on the petitioner, the respondent, the appropriate law enforcement agency, and any other person the judge determines is appropriate in open court or, if the person

is not present at the final extreme risk protective order hearing, by first-class mail to the person's last known address.

(2)(i) A copy of the final extreme risk protective order served on the respondent in accordance with paragraph (1) of this subsection constitutes actual notice to the respondent of the contents of the final extreme risk protective order.

(ii) Service is complete on mailing.

(f)(1) Except as provided in paragraph (2) of this subsection, all relief granted in a final extreme risk protective order shall be effective for the period stated in the order, not to exceed 1 year.

(2) A subsequent circuit court order pertaining to any of the provisions included in the final extreme risk protective order shall supersede those provisions in the final extreme risk protective order.

Maryland Code Public Safety Section 5-607

In accordance with the provisions of § 1-203 of the Criminal Procedure Article, on application by a State's Attorney or a law enforcement officer with probable cause to believe that a respondent who is subject to an extreme risk protective order possesses a firearm and failed to surrender the firearm in accordance with the order, a court may issue a search warrant for the removal of the firearm at any location identified in the application for the warrant.

Maryland Code Public Safety Section 5-609

(a) An interim extreme risk protective order, temporary extreme risk protective order, and final extreme risk protective order issued under this subtitle shall state that a violation of the order may result in:

- (1) criminal prosecution; and
- (2) imprisonment or fine or both.

(b) A temporary extreme risk protective order and final extreme risk protective order issued under this subtitle shall state that a violation of the order may result in a finding of contempt.

Maryland Code Public Safety Section 5-610

(a) A person who fails to comply with the provisions of an interim extreme risk protective order, a temporary extreme risk protective order, or a final extreme risk protective order under this subtitle is guilty of a misdemeanor and on conviction is subject to:

- (1) for a first offense, a fine not exceeding \$1,000 or imprisonment not exceeding 90 days or both; and
- (2) for a second or subsequent offense, a fine not exceeding \$2,500 or imprisonment not exceeding 1 year or both.

(b) A law enforcement officer shall arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an interim, temporary, or final extreme risk protective order in effect at the time of the violation.