



651680

LEGISLATIVE ACTION

Senate

House

Floor: NC/2R  
03/03/2018 06:07 PM

Senator Gibson moved the following:

1           **Senate Amendment**

2

3       Delete lines 451 - 960

4 and insert:

5       (a) "Petitioner" means a law enforcement officer, a law  
6 enforcement agency, or a family or household member that  
7 petitions a court for a risk protection order under this  
8 section. As used in this paragraph, the term "family or  
9 household member" has the same meaning as provided in s. 741.28  
10 and includes a person who:

11       1. Has a biological or legal parent-child relationship with



651680

12 the respondent, including stepparents and stepchildren and  
13 grandparents and grandchildren; and

14 2. Is acting or has acted as the respondent's legal  
15 guardian.

16 (b) "Respondent" means the individual who is identified as  
17 the respondent in a petition filed under this section.

18 (c) "Risk protection order" means a temporary *ex parte*  
19 order or a final order granted under this section.

20 (2) PETITION FOR A RISK PROTECTION ORDER.—There is created  
21 an action known as a petition for a risk protection order.

22 (a) A petition for a risk protection order may be filed by  
23 a law enforcement officer, a law enforcement agency, or a family  
24 or household member.

25 (b) An action under this section must be filed in the  
26 county where the petitioner is located or the county where the  
27 respondent resides.

28 (c) Such petition for a risk protection order does not  
29 require either party to be represented by an attorney.

30 (d) Notwithstanding any other law, attorney fees may not be  
31 awarded in any proceeding under this section.

32 (e) A petition must:

33 1. Allege that the respondent poses a significant danger of  
34 causing personal injury to himself or herself or others by  
35 having a firearm or any ammunition in his or her custody or  
36 control or by purchasing, possessing, or receiving a firearm or  
37 any ammunition, and must be accompanied by an affidavit made  
38 under oath stating the specific statements, actions, or facts  
39 that give rise to a reasonable fear of significant dangerous  
40 acts by the respondent;



651680

41       2. Identify the quantities, types, and locations of all  
42       firearms and ammunition the petitioner believes to be in the  
43       respondent's current ownership, possession, custody, or control;  
44       and

45       3. Identify whether there is a known existing protection  
46       order governing the respondent under s. 741.30, s. 784.046, or  
47       s. 784.0485 or under any other applicable statute.

48       (f) If the petitioner is a law enforcement officer or a law  
49       enforcement agency, the petitioner must make a good faith effort  
50       to provide notice to a family or household member of the  
51       respondent and to any known third party who may be at risk of  
52       violence. The notice must state that the petitioner intends to  
53       petition the court for a risk protection order or has already  
54       done so and must include referrals to appropriate resources,  
55       including mental health, domestic violence, and counseling  
56       resources. The petitioner must attest in the petition to having  
57       provided such notice or must attest to the steps that will be  
58       taken to provide such notice.

59       (g) If the petitioner is a law enforcement officer or a law  
60       enforcement agency, the petitioner must list the address of  
61       record on the petition as being where the appropriate law  
62       enforcement agency is located. If the petitioner is a family or  
63       household member, the petitioner must list the address of his or  
64       her residential address unless he or she has a reasonable fear  
65       that including his or her residential address might result in  
66       harm to himself or herself or to a person living at that  
67       address, and if so, the petitioner may list a post office box  
68       address.

69       (h) A court or a public agency may not charge fees for



651680

filing or for service of process to a petitioner seeking relief under this section and must provide the necessary number of certified copies, forms, and instructional brochures free of charge.

(i) A person is not required to post a bond to obtain relief in any proceeding under this section.

(j) The circuit courts of this state have jurisdiction over proceedings under this section.

(3) RISK PROTECTION ORDER HEARINGS AND ISSUANCE.—

(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



651680

99 a significant danger of causing personal injury to himself or  
100 herself or others by having in his or her custody or control, or  
101 by purchasing, possessing, or receiving, a firearm or any  
102 ammunition, the court must issue a risk protection order for a  
103 period that it deems appropriate, up to and including but not  
104 exceeding 12 months.

