

Marjory Stoneman Douglas High School Safety Act Technical Assistance Paper #1



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In response to the horrific shooting at the Marjory Stoneman Douglas High School, the Florida Legislature produced, during its 2018 Legislative Session, the Marjory Stoneman Douglas High School Safety Act. The 105-page act, previously [Senate Bill 7026](#), amends many statutes and creates new responsibilities for law enforcement agencies, the Department of Education, clerks of courts, school superintendents and school districts.

To supplement its members' resources, the FPCA will provide a summary of those sections of this Act that deal primarily with the new law enforcement responsibilities. The summary will be presented in a series of technical assistance papers. This first paper will introduce the Act and will focus solely on the new "Risk Protection Order Act" petition process.

Normally the clerk of court will furnish all documents related to risk protection orders to the sheriff at the county where the respondent resides. However, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. Accordingly, FPCA members need to review all aspects of this Act and begin training.

Legislative Intent of the School Safety Act

When reading the entire Act, it is essential to keep in mind the intent of the Legislature. Section 2 sets forth the purpose of the School Safety Act stating: "The Legislature finds there is a need to comprehensively address the crisis of gun violence, including but not limited to, gun violence on school campuses. The Legislature intends to address this crisis by providing law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence, and by promoting school safety and enhance coordination between education and law enforcement entities at the state and local level." See [SB 7026 Lines 303-312](#).¹

Legislative Intent of the Risk Protection Order Act

"The purpose and intent of s. 790.401, Florida Statutes, is to reduce deaths and injuries as a result of certain individuals' use of firearms while respecting constitutional rights by providing a judicial procedure for law enforcement officers to obtain a court order temporarily restricting a person's access to firearms and ammunition. The process established by s. 790.401, Florida Statutes, is intended to apply only to situations in which the person poses a significant danger of harming himself or herself or others by possessing a firearm or ammunition and to include standards and safeguards to protect the rights of respondents and due process of law."

¹ Links are provided throughout the document to Senate Bill 7026, which will be referred to by citing to specific line numbers, for your ease of reference.

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The Risk Protection Order Act

A new Florida statute, Section 790.401, was created to provide a cause of action known as a petition for a risk protection order. See [SB 7026 at lines 767 through 1362](#). Under this new procedure a law enforcement officer or agency can petition the court for a risk protection order. The petition must contain specific information which is described below. The officer or agency would be the petitioner. The individual identified in the petition would be the respondent. The result of the petition would be a “Risk Protection Order” (RPO) which is a temporary ex parte order, or a final order granted under this section. The following questions and answers are designed to assist your agency in understanding how this Act is expected to be implemented. Your agency counsel must review and give your agency an in-depth legal advice.

The following questions and answers are designed to assist in understanding the more relevant portions of the Risk Protection Order Act.

1. Where should a petition be filed?

The Petition must be filed in the county where the petitioner’s law enforcement office is located or the county where the respondent resides.

2. What courts have jurisdiction over a petition for an RPO?

All circuit courts of the State of Florida.

3. Is legal representation required?

No. The Act does not require either party to be represented by an attorney. Furthermore, the Act states that notwithstanding any other law, attorney fees may not be awarded in any RPO proceedings.

4. What are the requirements of the petition?

The Office of the State Courts Administrators IS tasked with developing and preparing instructions and informational brochures, standard petitions and risk protection forms, and a court staff handbook on the risk protections order process. The standard petitions and order forms must be used after January 1, 2019, for all petitions. Until this date the new Act will govern exactly what is needed to obtain an RPO. See [SB 7026 at lines 791-827](#).

5. What must be included in petition?

The petition must include the following:

- An allegation that the respondent poses a significant danger of causing personal injury to himself / herself or to others by having a firearm or any ammunition in his / her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition;
- An affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;
- A list identifying 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;
- A statement identifying whether there is a known existing protection order governing the respondent under s. 741.30 (domestic violence), s. 784.046 (dating violence) or s. 784.0485 (stalking) or under any other applicable statute;
- The address of appropriate law enforcement agency seeking the petition; and

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- Attestation that the petitioner has provided such notice or list the steps that will be taken to provide such notice.

