

**YOUR COURTS**



**UP CLOSE**

**2020**



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Judge Daryl Isenhower  
County Court Judge  
19<sup>th</sup> Judicial Circuit

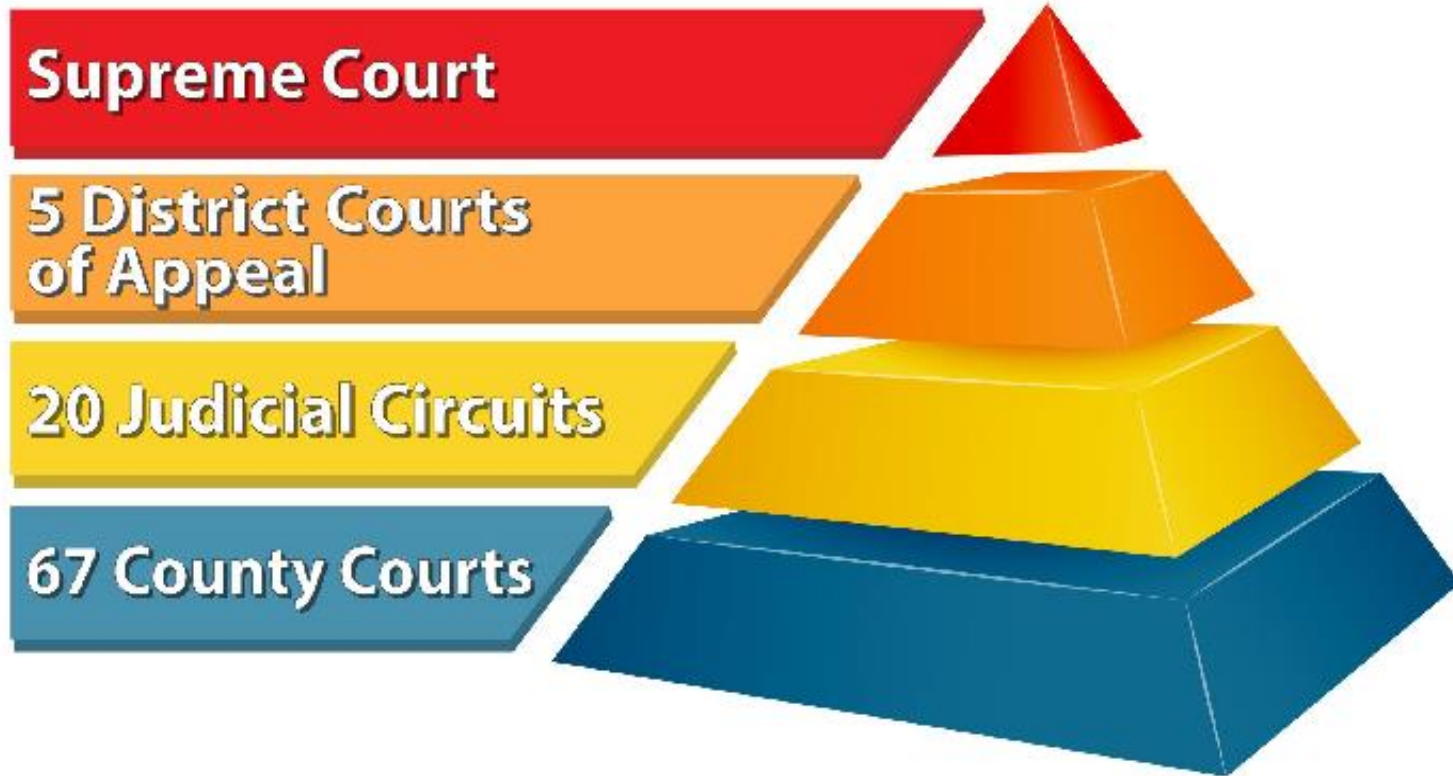


Judge Michael J. Linn  
Circuit Court Judge  
19<sup>th</sup> Judicial Circuit

# Brief Overview and Risk Protection Orders

Hon. Michael J. Linn

# Florida State Courts System



# The Constitution

- Articles
- Amendments

# 2<sup>nd</sup> Amendment

- A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed

# Heller

- District of Columbia v. Heller (2008)
  - The Second Amendment Right to Bear arms is a fundamental right
  - DC banned possession of firearms in one's home unless they had a permit
  - Heller was a police officer who was denied such a permit
  - The Court recognized that the right could be limited
    - One does not have the right to possess any weapon for any reason without limitation



# Davis v. Gilchrist County Sheriff's Office

- 1<sup>st</sup> DCA found the RPO statute to be Constitutional
- Strict Scrutiny test to determine whether the legislation is written to address a specific and compelling state interest
  - The prevalence of public shootings, and the need to thwart the mayhem and carnage contemplated by would-be perpetrators does represent an urgent and compelling state interest

# Risk Protection Orders

- FS 790.401
  - What does the Risk Protection Order do?
    - It prohibits the Respondent from possessing firearms for one year
    - Violation is a third degree felony
    - It can order someone to submit to a mental health evaluation
  - Who can request a Risk Protection Order
    - Law enforcement officer or a law enforcement agency
  - Who hears the Risk Protection Order
    - Circuit Judges
  - Where can a Petition be filed?
    - In the County where the Respondent resides or the Law Enforcement Agency

# What Must the Petition Allege

- Allege that Respondent "poses a significant danger of causing personal injury to himself or herself or others by having a firearm and any ammunition in his or her custody or control by purchasing, possessing, or receiving a firearm or any ammunition."
- Be accompanied by an affidavit made under oath stating the specific statements, actions, or fact that give rise to a reasonable fear of significant dangerous acts by Respondent.

# Evidence for a Risk Protection Order

- 1. 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.
- 2. 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.
- 3. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.

# Evidence continued

- 4. A violation by the respondent of a risk protection order or a no contact order issued under s. 741.30, s. 784.046, or s. 784.0485.
- 5. A previous or existing risk protection order issued against the respondent.
- 6. A violation of a previous or existing risk protection order issued against the respondent.
- 7. 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.

# Evidence Continued

- 8. Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons.
- 9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.
- 10. The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.
- 11. 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.
- 12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.

# Evidence Continued

- 13. Evidence of recent acquisition of firearms or ammunition by the respondent.
- 14. Any relevant information from family and household members concerning the respondent.
- 15. Witness testimony, taken while the witness is under oath, relating to the matter before the court.

# Temporary Risk Protection Orders

- 24 hour hearing
- Probable Cause
- Compliance
- Set final hearing



# Final Risk Protection Order

- Clear and Convincing Evidence
- 12 months
- Compliance
- Request to Vacate RPO
- Notice of Expiration
- Extension of RPO
- Department of Agriculture will cancel a Concealed Weapons license



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