

THE BROWARD COUNTY LEAGUE OF CITIES'  
SCHOOL AND COMMUNITY PUBLIC SAFETY  
TASK FORCE

INITIAL REPORT AND RECOMMENDATIONS

June 4, 2018

Exhibit #22

**Florida's Public Safety Act  
Risk Protection Orders**



**Chief Judge Jack Tuter  
Seventeenth Judicial Circuit of Florida  
March 2018**

# Risk Protection Orders

## F.S. 790.041

- (1) Section 790.401, Florida Statutes, is intended to temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement officers to obtain a court order when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior
- 2) The purpose and intent is to reduce deaths and injuries as a result of certain individuals' use of firearms while respecting constitutional rights by providing a judicial procedure for law enforcement officers to obtain a court order temporarily restricting a person's access to firearms and ammunition. The process is intended to apply only to situations in which the person poses a significant danger of harming himself or herself or others by possessing a firearm or ammunition and to include standards and safeguards to protect the rights of respondents and due process of law.

## RISK PROTECTION ORDERS

- Petitioner means a law enforcement officer or a law enforcement agency
- Respondent means the individual who is identified as the respondent
- Risk protection order may be ex parte or a Final Order
- PETITION FOR A RISK PROTECTION ORDER DEFINED:
  - (a) Petition may ONLY be filed by a law enforcement officer or law enforcement agency
  - (b) Petition can be filed in two places:
    - (i) the county where the petitioner's law enforcement office is located;
    - (ii) the county where the respondent resides
  - (c) No attorney needed to file the petition
  - (d) No provision for the award of attorney fees under the statute

## What Must the Petition Allege?

- ALL THESE THING ARE MANDATORY, A petition must,
- Allege respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition and;
- Must be accompanied by an affidavit and;
- Affidavit must be made under oath and;
- Must allege the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent and;
- Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the possession, custody, control or owned by respondent and;
- Identify whether there exists any order of protection governing the respondent under (741.30) domestic violence; (784.046) repeat, dating or sexual violence; or (784.048) stalking, or any other applicable statute.

## IN ADDITION TO REQUESTING A PETITION, THE PETITIONER MUST DO THE FOLLOWING

- Must make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence
- The notice must state that the petitioner intends to petition the court for a risk protection order or has already done so, and;
- Must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources and;
- Must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice and;
- Must list the address of record in the petition for the location of the appropriate law enforcement agency
- No filing fees permitted
- No service of process fees permitted
- No requirement to post a bond
- Certified copies, forms and instructional brochures are without charge
- Only the Circuit Courts have jurisdiction over Risk Protection Petitions

## Process After the Petition is Filed

- “Upon receipt of a Petition” (Does not say after filed)
- The court must order a hearing no later than 14 days after receipt of the petition
- Must issue a notice of hearing to the respondent
- The clerk of the court must forward – on or before the next business day - a copy of the notice of hearing and petition to the appropriate law enforcement agency for service on the respondent
- The court may issue a temporary ex parte risk protection order pending a final hearing
- Such temporary ex parte order must be served concurrently with the notice of hearing and petition as provided in subsection (5).

## Temporary Ex Parte Risk Protection Orders

- A petitioner may request a temporary ex parte risk protection order prior to a final hearing
- To obtain an ex parte RPO, without notice, the Petition **must contain detailed allegations based on personal knowledge** that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.
- In considering whether to issue a temporary ex parte risk protection order the court shall consider all relevant evidence
- If a court finds there is reasonable cause to believe the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition, the court must issue a temporary ex parte risk protection order.
- The court must hold a temporary ex parte risk protection order hearing in person or by telephone on the day the petition is filed or on next business day
- A temporary ex parte risk protection order must include all of the following:
  - 1. A statement of the grounds asserted for the order; and,
  - 2. The date the order was issued; and,
  - 3. The address of the court in which any responsive pleading may be filed; and,
  - 4. The date and time of the scheduled hearing; and,
  - 5. A description of the requirements for the surrender of all firearms and ammunition that the respondent owns; and,



## Temporary Ex Parte Risk Protection Orders

- The Ex Parte Order must contain the following language:
- “To the subject of this protection order: This order is valid until the date noted above. You are required to surrender all firearms and ammunition that you own in your custody, control, or possession. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You must surrender immediately to the (LOCAL LAW ENFORCEMENT AGENCY) all firearms and ammunition in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida 993 Statutes. A hearing will be held on the date and at the time noted above to determine if a risk protection order should be issued. Failure to appear at that hearing may result in a court issuing an order against you which is valid for 1 year. You may seek the advice of an attorney as to any matter connected with this order.”

