

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Education

BILL: SPB 7106

INTRODUCER: For consideration by the Education Committee

SUBJECT: Risk Protection Orders

DATE: April 9, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Olenick</u>	<u>Sikes</u>	_____	Pre-meeting

I. Summary:

SPB 7106 expands the definition of a petitioner for purposes of a risk protection order petition to include, in addition to law enforcement officers and agencies, certain family members in order to provide them the ability to bring forth a petition without the assistance of law enforcement.

The bill takes effect July 1, 2019.

II. Present Situation:

In 2018, the Florida Legislature passed the Marjory Stoneman Douglas High School Public Safety Act in response to a tragic school shooting. The law addresses public safety by restricting firearm and ammunition possession by a person who poses a danger to himself or herself or others.

Age Restrictions on Purchase and Use of Firearms

Florida law prohibits the sale or transfer of a firearm to an individual under 21 by any person although ownership of the firearm may be transferred to the minor with a parent or guardian's permission. A person who violates this prohibition commits a third degree felony.¹

In Florida, it is unlawful for any firearm dealer to sell or transfer to a minor any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, or electric weapon or device. A firearm dealer who violates this provision commits a second degree felony.²

A minor under 18 years of age may not possess a firearm in Florida, other than an unloaded firearm at his or her home. There are exceptions to the general rule for these circumstances:

¹ Section 790.17, F.S.

² Section 790.18, F.S. A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- The minor is engaged in a lawful hunting activity and is:
 - At least 16 years of age; or
 - Under 16 years of age and supervised by an adult.
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:
 - At least 16 years of age or
 - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from an event authorized above.³

Gun Violence Protective Orders

Gun violence protective order laws, also known as gun violence restraining orders and extreme risk protection orders, operate as a temporary restraint on a person's possession of his or her guns. Specifically, gun violence protective order laws enable law enforcement, and in some states, family and household members, to petition a court to remove a person's access to guns if he or she poses an imminent danger to self or others.⁴ With a court-ordered gun violence protective order, a person's access to firearms is blocked temporarily until they can demonstrate that there is no longer a risk.⁵

Under federal law, a person who has committed a violent act towards others is not prohibited from possessing guns unless he or she is the subject of a domestic violence restraining order, has been convicted of a felony, or has been convicted of a domestic violence misdemeanor.⁶

Individual states have begun to implement laws that restrict a person's access to possession and control of firearms. Connecticut became the first state to pass a law providing for a gun violence protective order in 1999.⁷ The state's risk-warrant law grants law enforcement or a state attorney the authority to remove temporarily firearms from individuals when there is probable cause to believe they pose a significant risk of harm to themselves or to others.⁸ Indiana, California, Oregon, and Washington have also implemented a gun violence protective order-type law.⁹ Gun violence protective orders or "red flag" laws are currently pending in 18 states.¹⁰

³ Section 790.22(3), F.S.

⁴ Giffords Law Center to Prevent Gun Violence, *Gun Violence Protective Orders*, available at <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/gun-violence-protective-orders/> (last visited February 22, 2018).

⁵ ABC News, *How a Temporary Restraining Order for Guns Could Help Stop Mass Shootings*, Andy Fies, February 16, 2018, available at <http://abcnews.go.com/US/temporary-restraining-order-guns-stop-mass-shootings/story?id=51042163> (last visited February 21, 2018).

⁶ 18 U.S.C. s. 922(d)(9).

⁷ Section 29-38C, Conn. Gen. Stat.

⁸ The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, September 2017, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

⁹ Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

¹⁰ Everytown for Gun Safety, *Red Flag Laws: Helping Prevent Mass Shootings*, February 15, 2018, available at <https://everytownresearch.org/red-flag-laws-helping-prevent-mass-shooting/> (last visited February 21, 2018).

Florida law sets out a process for a law enforcement officers to petition a court for a temporary ex parte risk protection order and a final risk protection order in s. 790.401, F.S. The intent of the process and court intervention is to temporarily prevent persons from accessing firearms 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. The process strikes a balance between the rights of the person (respondent) including due process of law, and reducing death or injury as a result of his or her use of firearms during a mental health crisis.