6. Is there a notice requirement?

Yes. The Act requires the petitioner to make 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. The notice must advise that the petitioner is seeking an RPO or has already done so and must include referrals to appropriate resources, including mental health, domestic violence and counseling.

7. Can a court or public agency charge a filing fee?

No. Both the filing and the service of process to a petitioner seeking an RPO are free of charge.

8. Once a petition for an RPO has been filed, what is the court's role?

- The court must order a hearing within 14 days of the date of the order and issue a notice of hearing to the respondent. The court may conduct the 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.
- The clerk shall forward a copy of the notice of hearing and the petition to the law enforcement agency for service on the respondent. See [SB 7026 lines 1010-1049](#) for service of process procedures.
- The court may issue a *temporary* ex parte risk protection order pending the hearing. Such an order must be served concurrently with the notice of hearing and petition. See [SB 7026 lines 1010-1049](#) for service of process procedures.
- 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 purchasing, possessing or receiving firearms, the court must issue a risk protection order for a period that it deems appropriate, up to and including, but not exceeding, 12 months.
- A person, including an officer of the court, who offers evidence or recommendations relating to the petition must either present the evidence or recommendations in writing with copies to all parties or under oath at the hearing with all parties present.
- In a hearing under this section, the rules of evidence apply as in a domestic violence injunction proceeding under s. 741.30.
- During the hearing the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and, if such determination is made, may order such evaluations, if appropriate.
- If the court issues a risk protection order, the court must inform the respondent that he or she is entitled to request a hearing to vacate the order. See [SB 7026 lines 1050-1105](#) for termination and extension of orders which will also be described below. The court shall provide the respondent with a form to request a hearing to vacate.
- Upon the issuance of an RPO, the court shall order a new hearing date and require the respondent to appear no later than three business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition owned by the respondent in the respondent's custody, control or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.

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- If the court denies the petitioner’s request for a risk protection order, the court must state the particular reasons for the denial.

9. What relevant evidence may a court consider to grant or deny an RPO?

- A recent act or threat of violence by the respondent against self or others, whether or not such violence or threat 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 self or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a risk protection order or a no contact order issued under s. 741.30 (domestic violence), s. 784.046 (dating violence), or s. 784.0485 (stalking)
- 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;
- Whether the respondent has used, or has threatened to use, weapons against self or others;
- 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 for, 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 or ammunition by the respondent; and,
- Any relevant information from family and household members concerning the respondent;
- Witness testimony, taken while the witness is under oath, relating to the matter before the court.

10. What information must be included in an RPO?

The following information must be included in a risk protection order:

- A statement of the grounds supporting the issuance of the order;
- The date the order was issued;
- The date the order ends;
- Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;
- The address of the court in which any responsive pleading should be filed;
- A description of the requirements for the surrender of all firearms and ammunition that the respondent owns (See [SB 7026 lines 1106-1188](#)); and,
- This 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 that you own in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under 790.06, Florida Statutes. You may not have in your custody

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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 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.”

11. Is there a temporary ex parte RPO process?

Yes. A petitioner may request a temporary ex parte risk protection order to be issued before a hearing for an RPO, without notice to the respondent, by including in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to self or others in the **near future**.

- The court shall consider all relevant evidence as it does for hearings on RPOs. See above for list.
- If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to himself or herself or others in the **near future** by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition, the court must issue a temporary ex parte risk protection order.
- The court must hold a temporary ex parte risk protection order hearing in person or by telephone **on the day the petition is filed or on the business day immediately following**.
- The temporary ex parte risk protection order must include:
 - A statement of the grounds asserted for the order;
 - The date the order was issued;
 - The address of the court in which any responsive pleading may be filed;
 - The date and time of the scheduled hearing;
 - A description of the requirements for the surrender of all firearms and ammunition that the respondent owns, under subsection (7); and
 - This 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 that you own 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.”
- A temporary ex parte risk protection order ends upon the hearing on the risk protection order.
- A temporary ex parte risk protection order must be served by a law enforcement officer (LEO) in the same manner as provided for service of the notice of hearing and petition and must be served concurrently with the notice of hearing and petition. See [SB 7026 at lines 1010-1049](#) for service of process procedures.
- If the court denies the petitioner’s request for a temporary ex parte risk protection order, the court must state the particular reasons for the denial.

