

IN THE THIRD JUDICIAL CIRCUIT OF FLORIDA

ADMINISTRATIVE ORDER 2018-005

IN RE: **RISK PROTECTION ORDERS**

WHEREAS, on March 9, 2018, Governor Rick Scott signed into law the “Marjory Stoneman Douglas High School Public Safety Act,” which, among other things, created section 790.401, Florida Statutes, titled “Risk protection orders”;

WHEREAS, this new statute creates Risk Protection Orders, which allows law enforcement officers and agencies to petition to a circuit court to order that a violent or mentally ill individual immediately surrender any firearms or ammunition in his or her possession and from purchasing firearms or ammunition;

WHEREAS, this statute also requires the Office of the State Courts Administrator to develop and prepare the necessary forms to be used statewide by January 1, 2019;

WHEREAS, in accordance with the authority vested in the chief judge by Article V, section 2(d) of the Florida Constitution; section 43.26, Florida Statutes; and Florida Rule of Judicial Administration 2.215.

It is hereby **ORDERED**:

Any petitions filed by law enforcement seeking a risk protection order will be assigned to and handled by the Chief Judge of the Third Judicial Circuit to promote uniformity of procedure and compliance with the strict time limitations contained in the statute.

The statute provides that the circuit court must consider petitions seeking a temporary risk protection order, by holding an *ex parte* hearing, on the day the petition is filed or the next business day. However, if emergency circumstances warrant immediate consideration of a petition seeking a temporary *ex parte* risk protection order during non-business hours, law enforcement shall attempt to contact the Chief Judge, the local judge, or the duty judge for immediate review.

If the Chief Judge is unavailable to timely consider a petition seeking a temporary risk protection order, the petition shall be presented to the local judge or duty judge, who will handle the request for a temporary risk protection order and set the compliance hearing and final hearing before the Chief Judge in accordance with the dates and times set forth in this Administrative

Order.

Compliance hearings, to ensure that a respondent has complied with either a temporary or final risk protection order by surrendering all of his or her firearms and ammunition, will be held in the Columbia County Courthouse, in Judge Coleman's hearing room, on Tuesdays at 9:00 a.m., and on Fridays at 9:00 a.m. The parties may appear via Polycom, which is available at each of the local courthouses.

Hearings for final risk protection orders will be held every other Friday at 9:00 a.m., as needed. Consult the Third Judicial Circuit Master Calendar, available at http://www.jud3.flcourts.org/Calendar_Master.html, to determine which Fridays these hearings will be held on. These hearings will be held in Judge Coleman's hearing room for all cases arising in Columbia County.

Until the Office of the State Courts Administrator releases the official forms for risk protection orders, the attached forms shall be used to seek risk protection orders and to motion to vacate a risk protection order. Both also include a cover page with brief instructions.

DONE in Columbia County, Florida, on April 4, 2018.



WESLEY R. DOUGLAS, CHIEF JUDGE

Attachments:

Instructions for and Verified Petition for Temporary *Ex Parte* Risk Protection Order or Risk Protection Order

Instructions for and Motion to Vacate a Risk Protection Order

ORIGINAL: *Clerk of Court, Columbia County*

COPIES TO: *Circuit and County Judges, Third Judicial Circuit*
Clerks of Court, Third Judicial Circuit
Sheriff Offices in the Third Judicial Circuit
Chiefs of Police in the Third Judicial Circuit

**INSTRUCTIONS FOR
VERIFIED PETITION FOR TEMPORARY *EX PARTE* RISK PROTECTION ORDER
OR RISK PROTECTION ORDER**

When should this form be used?

- This form should be used when law enforcement believes that someone 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 any ammunition and the person possesses a reasonable fear of significant dangerous acts.
- This form seeks to force the person to immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm.

Who may file this form?

- A petition must be filed by a law enforcement officer or law enforcement agency.

Where should this form be filed?

- A petition must be filed in the county where the Petitioner's law enforcement office is located or the county where the Respondent resides.

What must be shown?

- Temporary *Ex Parte* Risk Protection Order
 - The verified must allege specific statements, actions, or facts based on personal knowledge that give rise to a reasonable fear of significant dangerous acts by the Respondent, and that Respondent poses a significant danger of injury in the near future to himself or herself or others by having in his or her control, or by purchasing, possessing, or receiving, a firearm or ammunition.
- Final Risk Protection Order
 - The verified must allege specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the Respondent, and that Respondent poses a significant danger of injury to himself or herself or others by having in his or her control, or by purchasing, possessing, or receiving, a firearm or ammunition.
- The main difference between these two is that the Temporary *Ex Parte* Risk Protection Order must be based on personal knowledge and the Respondent must pose a significant danger in the near future.

**IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA**

_____,
Petitioner (Law Enforcement Officer/Agency)

Case No.: _____

v.

