



**Marjory Stoneman Douglas High School
Public Safety Act Risk Protection Order
Court Staff Manual**

**Prepared by
The Office of State Courts Administrator
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PROCESSING RISK PROTECTION ORDERS: A HANDBOOK FOR COURT STAFF

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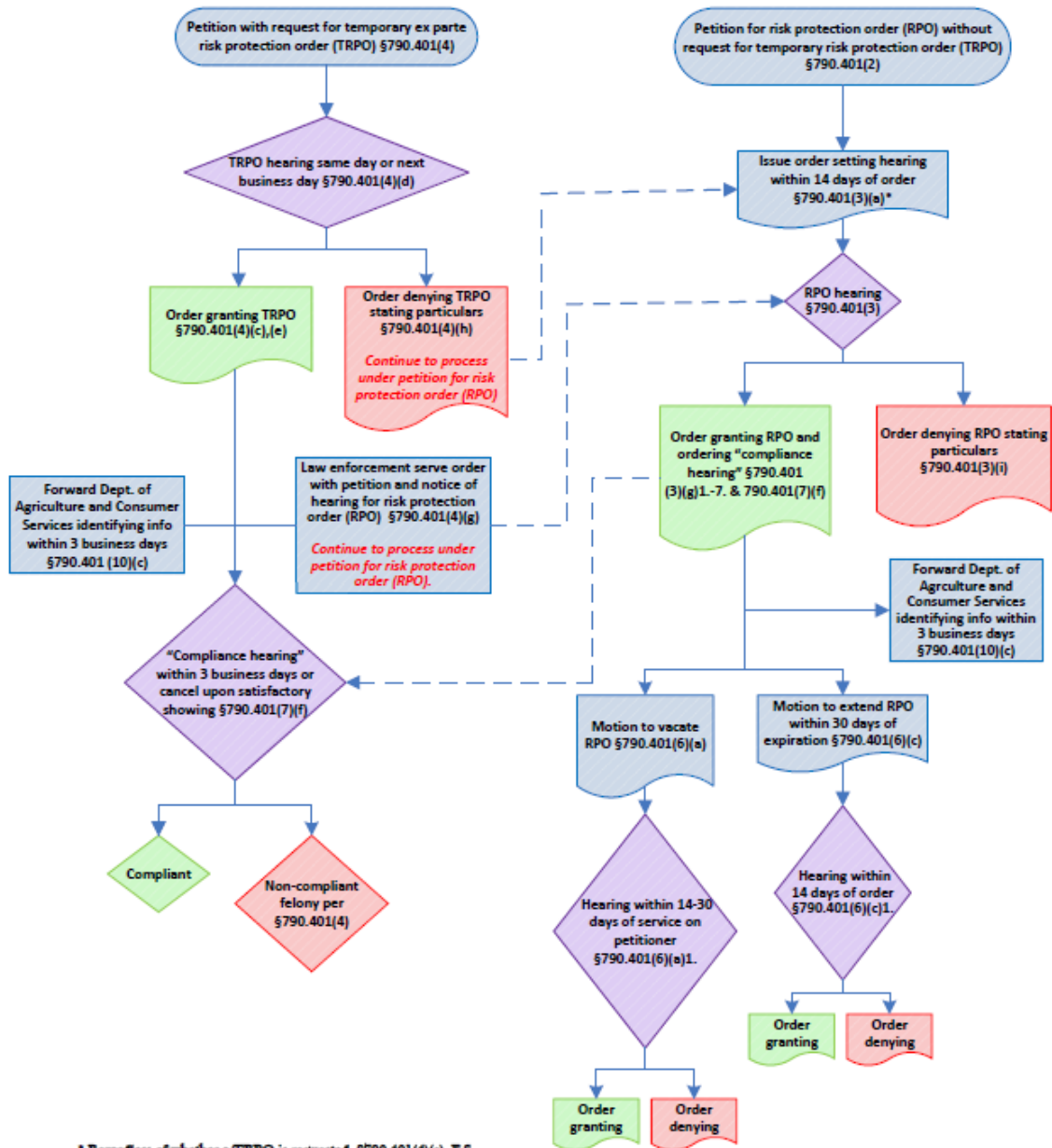
INTRODUCTION

In 2018, the Florida Legislature created The Risk Protection Order Act. (Section 790.401, Florida Statutes). The statute seeks to reduce deaths and injuries by restricting persons who are at a high risk of harming themselves or others from having access to firearms or ammunition. This is accomplished by allowing law enforcement officers or agencies to obtain a court order when there is evidence that a person poses a significant danger to himself or herself or others. This significant danger may be the result of a mental health crisis or evidenced by violent behavior or any other factor enumerated in s. 790.401(3)(c). While the process established under s. 790.401, is intended to restrict the use of firearms by persons posing a danger to themselves or to others, it also includes standards and safeguards to protect the constitutional rights of those persons and to ensure due process of law.

This handbook is intended to aid court staff in processing petitions for risk protection orders filed by law enforcement officers or agencies. Under The Risk Protection Order Act, only law enforcement officers or agencies may file a petition for a risk protection order.