## EX PARTE TEMPORARY RPO ORDERS

- A temporary ex parte risk protection order ends when the final hearing for a risk protection order is completed
- A temporary ex parte risk protection order must be served by a law enforcement officer in the same manner as provided in a final hearing and service of the notice of hearing and petition must be served concurrently with the ex parte order
- If the court denies the petitioner's request for a temporary ex parte risk protection order, the court must state the particular reasons for the denial.
- **SERVICE.**—
- The clerk of the court shall furnish a copy of the notice of hearing, petition, and temporary ex parte risk protection order or risk protection order, to the sheriff of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night.
- When requested by the sheriff, the clerk of the court may transmit a facsimile copy of a temporary ex parte risk protection order or a risk protection order that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy.
- Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent.
- The clerk of the court shall be responsible for furnishing to the sheriff information on the respondent's physical description and location. This form will have to be promulgated by the law enforcement agency.
- Statute authorizes the chief judge of each circuit, in consultation with the appropriate sheriff, to authorize any law enforcement agency within the jurisdiction to effect service.
- A law enforcement agency effecting service pursuant to this section shall use service and verification procedures consistent with those of the sheriff. **SERVICE UNDER THIS SECTION TAKES PRECEDENCE OVER THE SERVICE OF OTHER DOCUMENTS UNLESS THE OTHER DOCUMENTS ARE OF A SIMILAR EMERGENCY.**

## Service of RPO's

- All orders issued, changed, continued, extended, or vacated after the original service of documents must be certified by the clerk of court and delivered to the parties at the time of the entry of the order.
- The parties may acknowledge receipt of such order in writing on the face of the original order.
- If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected.
- If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff
- This is a first, all other injunctions generally require personal service

## Evidence at Final Hearing is Clear and Convincing Standard

“Clear and convincing evidence” differs from the “greater weight of the evidence” in that it is more compelling and persuasive.

“Clear and convincing evidence” is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue.

# Evidence Considered by the Court in an Ex Parte or Final Hearing

In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

- 1. A recent act or threat of violence by the respondent against himself or others, whether or not such violence or threat of violence involves a firearm.
- 2. An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others.
- 3. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.
- 4. A violation by the respondent of a risk protection order or a no contact order issued under s. 741.30, s. 784.046, or s. 784.0485.
- 5. A previous or existing risk protection order issued against the respondent.
- 6. A violation of a previous or existing risk protection order issued against the respondent.
- 7. Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28.
- 8. Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons.
- 9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.
- 10. The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.
- 11. Whether the respondent, in this state or any other state, has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence.
- 12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.
- 13. Evidence of recent acquisition of firearms or ammunition by the respondent.
- 14. Any relevant information from family and household members concerning the respondent.
- 15. Witness testimony, taken while the witness is under oath, relating to the matter before the court.

## Termination and Extension of RPO's

- The respondent may submit one written request for a hearing to vacate a risk protection order after the order is issued. If the order is extended he/she may request another hearing each time the order is extended.
- Upon a request for a hearing to vacate a risk protection order, the court shall set a hearing.
- Notice of the request must be served on the petitioner
- The hearing must occur no sooner than 14 days and no later than 30 days after the date the petitioner is served
- At the hearing, the respondent shall have the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition.
- The court may consider any relevant evidence, including the same evidence considered when determining an ex parte or final order
- If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.
- The law enforcement agency holding any firearm or ammunition or license to carry a concealed weapon that has been surrendered pursuant to this section shall be notified of the court order to vacate the risk protection order.
- **The court** must notify the petitioner of the impending end of a risk protection order.
- Notice must be received by the petitioner at least 30 days before the date the order ends.
- The petitioner may, by motion, request an extension of a risk protection order at any time within 30 days before the end of the order.