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

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

111 2. An act or threat of violence by the respondent within  
112 the past 12 months, including, but not limited to, acts or  
113 threats of violence by the respondent against himself or herself  
114 or others.

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

117 4. A violation by the respondent of a risk protection order  
118 or a no contact order issued under s. 741.30, s. 784.046, or s.  
119 784.0485.

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

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

124 7. Whether the respondent, in this state or any other  
125 state, has been convicted of, had adjudication withheld on, or  
126 pled nolo contendere to a crime that constitutes domestic  
127 violence as defined in s. 741.28.



651680

128       8. The respondent's ownership of, access to, or intent to  
129       possess firearms or ammunition.

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

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

135       11. Whether the respondent, in this state or any other  
136       state, has been arrested for, convicted of, had adjudication  
137       withheld on, or pled nolo contendere to a crime involving  
138       violence or a threat of violence.

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

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

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

145       (d) A person, including an officer of the court, who offers  
146       evidence or recommendations relating to the cause of action  
147       either must present the evidence or recommendations in writing  
148       to the court with copies to each party and his or her attorney,  
149       if one is retained, or must present the evidence under oath at a  
150       hearing at which all parties are present.

151       (e) In a hearing under this section, the rules of evidence  
152       apply to the same extent as in a domestic violence injunction  
153       proceeding under s. 741.30.

154       (f) During the hearing, the court must consider whether a  
155       mental health evaluation or chemical dependency evaluation is  
156       appropriate and, if such determination is made, may order such



651680

evaluations, if appropriate.

(g) A risk protection order must include all of the following:

1. A statement of the grounds supporting the issuance of the order;

2. The date the order was issued;

3. The date the order ends;

4. Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;

5. The address of the court in which any responsive pleading should be filed;

6. A description of the requirements for the surrender of firearms and ammunition under subsection (7); and

7. The following statement:

"To the subject of this protection order: This order will last until the date noted above. If you have not done so already, you must surrender immediately to the (insert name of 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 Statutes. 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 have the right to request one hearing to vacate this order, starting after the date of the issuance of this order, and to request another hearing after every extension of the order, if any. You may seek the advice of an attorney as to any matter connected with this order."



651680

186  
187        (h) If the court issues a risk protection order, the court  
188        must inform the respondent that he or she is entitled to request  
189        a hearing to vacate the order in the manner provided by  
190        subsection (6). The court shall provide the respondent with a  
191        form to request a hearing to vacate.

192        (i) If the court denies the petitioner's request for a risk  
193        protection order, the court must state the particular reasons  
194        for the denial.

195        (4) TEMPORARY EX PARTE RISK PROTECTION ORDERS.—

196        (a) A petitioner may request that a temporary ex parte risk  
197        protection order be issued before a hearing for a risk  
198        protection order, without notice to the respondent, by including  
199        in the petition detailed allegations based on personal knowledge  
200        that the respondent poses a significant danger of causing  
201        personal injury to himself or herself or others in the near  
202        future by having in his or her custody or control, or by  
203        purchasing, possessing, or receiving, a firearm or ammunition.

204        (b) In considering whether to issue a temporary ex parte  
205        risk protection order under this section, the court shall  
206        consider all relevant evidence, including the evidence described  
207        in paragraph (3)(c).

208        (c) If a court finds there is reasonable cause to believe  
209        that the respondent poses a significant danger of causing  
210        personal injury to himself or herself or others in the near  
211        future by having in his or her custody or control, or by  
212        purchasing, possessing, or receiving, a firearm or ammunition,  
213        the court must issue a temporary ex parte risk protection order.

214        (d) The court must hold a temporary ex parte risk



651680

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.

(e) A temporary ex parte risk protection order must include all of the following:

1. A statement of the grounds asserted for the order;

2. The date the order was issued;

3. The address of the court in which any responsive pleading may be filed;

4. The date and time of the scheduled hearing;

5. A description of the requirements for surrender of firearms and ammunition under subsection (7); and

6. The following statement:

"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 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 (insert name of 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 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."



