

**RISK
PROTECTION
ORDER FLA.
STAT. 790.401**

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INTRODUCTION

Florida Statute 790.401 (2018).

Passed in response to school shootings, specifically Marjory Stoneman Douglas High School.

Brought by law enforcement, however civil in nature.

Probate Court, a “mental health” issue (2022 MH 1234).

No arrest required.

INITIAL EXPERIENCES

Brought by the Sheriff.

Clear and convincing evidence standard.

Granted *Ex Parte*.

Return for “Final Hearings.”

No entitlement to an attorney.

HANDOUTS

- Petition For Temporary Ex Parte Risk Protection Order
- Order Granting Temporary Ex Parte Risk Protection & Order On 3 Day Compliance Hearing And Setting Final Hearing
- Notice To Department Of Agriculture And Consumer Services
- *Davis v. Gilchrist Cty. Sheriff's Office*, 280 So. 3d 524

(a) 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 must issue a notice of hearing to the respondent for the same.

1. The clerk of the court shall cause a copy of the notice of hearing and petition to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent as provided in subsection (5).

2. The court may, as provided in subsection (4), issue a temporary ex parte risk protection order pending the hearing ordered under this subsection. Such temporary ex parte order must be served concurrently with the notice of hearing and petition as provided in subsection (5).

3. The court may conduct a hearing by telephone pursuant to a local court rule to reasonably accommodate a disability or exceptional circumstances. The court must receive assurances of the petitioner's identity before conducting a telephonic hearing.

(b) Upon notice and a hearing on the matter, 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 by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court must issue a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months.

FACTORS TO BE CONSIDERED

1. A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm.

FACTORS TO BE CONSIDERED

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.

FACTORS TO BE CONSIDERED

3. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.

FACTORS TO BE CONSIDERED

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.

(Domestic Violence, Repeat Violence, Stalking – All of which allow a Court to force the surrender of firearms)

FACTORS TO BE CONSIDERED

5. A previous or existing risk protection order issued against the respondent.

FACTORS TO BE CONSIDERED

6. A violation of a previous or existing risk protection order issued against the respondent.

FACTORS TO BE CONSIDERED

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.

FACTORS TO BE CONSIDERED

8. Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons.

FACTORS TO BE CONSIDERED

9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.

FACTORS TO BE CONSIDERED

10. The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.

FACTORS TO BE CONSIDERED

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.

FACTORS TO BE CONSIDERED

12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.

FACTORS TO BE CONSIDERED

13. Evidence of recent acquisition of firearms or ammunition by the respondent.

FACTORS TO BE CONSIDERED

14. Any relevant information from family and household members concerning the respondent.

FACTORS TO BE CONSIDERED

15. Witness testimony, taken while the witness is under oath, relating to the matter before the court.

ORDER ISSUED, WHAT IS NEXT?

One Chance!

- One chance in 12 months to ask to have it dissolved or modified.
- State can ask multiple times to have order extended.

VIOLENCE RISK ASSESSMENT

Specific mental health evaluation, only done locally by Centerstone.

DUE PROCESS CONSIDERATIONS

Discovery?

Monetary value?

2nd Amendment?

1st Amendment?

Private Property?

Others?

GENERAL ISSUES ON GUN LAWS

Local governments are prohibited from maintaining a “list.”

RPOs have been challenged, constitutionally valid. *Davis v. Gilchrist Cty. Sheriff's Office*, 280 So. 3d 524

THANK YOU

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company did that, not me 😊

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