_____,
Respondent.

**VERIFIED PETITION FOR TEMPORARY *EX PARTE* RISK PROTECTION ORDER
OR RISK PROTECTION ORDER**

SECTION I. PETITIONER

1. Petitioner's full legal name or name of petitioning agency: _____
2. Petitioner's law enforcement office/agency's address: *[street address, city, state and zip code]*

SECTION II. RESPONDENT

1. Respondent's full legal name: _____
2. Respondent's current address: *[street address, city, state, and zip code]*

3. Physical description of Respondent:
Race: _____ Sex: _____ Date of Birth: _____
Height: _____ Weight: _____ Eye Color: _____ Hair Color: _____
4. Distinguishing marks or scars: _____
5. Vehicle: *[make/model]* _____ Color: _____ Tag Number: _____
6. Other names Respondent goes by: *[aliases or nicknames]* _____
7. Respondent's email address: *[if known]* _____
8. Respondent's Driver's License number: *[if known]* _____
9. Respondent's attorney's name, address, and telephone number: *[if known]* _____

SECTION III. BASIS FOR PETITION

1. In support of this Petition, the undersigned Law Enforcement Officer/Agency alleges (check all that apply):

_____ *Based on personal knowledge*, the Respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having a firearm or any ammunition in his or her custody or control or purchasing, possessing or receiving a firearm or any ammunition. ***Required for Temporary Ex Parte Risk Protection Order.***

_____ The 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 purchasing, possessing or receiving a firearm or any ammunition. ***Required for Final Risk Protection Order.***

2. Relevant evidence for this Court's consideration is detailed later in this Petitioner and shows that the Respondent:

_____ was involved in a recent act or threat of violence against himself/herself or others;

_____ engaged in an act or threat of violence, including but not limited to acts or threats of violence against himself/herself, within the past 12 months;

_____ is seriously mentally ill or has recurring mental health issues;

_____ has violated a risk protection order or no contact order issued under sections 741.30, 784.046, or 784.0485, Florida Statutes;

_____ is the subject of a previous or existing risk protection order;

_____ has violated a previous or existing risk protection order;

_____ has been convicted of, had adjudication withheld on, or pled *nolo contendere* in Florida or in any other state to a crime that constitutes domestic violence as defined in section 741.28, Florida Statutes;

_____ has used, or threatened to use, against himself/herself or others, any weapons;

_____ has unlawfully or recklessly used, displayed, or brandished a firearm;

_____ has used or threatened to use on a recurring basis physical force against another person or has stalked another person;

_____ has been arrested for, convicted of, had adjudication withheld, or pled *nolo contendere* to a crime involving violence or a threat of violence in Florida or in any other state;

_____ has abused or is abusing controlled substances or alcohol;

_____ has recently acquired firearms or ammunition;

_____ other (additional relevant information may be attached).

3. The following specific statements, actions, or facts give rise to a reasonable fear of significant dangerous acts by the Respondent:

4. *[Name of witness]* _____ provided the following information based on his or her personal knowledge:

_____ Additional pages are attached.

5. The Petitioner _____ is _____ is not aware of any existing protection order governing the Respondent under any applicable statute.

6. The quantities, types, and locations of all firearms and ammunition the Petitioner believes to be in the Respondent's current ownership, possession, custody, or control are as follows:

Quantity _____ Type _____ Location _____

Quantity _____ Type _____ Location _____

Quantity _____ Type _____ Location _____

Quantity _____ Type _____ Location _____

_____ Additional pages are attached.

SECTION IV. NOTICE

_____ The Petitioner has made 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 in compliance with section 790.401(2)(f), Florida Statutes; **OR**

_____ The Petitioner will take the following steps to provide notice, as required by section 790.401(2)(f), Florida Statutes: _____

SECTION V. RISK PROTECTION ORDERS

For the foregoing reasons, the Petitioner requests the Court to enter (check all that are requested):

_____ A **TEMPORARY EX PARTE RISK PROTECTION ORDER** in this matter requiring the Respondent to:

1. Immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm to the *[name of law enforcement agency]*: _____;
2. Not have in his or her custody, control, or possession any firearm or ammunition while this order is in effect;
3. Not purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect; and
4. Abide by any other lawful relief this Court may order.

The Petitioner further requests this Court to schedule a hearing for a Final Risk Protection Order to be held within 14 days.

_____ A Final **RISK PROTECTION ORDER** in this matter requiring the Respondent to:

1. Immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm to the *[name of law enforcement agency]*: _____;
2. Not have in his or her custody, control, or possession any firearm or ammunition while this order is in effect;
3. Not purchase, possess, receive, or attempt to purchase or receive a firearm or ammunition while this order is in effect; and

4. Abide by any other lawful relief this Court may order.

The Petitioner requests the Risk Protection Order to remain in effect for a period the Court deems appropriate, up to and including but not exceeding 12 months.

THE PETITIONER HEREBY CERTIFIES UNDER PENALTY OF PERJURY THAT THE STATEMENTS AND FACTS IN THIS VERIFIED PETITION AND IN ANY ATTACHMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Respectfully submitted on _____, 20__.