651680

244  
245       (f) A temporary ex parte risk protection order ends upon  
246 the hearing on the risk protection order.

247       (g) A temporary ex parte risk protection order must be  
248 served by a law enforcement officer in the same manner as  
249 provided for in subsection (5) for service of the notice of  
250 hearing and petition and must be served concurrently with the  
251 notice of hearing and petition.

252       (h) If the court denies the petitioner's request for a  
253 temporary ex parte risk protection order, the court must state  
254 the particular reasons for the denial.

255       (5) SERVICE.—

256       (a) The clerk of the court shall furnish a copy of the  
257 notice of hearing, petition, and temporary ex parte risk  
258 protection order or risk protection order, as applicable, to the  
259 sheriff of the county where the respondent resides or can be  
260 found, who shall serve it upon the respondent as soon thereafter  
261 as possible on any day of the week and at any time of the day or  
262 night. When requested by the sheriff, the clerk of the court may  
263 transmit a facsimile copy of a temporary ex parte risk  
264 protection order or a risk protection order that has been  
265 certified by the clerk of the court, and this facsimile copy may  
266 be served in the same manner as a certified copy. Upon receiving  
267 a facsimile copy, the sheriff must verify receipt with the  
268 sender before attempting to serve it upon the respondent. The  
269 clerk of the court shall be responsible for furnishing to the  
270 sheriff information on the respondent's physical description and  
271 location. Notwithstanding any other provision of law to the  
272 contrary, the chief judge of each circuit, in consultation with



651680

273 the appropriate sheriff, may authorize a law enforcement agency  
274 within the jurisdiction to effect service. A law enforcement  
275 agency effecting service pursuant to this section shall use  
276 service and verification procedures consistent with those of the  
277 sheriff. Service under this section takes precedence over the  
278 service of other documents, unless the other documents are of a  
279 similar emergency nature.

280 (b) All orders issued, changed, continued, extended, or  
281 vacated after the original service of documents specified in  
282 paragraph (a) must be certified by the clerk of the court and  
283 delivered to the parties at the time of the entry of the order.  
284 The parties may acknowledge receipt of such order in writing on  
285 the face of the original order. If a party fails or refuses to  
286 acknowledge the receipt of a certified copy of an order, the  
287 clerk shall note on the original order that service was  
288 effected. If delivery at the hearing is not possible, the clerk  
289 shall mail certified copies of the order to the parties at the  
290 last known address of each party. Service by mail is complete  
291 upon mailing. When an order is served pursuant to this  
292 subsection, the clerk shall prepare a written certification to  
293 be placed in the court file specifying the time, date, and  
294 method of service and shall notify the sheriff.

295 (6) TERMINATION AND EXTENSION OF ORDERS.—

296 (a) The respondent may submit one written request for a  
297 hearing to vacate a risk protection order issued under this  
298 section, starting after the date of the issuance of the order,  
299 and may request another hearing after every extension of the  
300 order, if any.

301 1. Upon receipt of the request for a hearing to vacate a



651680

risk protection order, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance with subsection (5). The hearing must occur no sooner than 14 days and no later than 30 days after the date of service of the request upon the petitioner.

2. 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 evidence of the considerations listed in paragraph (3) (c).

3. If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.

4. The law enforcement agency holding any firearm or ammunition or license to carry a concealed weapon or firearm that has been surrendered pursuant to this section shall be notified of the court order to vacate the risk protection order.

(b) 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.

(c) 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.

1. 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.

a. The court may schedule a hearing by telephone in the



651680

manner provided by subparagraph (3) (a) 3.

b. The respondent must be personally served in the same manner provided by subsection (5).

2. 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 listed in paragraph (3) (c).

3. If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order as provided in subsection (3) continue to be met, the court must extend the order. However, 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.

4. The court may extend a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate as provided in paragraph (a) or to another extension order by the court.

(7) SURRENDER OF FIREARMS AND AMMUNITION.—

(a) Upon issuance of a risk protection order under this section, including a temporary ex parte risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession except as provided in subsection (9), and any license to carry a concealed weapon or firearm issued under s. 790.06.