## Termination and Extension of RPO's

- Upon receipt of the motion to extend, the court shall order that a hearing be held no later than 14 days after the date the order is issued and shall schedule such hearing.
- The court may schedule a hearing by telephone
- The respondent must be personally serviced in the same manner provided by subsection (5).
- In determining whether to extend a risk protection order issued under this section, the court may consider all relevant evidence, including evidence of the considerations for an ex parte or final order
- If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order continue to be met, the court must extend the order.
- If, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension.
- The court may extend a risk protection order for a period that it deems appropriate, not to exceed 12 months

# Surrender of Firearms and Ammunition

- Upon issuance of a risk protection order, ex parte or final, the court **shall order** the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by respondent or in the respondent's custody, control, or possession
- Respondent shall also surrender any license to carry a concealed weapon
- The law enforcement officer serving a risk protection order under this section, including a temporary ex parte risk protection order, **shall request that the respondent immediately surrender** all firearms and ammunition owned by the respondent in his or her custody, control, or possession and any concealed weapon license
- The law enforcement officer shall take possession of all firearms and ammunition owned by the respondent and any license to carry a concealed weapon license which are surrendered
- Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent must surrender any firearms and ammunition owned by the respondent and any license to carry a concealed weapon in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present.
- Notwithstanding ss. 933.02 and 933.18, (search warrant statutes) a law enforcement officer may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned by the respondent if the officer has probable cause to believe there are firearms or ammunition owned by the respondent or in the respondent's custody, control, or possession which have not been surrendered
- At the time of surrender, a law enforcement officer taking possession of any firearm or ammunition or concealed weapon license shall issue a receipt identifying all firearms, ammunition or concealed weapons license which were surrendered and shall provide a copy of the receipt to the respondent
- Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt
- Notwithstanding ss. 933.02 and 933.18, (search warrant statutes) upon the sworn statement or testimony of **any person** alleging the respondent has failed to comply with the surrender of firearms or ammunition owned by the respondent, as required by an order the court shall determine whether probable cause exists to believe the respondent has failed to surrender all firearms or ammunition owned by the respondent or in the respondent's custody, control, or possession
- If the court finds that probable cause exists, the court must issue a warrant describing the firearms or ammunition owned by the respondent and authorizing a **search of the locations where the firearms or ammunition owned by the respondent are reasonably believed to be found and the seizure of any such firearms or ammunition owned by the respondent**



## Surrender of Firearms and Ammunition

- If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to this section and he or she is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to him or her, if:
  - 1. The lawful owner agrees to store the firearm or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition.
  - 2. The firearm or ammunition is not otherwise unlawfully possessed by the owner.
- Upon the issuance of a risk protection order, the court shall order a new hearing date and require the respondent to appear no later than 3 business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition owned by the respondent in the respondent's custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.
- All law enforcement agencies must develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition, or licenses required to be surrendered

# RETURN AND DISPOSAL OF FIREARMS AND AMMUNITION

- If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition owned by the respondent or a license to carry a concealed weapon that has been surrendered or seized must return such surrendered firearm, ammunition, or license to carry a concealed weapon as requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.
- If a risk protection order is vacated or ends without extension, the Department of Agriculture and Consumer Services, must reinstate such license
- A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition owned by the respondent
- Any firearm and ammunition surrendered by a respondent which remains unclaimed for 1 year by the lawful owner after an order to vacate the risk protection order shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

## Transfer of Firearms and Ammunition

- A respondent may elect to transfer all firearms and ammunition owned by the respondent that have been surrendered to or seized by a local law enforcement agency to another person who is willing to receive the respondent's firearms and ammunition.
- The law enforcement agency must allow such a transfer only if it is determined that the chosen recipient:
- (a) Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
- (b) Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension;
- (c) Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.

# Reporting of Orders

- Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.
- Within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order.
- Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the Florida Crime Information Center and National Crime Information Center. The order must remain in each system for the period stated in the order, and the law enforcement agency may only remove an order from the systems when the order has ended or been vacated.
- Entry of the order into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.
- The issuing court shall, within 3 business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services.
- Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.
- If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate.
- Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered

## Penalties

- (a) A person who makes a false statement, which he or she does not believe to be true, under oath in a hearing under this section in regard to any material matter commits a felony of the third degree ...
- (b) A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by an order issued under this section commits a felony of the third degree,...
- **LAW ENFORCEMENT RETAINS OTHER AUTHORITY.**— This section does not affect the ability of a law enforcement officer to remove a firearm or ammunition or license to carry a concealed weapon from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.
- **LIABILITY.**— Except as provided in subsection (8) or subsection (11), this section does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a risk protection order or temporary ex parte risk protection order, including, but not limited to, providing notice to the petitioner, a family or household member of the respondent, and any known third party who may be at risk of violence or failure to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing, or declining to file, a petition under this section.