

FLORIDA

# RISK PROTECTIVE ORDER

&

# THE BAKER ACT (INVOLUNTARY EXAMINATION, INVOLUNTARY INPATIENT PLACEMENT)

## HOW DO THEY DIFFER?



Bloomberg American Health Initiative

Information on this website does not constitute legal advice. Every factual situation is unique; if you want legal advice specific to your particular circumstances, please consult knowledgeable counsel.

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**Risk Protection Orders (RPOs)** temporarily remove firearms from individuals at risk of harming themselves (including suicide) or others. Criteria for an RPO focus on dangerous behaviors, not mental illness diagnoses.

**The Baker Act's involuntary examination and involuntary inpatient placement** are primarily concerned with ensuring that a person with a suspected or diagnosed mental health disorder receives appropriate treatment.

## WHAT IS A RISK PROTECTION ORDER?

In Florida, a **Risk Protection Order (RPO)**<sup>1</sup> is a civil order that temporarily prohibits individuals who pose a danger of injuring themselves (including suicide) or others from purchasing and possessing firearms and ammunition.<sup>2</sup>

### *Mental illness diagnosis*

Florida's **RPO** law does not require the petitioner to demonstrate that the respondent has a suspected or diagnosed mental disorder; however, evidence of the respondent being seriously mentally ill or having recurring mental health issues may be considered. Dangerous behaviors are the main criteria for an RPO. An RPO petitioner must establish that a person poses a significant danger of harming themselves or others.<sup>3</sup> The court will consider relevant evidence including any act or threat of violence toward self or others, abuse of controlled substances or alcohol, and violation of a no contact order, among others.<sup>4</sup>

### *Firearm prohibition*

**RPOs** prohibit respondents from purchasing or possessing firearms and ammunition for the duration of the order and require respondents to surrender their firearms and ammunition to law enforcement or transfer firearms and ammunition to a person lawfully eligible to possess them upon execution of the order.<sup>5</sup> A respondent must also surrender any license to carry a concealed weapon or firearm held by the respondent.<sup>6</sup>

## WHAT IS AN INVOLUNTARY EXAMINATION AND INVOLUNTARY INPATIENT PLACEMENT UNDER THE BAKER ACT?

In Florida, an **involuntary examination** is the hospitalization and examination of an individual believed to have a mental illness and, as a result, likely to cause injury to self or others. The hospitalization serves to determine if they are eligible for involuntary services, including involuntary inpatient placement.<sup>7</sup> **Involuntary inpatient placement** is the hospitalization and treatment of an individual with a mental illness who is in need of inpatient care because they present a danger to themselves or others, there is no less restrictive intervention, and they are unwilling to be admitted voluntarily.<sup>8</sup>

### *Mental illness diagnosis*

An individual may be hospitalized for an **involuntary examination** if they are believed to have a mental illness, and as a result:

- (1) is in need of an examination but unwilling to submit to an examination voluntarily or unable to determine whether an examination is necessary, and
- (2) presents a danger to self (including their well-being) or others without treatment.<sup>9</sup>

An individual may be ordered for **involuntary inpatient placement** if they have a mental illness, there is no less restrictive alternative, and because of the mental illness:

- (1) refuse voluntary placement, or is unable to determine that voluntary placement is necessary; and
- (2) pose a threat of harm to self or well-being because of their inability to care for themselves without treatment, or is likely to harm self or others.<sup>10</sup>

### *Firearm prohibition*

An individual hospitalized for an **involuntary examination** is not prohibited from purchasing and possessing firearms.<sup>11</sup> However, a law enforcement officer who has detained an individual for an **involuntary examination** may remove and hold a firearm or any ammunition the individual possesses at the time of detainment if the person poses a potential danger to himself/herself or others, and has made a credible threat of violence against another person.<sup>12</sup> The law enforcement officer may seek the voluntary surrender of firearms or ammunition kept in the residence if they were not removed.<sup>13</sup> If any firearms or ammunition are not removed or voluntarily surrendered, a law enforcement officer may petition the court for an RPO.<sup>14</sup> The firearms and ammunition will be held by law enforcement until the individual can show they are no longer subject to involuntary examination or **involuntary inpatient placement**, unless an RPO is in effect or the person is otherwise ineligible to lawfully purchase or possess firearms.<sup>15</sup>

An individual hospitalized for **involuntary inpatient placement** is prohibited from purchasing and possessing firearms.<sup>16</sup> An individual may petition the court for relief from the firearm disabilities.<sup>17</sup>

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## ENDNOTES

- 1 Fla. Stat. § 790.401.
- 2 Fla. Stat. § 790.401(7)(a).
- 3 Fla. Stat. § 790.401(1)(e)(1), (4)(c).
- 4 Fla. Stat. § 790.401(3)(c).
- 5 Fla. Stat. § 790.401(7)(a).
- 6 Fla. Stat. § 790.401(7)(a).
- 7 Fla. Stat. § 394.463(1), (2)(f).
- 8 Fla. Stat. §§ 394.463; 374.467.
- 9 Fla. Stat. § 394.463(1).
- 10 Fla. Stat. § 394.467(1).
- 11 Fla. Stat. § 790.065(2)(a)(4).
- 12 Fla. Stat. § 394.463(2)(d)(1).
- 13 Fla. Stat. § 394.463(2)(d)(2).
- 14 Fla. Stat. § 394.463(2)(d)(2).
- 15 Fla. Stat. § 394.463(2)(d)(3).
- 16 Fla. Stat. § 790.065(2)(a)(4).
- 17 Fla. Stat. § 790.065(2)(a)(4)(d).

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## ABOUT THIS PROJECT

In 2013, following the Sandy Hook massacre, the Consortium for Risk-Based Firearm Policy published evidence-based recommendations to address all forms of gun violence. Among the recommendations was a call for states to pass a new policy called Extreme Risk Protection Orders. As of September 1, 2020, seven years since the Consortium released its report, 19 states and the District of Columbia have passed new ERPO laws. Dozens more states have introduced ERPO bills.

With many laws in place, and several additional states poised to enact ERPO laws, there is a need for information, technical assistance, and support for implementing ERPO laws. This project was created to address that need. Please visit the central resource for ERPO implementers at [americanhealth.jhu.edu/implementERPO](http://americanhealth.jhu.edu/implementERPO).