(b) The law enforcement officer serving a risk protection



651680

360 order under this section, including a temporary ex parte risk  
361 protection order, shall request that the respondent immediately  
362 surrender all firearms and ammunition in his or her custody,  
363 control, or possession and any license to carry a concealed  
364 weapon or firearm issued under s. 790.06. The law enforcement  
365 officer shall take possession of all firearms and ammunition  
366 belonging to the respondent which are surrendered.  
367 Alternatively, if personal service by a law enforcement officer  
368 is not possible or is not required because the respondent was  
369 present at the risk protection order hearing, the respondent  
370 must surrender any firearms, ammunition, and license to carry a  
371 concealed weapon or firearm in a safe manner to the control of  
372 the local law enforcement agency immediately after being served  
373 with the order by service or immediately after the hearing at  
374 which the respondent was present. Notwithstanding ss. 933.02 and  
375 933.18, a law enforcement officer may seek a search warrant from  
376 a court of competent jurisdiction to conduct a search for  
377 firearms or ammunition if the officer has probable cause to  
378 believe that there are firearms or ammunition in the  
379 respondent's custody, control, or possession which have not been  
380 surrendered.

381 (c) At the time of surrender, a law enforcement officer  
382 taking possession of a firearm, any ammunition, or a license to  
383 carry a concealed weapon or firearm shall issue a receipt  
384 identifying all firearms and the quantity and type of ammunition  
385 that have been surrendered and shall provide a copy of the  
386 receipt to the respondent. Within 72 hours after service of the  
387 order, the law enforcement officer serving the order shall file  
388 the original receipt with the court and shall ensure that his or



651680

389 her law enforcement agency retains a copy of the receipt.

390 (d) Notwithstanding ss. 933.02 and 933.18, upon the sworn  
391 statement or testimony of any person alleging that the  
392 respondent has failed to comply with the surrender of firearms  
393 or ammunition as required by an order issued under this section,  
394 the court shall determine whether probable cause exists to  
395 believe that the respondent has failed to surrender all firearms  
396 or ammunition in his or her custody, control, or possession. If  
397 the court finds that probable cause exists, the court must issue  
398 a warrant describing the firearms or ammunition and authorizing  
399 a search of the locations where the firearms or ammunition are  
400 reasonably believed to be found and the seizure of any firearms  
401 or ammunition discovered pursuant to such search.

402 (e) If a person other than the respondent claims title to  
403 any firearms or ammunition surrendered pursuant to this section  
404 and he or she is determined by the law enforcement agency to be  
405 the lawful owner of the firearm or ammunition, the firearm or  
406 ammunition shall be returned to him or her, if:

407 1. The lawful owner agrees to store the firearm or  
408 ammunition in a manner such that the respondent does not have  
409 access to or control of the firearm or ammunition.

410 2. The firearm or ammunition is not otherwise unlawfully  
411 possessed by the owner.

412 (f) Upon the issuance of a risk protection order, the court  
413 shall order a new hearing date and require the respondent to  
414 appear no later than 3 business days after the issuance of the  
415 order. The court shall require proof that the respondent has  
416 surrendered any firearms or ammunition in his or her custody,  
417 control, or possession. The court may cancel the hearing upon a



651680

418 satisfactory showing that the respondent is in compliance with  
419 the order.

420 (g) All law enforcement agencies must develop policies and  
421 procedures by January 1, 2019, regarding the acceptance,  
422 storage, and return of firearms, ammunition, or licenses  
423 required to be surrendered under this section.

424 (8) RETURN AND DISPOSAL OF FIREARMS AND AMMUNITION.—

425 (a) If a risk protection order is vacated or ends without  
426 extension, a law enforcement agency holding a firearm or any  
427 ammunition that has been surrendered or seized pursuant to this  
428 section must return such surrendered firearm or ammunition  
429 requested by a respondent only after confirming through a  
430 background check that the respondent is currently eligible to  
431 own or possess firearms and ammunition under federal and state  
432 law and after confirming with the court that the risk protection  
433 order has been vacated or has ended without extension.