Signature of Petitioner: _____

Law Enforcement Agency

Service Address

Sworn to or affirmed and signed before me on _____ by _____

who _____ is personally known to me or _____ presented _____, as
identification.

Notary Public, State of Florida

My commission expires: _____

**INSTRUCTIONS FOR MOTION TO VACATE
A RISK PROTECTION ORDER**

When should this form be used?

- This form may be used if you have had a Risk Protection Order entered against you pursuant to section 790.401(3), Florida Statutes, or the Risk Protection Order has been extended pursuant to section 790.401(6), Florida Statutes.
- If you use this form, you are the respondent. As the Respondent, you may file a written request for a hearing to vacate a risk protection order starting after the date the order is issued by the court.
- You may only file **ONE** written request for a hearing to vacate a Risk Protection Order (using the attached motion) for a Risk Protection Order entered against you. If a Risk Protection Order has been extended, then you may file a written request for a hearing to vacate the Risk Protection Order (using the attached motion) for each extension of the Risk Protection Order.

Who may file this form?

- A person (respondent) who has had a risk protection order entered against him or her pursuant to section 790.401(3), Florida Statutes, and who has not previously filed a written request to vacate the order.
- A person (respondent) who has had a Risk Protection Order entered against him or her extended and who has not previously filed a written request to vacate that extension.

**IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA**

_____,
Petitioner (Law Enforcement Officer/Agency)

Case No.: _____

v.

_____,
Respondent.

MOTION TO VACATE A RISK PROTECTION ORDER

I, *[full legal name]* _____, being sworn, certify that the following statements are true.

SECTION I.

1. I am the Respondent in this case.
2. I currently live at the following address: *[street address]* _____
[city, state, and zip code] _____
Telephone Number: *[area code and number]* _____
3. My attorney's name, address, and telephone number: _____
_____. (If you do not have an attorney, write "none.")

SECTION II. REQUEST TO VACATE

1. This is a request to vacate a: *[Indicate only one]*
_____ Risk Protection Order entered on *[date]* _____ by
[court entering order] _____
_____ Extension of a Risk Protection Order entered on *[date]* _____ by
[court entering extension] _____
2. I _____ have _____ have not previously requested a hearing to vacate a _____ Risk Protection Order or _____ Extension of Risk Protection Order. What is the date of your most recent request to vacate either an order or extension? _____

3. I no longer pose a significant danger of causing personal injury to myself or to others by having firearms and/or ammunition in my custody or control, or by purchasing, possessing, or receiving a firearm or ammunition.

4. I _____ have _____ have not committed or threatened violence against myself or others—whether or not such act or threat involved a firearm since issuance of the order or extension.

5. I _____ have _____ have not had mental health issues since the order or extension was issued. Describe any mental health issues with specificity and whether you were hospitalized or put on medication as a result of such issues: _____

6. An _____ injunction for protection or _____ no-contact order _____ has _____ has not been entered against me. This order was entered on [date] _____ by [name of court entering order] _____.

I _____ have _____ have not violated the injunction for protection or no-contact order.

7. I _____ have _____ have not been convicted, had adjudication withheld, or pled *nolo contendere* to a crime that constitutes domestic violence as defined in section 741.28, Florida Statutes, in Florida or another state.

If you have, provide [date action occurred] _____ and [court where occurred] _____.

8. I _____ have _____ have not been convicted, had adjudication withheld, or pled *nolo contendere* to a crime involving violence or a threat of violence in Florida or another state.

If you have, provide [date action occurred] _____ and [court where occurred] _____.

9. I _____ have _____ have not used physical force against or stalked another person.

If you have, describe the circumstances: _____

10. I _____ have _____ have not used or threatened to use a weapon against others or myself.

If you have, describe the circumstances: _____

11. I _____ have _____ have not recklessly used, displayed, or brandished a firearm.

If you have, describe the circumstances: _____

12. I _____ have _____ have not abused alcohol or a controlled substance.

If you have, describe the circumstances _____

13. I _____ have _____ have not possessed a firearm or ammunition since my firearms or ammunition were surrendered pursuant to this Court's order.

SECTION III. REQUEST FOR RELIEF

1. I ask this Court to vacate the Risk Protection Order or the Extension of a Risk Protection Order entered in this case.

2. I request that this Court order a hearing to be held on this motion. Should a hearing be ordered, I understand that I must appear at the hearing and prove by clear and convincing evidence that I do not pose a significant danger of causing personal injury to myself or others by having in my custody or control, or purchasing, possessing, or receiving a firearm or ammunition.

I understand that I am swearing or affirming under oath to the truthfulness of the factual claims made in this motion and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Date: _____

Signature of Respondent

STATE OF FLORIDA
COUNTY OF _____

Sworn to or affirmed and signed before me on _____ by _____.

NOTARY PUBLIC or DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or clerk]

_____ Personally known
_____ Produced identification
_____ Type of identification produced