

Baker Act/Firearms

During a Baker Act by law enforcement:

- The law enforcement officer may seize firearms and ammunition the person being Baker-Acted possesses at the time they are taken into custody
 - If the person is a danger to himself or others
 - **AND** there is a credible threat of violence against another
- LEO may use force to serve a court-ordered Baker Act



Baker Act/Firearms

If firearms or ammunition are seized or surrendered by/to an LEO at the time of the Baker Act

- The firearms and ammunition must be “made available” for return no later than 24 hours after the person documents he has been discharged from the receiving facility
- **UNLESS** there is a Risk Protection Order (RPO) in place or a “disability” from firearm possession or ownership exists



Baker Act/Firearms

Surrendered/seized firearms and ammunition must be “available” for return within the 24 hours

However, the process for the “actual return” of firearms or ammunition must not exceed 7 days



Risk Protection Orders: Petition

- A law enforcement officer or agency may petition the court for an RPO
- An RPO can be a temporary ex parte or final order
- An RPO may be filed in the county of the law enforcement agency or the county where the respondent lives
- Neither petitioner (law enforcement) or respondent are required to be represented by a lawyer
- No attorney's fees may be awarded
- No filing fees



Risk Protection Orders: Petition

- Allege that the respondent is a “**significant danger to himself or others**” by having a gun or ammunition in his possession or by purchasing a gun AND there is a “**reasonable fear of significant dangerous acts**” by the respondent
- Identify guns and their quality, type, and location in the respondent’s “**ownership, custody, possession or control**”
- Identify whether any other protection order is in place
- Provide that the notification will be or has been made to “family or other household members” or third parties who may be at risk of potential violence by the respondent and provide referral information for services



Risk Protection Orders: Court Duties

Upon receipt of the petition the court must order a hearing be held within 14 days and issue a Notice of Hearing

- The clerk of court must send the Notice of Hearing and petition to the sheriff for service by the next day after entering the order
- The court may issue a temporary ex parte RPO pending the hearing
 - The temporary ex parte RPO “must be served concurrently with the notice of hearing and petition”
- The court shall consider evidence under oath and in person or in writing
 - The hearing may be held by phone



Risk Protection Orders: Issuance

The court must find by clear and convincing evidence that the respondent poses a **“significant danger of causing personal injury to himself or others”** by having or purchasing a firearm and if established the court “must” issue an RPO and may do so for up to 12 months

- Non-limiting factors the court can consider to determine that the respondent is a **“significant danger of causing personal injury to himself or others”** by having or purchasing a firearm
 - There is no requirement that the respondent meet Baker Act criteria to meet this standard

- The court may order the respondent to undergo a mental health or controlled substance evaluation



Risk Protection Orders: Evidence

Evidence presented to the court must be in person and under oath or in writing with copies served to the other party

- Court may conduct telephonic hearing to accommodate disability or exceptional circumstances provided court is assured of the petitioner's identity
- Rules of evidence apply to the same extent as a Domestic Violence injunction hearing



Risk Protection Orders: Ex Parte Order

A court may issue a temporary ex parte RPO if the petitioner in the petition includes “detailed allegations” **based upon personal knowledge** that the respondent poses a significant danger of causing personal injury to himself or others **in the near future** by having in his custody or control, or by purchasing, possession, or receiving a firearm or ammunition

- No notice is required to the respondent for the court to consider the temporary request



Risk Protection Orders: Ex Parte Order

The court must hold the hearing on the temporary RPO on the day the petition is filed or the next business day.

- The factors the court considers for the temporary RPO are similar to what the court considers for the final RPO
- Reasonable cause standard
- Temporary RPO requires respondent to surrender all firearms and ammunition owned, in custody or control, and CCW permit



Risk Protection Orders: Notice

The Clerk of Court must furnish the sheriff the notice of hearing, petition, temporary RPO or final RPO as “soon as possible” after it is entered and the sheriff can serve at any time

- A respondent is permitted one request to vacate the RPO
- The respondent has the burden of proof by clear and convincing evidence that he does not pose a threat of harm to have the RPO dissolved

The petitioner (LEO/LEA) may seek an extension of the RPO within 30 days before the RPO terminates



Risk Protection Orders: Service

When serving the temporary or final RPO the law enforcement officer shall request that the respondent surrender all firearms and ammunition he owns and that which is in his custody, control or possession, and his CCW Permit

- If LE is not personally serving the RPO on the respondent (because he was present for the hearing as an example and he was served in court) the respondent must then surrender all firearms and ammunition to law enforcement



Risk Protection Orders: Surrender/Seizure of Firearms and Ammunition

If LEO has probable cause that the respondent has not surrendered all firearms and ammunition in his custody, control or possession, the officer can seek a search warrant

- Law enforcement agency must issue the respondent a receipt for the firearms and ammunition taken and file the “original” receipt with the court within 72 hours and keep a copy for agency’s records

If another person claims ownership to the items surrendered

- The law enforcement agency must determine if the other person is the owner and if so, return the items to the “owner” if the owner agrees to certain conditions, including prohibiting the respondent’s access to them



Risk Protection Orders: Surrender/Seizure of Firearms and Ammunition

Upon entering an RPO the court must set a new hearing to occur within 3 days

- The respondent must show at the RPO that he has surrendered all firearms and ammunition
- The court can cancel this hearing upon a showing that respondent has complied with the RPO prior to the hearing



Risk Protection Orders: Return of Firearms and Ammunition

After the RPO has expired and before law enforcement returns firearms and ammunition to the respondent

- Law enforcement agency must notify the respondent's family that the guns will be returned

If the guns or ammunition go unclaimed the law enforcement agency must retain them for one year before disposing of them according to law and policy

In lieu of law enforcement retaining the firearms and ammunition ordered surrendered under the RPO, the respondent can request that the guns and ammunition be retained by someone eligible to possess them

- This person must agree to certain terms including that the respondent will not have access to the firearms or ammunition
 - (Recommended that this agreement be in writing)



Risk Protection Orders: Information Sharing

- Within 24 hours of the court entering the RPO, the Clerk of the Court must enter the RPO in the Uniform Case Reporting System
- The law enforcement agency must enter the RPO in FCIC/NCIC
- The court must send the RPO to the Department of Agriculture so it may suspend the respondent's CCW permit



Risk Protection Orders: Penalties

Any petitioner making a false statement in the petition commits a third degree felony

Any respondent in possession of guns or ammunition, or who purchases firearms or ammunition in violation of the RPO commits a third degree felony



Risk Protection Orders: Policies

All law enforcement agencies must develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition, or licenses required to be surrendered



Risk Protection Orders: Liability

No criminal or civil liability for acts or omissions related to obtaining an RPO or a temporary ex parte RPO, including providing required notice, declining to report, investigating, declining to investigate, filing or declining to file, a petition for RPO