434 (b) If a risk protection order is vacated or ends without  
435 extension, the Department of Agriculture and Consumer Services,  
436 if it has suspended a license to carry a concealed weapon or  
437 firearm pursuant to this section, must reinstate such license  
438 only after confirming that the respondent is currently eligible  
439 to have a license to carry a concealed weapon or firearm  
440 pursuant to s. 790.06.

441 (c) A law enforcement agency must provide notice to any  
442 family or household members of the respondent before the return  
443 of any surrendered firearm and ammunition.

444 (d) Any firearm and ammunition surrendered by a respondent  
445 pursuant to subsection (7) which remains unclaimed by the lawful  
446 owner after an order to vacate the risk protection order shall



651680

447 be disposed of in accordance with the law enforcement agency's  
448 policies and procedures for the disposal of firearms in police  
449 custody.

450 (9) TRANSFER OF FIREARMS AND AMMUNITION.—A respondent may  
451 elect to transfer all firearms and ammunition that have been  
452 surrendered to or seized by a local law enforcement agency  
453 pursuant to subsection (7) to another person who is willing to  
454 receive the respondent's firearms and ammunition. The law  
455 enforcement agency may allow such a transfer only if it is  
456 determined that the chosen recipient:

457 (a) Currently is eligible to own or possess a firearm and  
458 ammunition under federal and state law after confirmation  
459 through a background check;

460 (b) Attests to storing the firearms and ammunition in a  
461 manner such that the respondent does not have access to or  
462 control of the firearms and ammunition until the risk protection  
463 order against the respondent is vacated or ends without  
464 extension; and

465 (c) Attests not to transfer the firearms or ammunition back  
466 to the respondent until the risk protection order against the  
467 respondent is vacated or ends without extension.

468 (10) REPORTING OF ORDERS.—

469 (a) Within 24 hours after issuance, the clerk of the court  
470 shall enter any risk protection order or temporary ex parte risk  
471 protection order issued under this section into the uniform case  
472 reporting system.

473 (b) Within 24 hours after issuance, the clerk of the court  
474 shall forward a copy of an order issued under this section to  
475 the appropriate law enforcement agency specified in the order.



651680

476 Upon receipt of the copy of the order, the law enforcement  
477 agency shall enter the order into the National Instant Criminal  
478 Background Check System, any other federal or state computer-  
479 based systems used by law enforcement agencies or others to  
480 identify prohibited purchasers of firearms or ammunition, and  
481 into any computer-based criminal intelligence information system  
482 available in this state used by law enforcement agencies to list  
483 outstanding warrants. The order must remain in each system for  
484 the period stated in the order, and the law enforcement agency  
485 shall only remove orders from the systems that have ended or  
486 been vacated. Entry into the Florida Crime Information Center  
487 and National Crime Information Center constitutes notice to all  
488 law enforcement agencies of the existence of the order. The  
489 order is fully enforceable in any county in this state.

490       (c) The issuing court shall, within 3 business days after  
491 issuance of a risk protection order or temporary ex parte risk  
492 protection order, forward all available identifying information  
493 concerning the respondent, along with the date of order  
494 issuance, to the Department of Agriculture and Consumer  
495 Services. Upon receipt of the information, the department shall  
496 determine if the respondent has a license to carry a concealed  
497 weapon or firearm. If the respondent does have a license to  
498 carry a concealed weapon or firearm, the department must  
499 immediately suspend the license.

500       (d) If a risk protection order is vacated before its end  
501 date, the clerk of the court shall, on the day of the order to  
502 vacate, forward a copy of the order to the Department of  
503 Agriculture and Consumer Services and the appropriate law  
504 enforcement agency specified in the order to vacate. Upon



651680

receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to paragraph (b).

(11) PENALTIES.-

(a) A person who files a petition under this section knowing the information in such petition is materially false, or files with the intent to harass the respondent, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(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, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) 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 or concealed firearm from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.

(13) LIABILITY.-Except as provided in subsection (10) 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 and any known third party that may be at risk of