The court must find by clear and convincing evidence based on the following considerations 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 to issue a risk protection order:¹¹

- 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;
- 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;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or a no contact order issued under ss. 741.30, 784.046, or 784.0485, F.S.;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;
- 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, F.S.;
- The respondent's ownership of, access to, or intent to possess firearms;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person;
- Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent; and
- Any relevant information from family and household members concerning the respondent.

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.

Florida law allows the petitioner, who is a law enforcement officer or agency, to request a temporary ex parte risk protection order be issued before the hearing for a risk protection order has occurred. The court must find that the respondent poses a significant danger of causing

¹¹ Section 790.401(3)(b)and(c), F.S.

personal injury to himself or herself or to others in the near future by having in his or her custody or control or by purchasing, possessing or receiving a firearm or ammunition to issue an ex parte temporary risk protection order.¹²

Upon issuance of a risk protection order, including a temporary ex parte risk protection order, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S.¹³

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm. The law enforcement officer must take possession of all firearms and ammunition belonging to the respondent that are surrendered.¹⁴

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 the firearms and ammunition 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.¹⁵

Notwithstanding ss. 933.02 and 933.018, F.S., a law enforcement officer may seek a search warrant from a court to conduct a search for firearms or ammunition if the officer has probable cause to believe that there are firearms or ammunition in the respondent's custody, control, or possession that have not been surrendered.

At the time of surrender, a law enforcement officer taking possession of a firearm, any ammunition, or a license to carry a concealed weapon or firearm must issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered and must 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 ensure that his or her law enforcement agency retains a copy of the receipt. All law enforcement agencies must develop policies and procedures by January 1, 2019, regarding the acceptance, storage, and return of firearms or ammunition required to be surrendered.¹⁶

Upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition as required by a risk protection order or temporary ex parte risk protection order, the court must determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition in his or her custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant authorizing a search of the locations where the firearms or ammunition are reasonably

¹² Section 790.401(4), F.S.

¹³ *Id.* at (7)

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.¹⁷

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. A respondent may elect to transfer all firearms and ammunition 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 may allow such a transfer only if it is determined that the chosen recipient:¹⁸

- Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
- 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; and
- 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.

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.¹⁹

Also 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 National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms or ammunition, and into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems that have ended or been vacated. Entry 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.²⁰

The issuing court shall forward, within three business days after issuance of a risk protection order or temporary ex parte risk protection order, 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 or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.²¹

¹⁷ *Id.*

¹⁸ *Id.* at (8).

¹⁹ *Id.* at (10).

²⁰ *Id.*

²¹ *Id.*

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.²²

A person who files a petition knowing the information in such petition is materially false, or files with the intent to harass the respondent, commits a first degree misdemeanor.²³

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 a risk protection order commits a felony of the third degree.²⁴

III. Effect of Proposed Changes:

SPB 7016 expands the definition of a petitioner for purposes of a risk protection order petition to include, in addition to law enforcement officers and agencies, certain family members in order to provide them the ability to bring forth a petition without the assistance of law enforcement.

Risk Protection Orders

The bill changes the definition of “petitioner” to include an individual who petitions a court for a risk protection order who has the following relationship with the respondent:

- Biological relationship,
- Legal parent-child relationship with the respondent,
- Stepparent-stepchild relationship,
- Grandparent-grandchild relationship,
- Individual who is the legal guardian of a respondent or,
- Sibling of a respondent.

The bill allows for a risk protection order petition to be filed by any of these individuals, and specifies that the order must either be brought forth in the county of residence in which the petitioner is located, or if the action is brought by law enforcement where the office is located.

The bill also clarifies that the address of record, if the petitioner is not a law enforcement officer, is the residence of the petitioner.

In effect, this will allow for, in addition to law enforcement, certain family members to petition a court for a risk protection order.

The bill takes effect July 1, 2019.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends 709.401 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