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12. Who is responsible for the service of documents related to the petition for an RPO?

Normally, the sheriff of the county where the respondent resides or can be found. See [SB 7026](#) at lines 1010-1034.

- The clerk of the court shall furnish a copy of the notice of hearing, petition, and temporary ex parte risk protection order or risk protection order, as applicable, **to the sheriff** of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night.
- When requested by the **sheriff**, the clerk of the court may transmit a facsimile copy of a temporary ex parte risk protection order or a risk protection order that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy.
- Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. The clerk shall be responsible for furnishing to the **sheriff** information on the respondent's physical description and location.
- Notwithstanding any other provision of law to the contrary, **the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service.** A law enforcement agency effecting service pursuant to this section shall use service and verification procedures consistent with those of the sheriff. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.
- All orders issued, changed, continued, extended, or vacated after the original service of documents specified in paragraph (a) must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was affected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

13. May a respondent request a hearing to vacate the RPO?

Yes. The respondent may submit one written request for a hearing to vacate an RPO starting after the date of the issuance of the order and may request another after every extension of the order, if any.

- Upon receipt of the request for a hearing to vacate an RPO, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance. See [SB 7026](#) lines 1010-1049 for service of process procedures. 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.
- The respondent shall have the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger of cause personal injury to self or others with a firearm. The court may consider any relevant evidence, including evidence of the considerations listed in paragraph (3)(c).

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- If the court finds after the hearing that the respondent has met his/her burden of proof, the court must vacate the order.
- 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 RPO.
- The court must notify the petitioner of the impending end of an RPO. Notice must be received by the petitioner at least 30 days before the date the order ends.

14. Can a petitioner request an extension of an RPO?

Yes. The petitioner may, by motion, request an extension of an RPO at any time within 30 days before the end of the order.

- 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.
- The court may schedule a hearing by telephone.
- The respondent must be personally serviced. See [SB 7026 lines 1010-1049](#) for service of process procedures.
- In determining whether to extend an RPO, the court may consider all relevant evidence as listed above.
- If the court finds by clear and convincing evidence that the requirements for issuance of an RPO 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.
- The court may extend an RPO for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate as provided above or to another extension order by the court.

15. Once an RPO is issued by the court what is the process for the surrender of firearms and ammunition?

- Upon issuance of an RPO, including a temporary ex parte RPO, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in the respondent's custody, control, or possession except as provided in subsection 9, and any license to carry a concealed weapon or firearm held by the respondent.
- The LEO serving an RPO, including a temporary ex parte RPO, shall request that the respondent immediately surrender all firearms and ammunition owned by the respondent in his or her custody, control, or possession and any license to carry a concealed weapon or firearm held by the respondent.
- The LEO shall take possession of all firearms and ammunition owned by respondent and any license to carry a concealed weapon or firearm issued under s. 790.06 which are surrendered.
- If personal service by an LEO is not possible or is not required because the respondent was present at the RPO hearing, the respondent must surrender any firearms and ammunition and any license to carry a concealed weapon 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.

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- Notwithstanding ss. 933.02 (grounds for issuance of search warrant) and 933.18 (when warrant may be issued for search of private dwelling), an LEO may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned by the respondent if the officer has probable cause to believe that there are firearms or ammunition owned by the respondent in his or her custody, control or possession which have not been surrendered.
- At the time of surrender, an LEO taking possession of any firearm, ammunition or license to carry a concealed weapon, shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered, and any license surrendered and shall provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the LEO serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.
- Notwithstanding ss. 933.02 and 933.18, 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 an RPO, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition owned by the respondent. If the court finds that probable cause exists, the court must issue a warrant describing the firearms or ammunition owned by the respondent and authorizing a search of the locations where the firearms or ammunition owned by the respondent are reasonably believed to be found and the seizure of any firearms or ammunition owned by the respondent discovered pursuant to such search.
- If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to this section and he or she is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to him or her if:
 - The lawful owner agrees to store the firearm or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition.
 - The firearm or ammunition is not otherwise unlawfully possessed by the owner.

16. Is every law enforcement agency required to develop policies and procedures for dealing with this Act?

Yes, all law enforcement agencies must develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition or licenses required to be surrendered under this section. See [SB 7026](#) at lines 1185-1188.