RISK PROTECTION ORDERS-GENERAL CASE PROCESS FLOW CHART

Risk Protection Orders - General Case Process



* Regardless of whether a TRPO is requested, §790.401(4)(c), F.S., provides that "If a court finds there is reasonable cause to believe 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, the court must issue a temporary ex parte risk protection order."

HOW IS A RISK PROTECTION ORDER OBTAINED?

(For full procedure, please refer to s. 790.401(2)-(6))

- A law enforcement officer or agency files a petition for a risk protection order in the county where the law enforcement office is located or where the respondent resides. The circuit court has jurisdiction over the proceedings.
- The petition must allege that the respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or ammunition in his or her custody or control or by purchasing or receiving a firearm or ammunition.
- The petition must be accompanied by an affidavit stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent.
- The petition must identify the quantities, types, and locations of all firearms and ammunition the petitioner (the law enforcement officer or agency) believes to be in the respondent's ownership, possession, custody, or control.
- The petition must identify whether there is a known existing protection order governing respondent under s. 741.30, s. 784.046, or s. 784.0485, or under any other applicable statute.
- The petitioner must make a good faith effort to provide notice to the respondent's family or household member, and any known third party who may be at a risk of violence. The notice must state that petitioner either has or intends to ask the court for a risk protection order, and must include referrals to resources, including mental health, domestic violence, and counseling.
- There are no filing or service of process fees and no bond is required.
- Upon receipt of a petition, the court must order a hearing to be held no later than 14 days after the date of the order and issue a notice of hearing which must be served upon the respondent.
- The court may conduct a hearing by telephone pursuant to s. 790.401(3)(a)3.
- A petitioner may include a request that a temporary ex parte risk protection order be issued before a hearing for a risk protection order, without notice to the respondent, by including in the petition 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 access to firearms or ammunition.
- If a temporary risk protection order is requested, 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 the business day immediately following the day the petition is filed.
- If the court finds reasonable cause to believe that the respondent poses a significant danger of causing personal injury to himself or herself or others in

the near future by having access to firearms or ammunition, the court **must** issue a temporary ex parte risk protection order.

- Any temporary ex parte risk protection order issued by the court pending the hearing must be served on respondent with the notice of hearing and petition.
- Upon notice and hearing, the court may issue a risk protection order for a period up to 12 months, if the court finds, by clear and convincing evidence, that the respondent poses a significant danger of causing personal injury to himself or herself or others through access to firearms or ammunition.
- In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including but, not limited to, the fifteen factors enumerated in section 790.401(3)(c), F.S.
- If the court denies the petitioner's request for a risk protection order or for a temporary ex parte risk protection order, the court must state the particular reasons for the denial.

WHAT MUST BE INCLUDED IN A RISK PROTECTION ORDER?

(For full procedures, please refer to s. 790.401(3) and (4))

A risk protection order must include the following:

- A statement of the grounds supporting issuance of the order.
- The date the order is issued.
- The date the order ends.
- Whether a mental health evaluation or chemical dependency evaluation of respondent is required.
- The address of the court where a responsive pleading should be filed.
- A description of requirements for the surrender of firearms and ammunition.
- The statement required by s. 790.401(3)(g)7, F.S., for a final order.
- The statement required by s. 790.401(4)(e)6, F.S. for a temporary ex parte order.
- A statement informing the respondent: the date on which the risk protection order ends; that all firearms and ammunition within his or her custody, control, or possession, and any concealed weapons permits must be surrendered; that he or she has the right to request one hearing to vacate the order; and that he or she may request another hearing to vacate the order after each extension.
- A form that respondent may use to request that the order be vacated.

WHAT HAPPENS AFTER A RISK PROTECTION ORDER IS ISSUED:

- A copy of the notice of hearing, petition, and temporary ex parte risk protection order or risk protection order, as applicable, must be served on respondent in accordance with s. 790.401(5).
- The petition and notice for hearing must be served on respondent at the same time as the temporary ex parte order.
- The clerk of the court shall enter a risk protection order or temporary ex parte risk protection order into the uniform case reporting system within 24 hours of issuance of the order.
- The clerk of the court shall forward a copy of the order to the law enforcement agency specified in the order within 24 hours after issuance of the order. Upon receipt, the law enforcement agency shall enter the order into the Florida Crime Information Center and National Crime Information Center.
- The court must forward a risk protection order or temporary ex parte risk protection order and any available identifying information concerning respondent to the Department of Agriculture and Consumer Services (department) within 3 business days after issuance of the order. The department must immediately suspend any concealed weapons permit respondent has.
- Upon issuance of a risk protection order or temporary ex parte risk protection order, the court shall order respondent to surrender to the local law enforcement agency all firearms and ammunition owned by respondent in his or her custody, control or possession, except as provided in s. 790.401(9), F.S., and any concealed weapons permit.
- The court shall order a new hearing date for respondent to appear, no later than 3 business days after issuance of the order, to show proof of surrender.
- The law enforcement officer serving the risk protection order shall request that respondent immediately surrender all firearms and ammunition and any concealed weapons permit. The law enforcement officer shall take possession of all firearms, ammunition, and permits.
- If personal service by the law enforcement officer is not possible or not required because the respondent was present at the hearing, respondent must surrender any firearms and ammunition in a safe manner to the control of the local law enforcement agency immediately after the hearing at which respondent was present.
- A law enforcement officer may seek a search warrant from the court to conduct a search for respondent's firearms or ammunition if the officer has probable cause to believe that respondent has firearms or ammunition in his or her custody, control, or possession which have not been surrendered.

- The law enforcement officer must issue a receipt identifying all firearms, ammunition, and permits which have been surrendered and provide a copy of the receipt to 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 ensure that his or her law enforcement agency retains a copy.
- Upon sworn statement or testimony alleging respondent has failed to comply with surrender of firearms or ammunition, the court shall determine whether probable cause exists to believe that respondent has failed to surrender all firearms or ammunition in his or her custody, control, or possession.
- If the court finds probable cause exists, the court must issue a warrant describing the firearms or ammunition and authorizing a search of the locations where they are reasonably believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.
- Surrendered firearms or ammunition determined to be lawfully owned by someone other than respondent shall be returned to their owner so long as respondent will not have access to them and the firearms or ammunition are lawfully possessed by the owner.
- A risk protection order is fully enforceable in any county in Florida.

CAN A RISK PROTECTION ORDER BE VACATED?

- Respondent may submit one written request for a hearing to vacate a risk protection order, starting after the date of issuance of the order, and may request another hearing after each extension of the order, if it is extended.
- Upon receipt of the request for a hearing to vacate a risk protection order, the court shall set a date for a hearing. Notice of the hearing must be served upon petitioner. The hearing must occur no sooner than 14 days and no later than 30 days after the date of service of the request upon petitioner.
- Respondent shall have the burden of proving, by clear and convincing evidence, that he or she no longer poses a significant danger of causing personal injury to himself or herself or others by having firearms or ammunition in his or her custody or control, or by purchasing, possessing, or receiving them.
- If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.
- If the court vacates the order, it must notify the law enforcement agency who is holding any firearms, ammunition, or concealed weapons permit which have been surrendered.
- If a risk protection order is vacated, a law enforcement agency must confirm, through a background check, that respondent is currently legally eligible to own or possess firearms and ammunition before returning any firearms, ammunition, or concealed weapons permits, surrendered by or seized from respondent pursuant to this section, to respondent at his or her request.

- If a risk protection order is vacated, the department must reinstate any license to carry a concealed weapon or firearm it has suspended, only after confirming that respondent is currently eligible to have a permit pursuant to s. 790.06.

WHAT HAPPENS WHEN A RISK PROTECTION ORDER EXPIRES?

- The court must notify petitioner that a risk protection order has an ending, or expiration date.
- This notification may be included within the risk protection order when issued.
- The standard form for a risk protection order advises petitioner that a request for an extension must be made within 30 days prior to expiration of the order.
- If a risk protection order expires without extension, a law enforcement agency must confirm, through a background check, that respondent is currently legally eligible to own or possess firearms and ammunition before returning any firearms, ammunition, or concealed weapons permits, surrendered by or seized from respondent pursuant to this section, to respondent at his or her request.
- If a risk protection order expires without extension, the department must reinstate any license to carry a concealed weapon or firearm it has suspended, only after confirming that respondent is currently eligible to have a such license pursuant to s. 790.06.

HOW CAN A RISK PROTECTION ORDER BE EXTENDED?

- The court may extend a risk protection order for a period up to 12 months subject to an order to vacate or another extension order.
- Petitioner may request an extension of a risk protection order at any time within 30 days before the order expires.
- Upon receipt of a motion to extend, the court shall order that a hearing be held no later than 14 days after the date that order is issued and shall schedule the hearing.
- The court may schedule a hearing by telephone pursuant to s. 790.401(3)(a)3.
- Respondent must be personally served with the motion and notice of hearing.
- In determining whether to extend a risk protection order, the court may consider all relevant evidence including factors listed in s.790.401(3)(c).
- If the court finds, by clear and convincing evidence, that the requirements for an 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.

FORMS FOR PETITIONS AND ORDERS

- [Petition for Risk Protection Order](#)
- [Temporary Ex Parte Risk Protection Order and Notice of Further Proceedings](#)
- [Order Denying Petition for a Temporary Risk Protection Order and Setting Hearing](#)
- [Final Risk Protection Order](#)
- [Final Order Denying Petition for Risk Protection Order](#)
- [Request for Hearing to Vacate Final Risk Protection Order](#)
- [Order Setting Hearing or Respondent's Request to Vacate Final Risk Protection Order](#)
- [Order Vacating Final Risk Protection Order](#)
- [Order Denying Respondent's Request to Vacate](#)
- [Petitioner's Motion to Extend Final Risk Protection Order](#)
- [Order Setting Hearing or Petitioner's Motion to Extend Final Risk Protection Order](#)

COMMUNITY RESOURCE LIST

(This section of the Court Staff Handbook is reserved for the clerk of the court to add a community resource list pursuant to s. 790.401(14)(a)5, F.S.)