17. How does the Act regulate the return and disposal of firearms and ammunition?

- If an RPO is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition owned by the respondent or a license to carry a concealed weapon that has been surrendered or seized pursuant to this section must return such surrendered firearm, ammunition, or license to carry a concealed weapon as requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the RPO has been vacated or has ended without extension.

Note: The Marjory Stoneman Douglas High School Safety Act also amended Florida's Baker Act statutes. More specifically, s. 394.463 was amended to require all firearms or ammunition seized or voluntarily surrendered under the Baker Act procedures to be made available for return no later than 24 hours after the person taken into custody

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can document that he or she is no longer subject to involuntary examination and has been released or discharged from any inpatient or involuntary outpatient treatment provided or ordered under paragraph (g), unless a risk protection order entered under s. 790.401 directs the law enforcement agency to hold the firearms or ammunition for a longer period or the person is subject to a firearm purchase disability under s.790.065(2), or a firearm possession and firearm ownership disability under s. 790.064. The process for the actual return of firearms or ammunition seized or voluntarily surrendered under this paragraph may not take longer than 7 days. **See SB7026 at lines 456-499.**

- If an RPO is vacated or ends without extension, the Department of Agriculture and Consumer Services, if it has suspended a license to carry a concealed weapon pursuant to this section, must reinstate such license only after confirming that the respondent is currently eligible to have a license to carry a concealed weapon or firearm pursuant to s. 790.06.
- 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 owned by the respondent.
- Any firearm and ammunition surrendered by a respondent which remains unclaimed for one year by the lawful owner after an order to vacate the RPO shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

18. Can a respondent transfer items subject to an RPO to a third party?

Yes, a respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency pursuant to subsection 7 of the Act to another person who is willing to receive the respondent's firearms and ammunition.

The law enforcement agency must allow such a transfer only if it is determined that the chosen recipient:

- Is currently 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 RPO against the respondent is vacated or ends without extension; and,
- Attests not to transfer the firearms or ammunition back to the respondent until the RPO against the respondent is vacated or ends with extension.

19. What is the clerk of courts' role once an RPO is issued?

- Within 24 hours after issuance, the clerk of the court shall enter any RPO or temporary ex parte RPO issued under this section into the uniform case reporting system.
- 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 Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC). The order must remain in each system for the period stated in the order, and the law enforcement agency may only remove an order from the systems which has ended or been vacated. Entry of the order into the FCIC and NCIC constitutes notice to

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all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

- The issuing clerk shall, within three business days after issuance of an RPO or temporary ex parte RPO, forward 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.
- If an RPO 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. See [SB 7026](#) lines 1238-1273.

20. What are the penalties under the Act?

- A person who makes a false statement, which he or she does not believe to be true, under oath in a hearing under this section in regard to any material matter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- 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. See [SB 7026](#) at lines 1274-1285.

21. Is there criminal or civil liability exposure against an LEO under the Act?

Except as provided in subsection 8 (return or disposal of firearms and ammunition) or 11 (penalties), this section does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining an RPO or temporary ex parte RPO, including, but not limited to, providing notice to the petitioner, a family or household member of the respondent, and any known third party who may be at risk of violence or failure to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing or declining to file, a petition under this section. See [SB 7026](#) at lines 1292-1301.

22. Who is responsible for developing instructional and information materials related to petitions for RPOs?

The Office of the State Courts Administrator is mandated to develop and prepare instructions and information brochures, standard petitions and RPO forms, and a court staff handbook on the RPO process. The standard petition and order forms must be used after January 1, 2019, for all petitions filed and orders issued pursuant to this section. The office shall determine the significant non-English-speaking or limited English-speaking populations in the state and prepare the instructions and informational brochures and standard petitions and risk protection order forms in such languages. The instructions, brochures, forms, and handbook must be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and must be available online to the public.

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[SB 7026](#) is cumbersome at 105 pages in length. Hopefully this first technical assistance paper will provide useful clarification. The second technical assistance paper will focus on the new Coach Aaron Feis Guardian Program and the Act's safety and security best practices that will be required to be implemented by school districts.

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