

Virginia's Substantial Risk Order: A Vital Tool for Safety

A substantial risk order is a measure designed to help an individual in crisis, and the people around them, to stay safe from gun violence. It is a court order that temporarily restricts a person's access to guns. It is designed to help law enforcement intervene quickly in dangerous situations.

FAQs

How do I request a substantial risk order?

If you are concerned that someone you know is at risk of harming themselves or others, your first step should be to contact a member of law enforcement and discuss your concerns with them. Law enforcement can then investigate your concerns and request the substantial risk order from the court.

Who can request a substantial risk order in Virginia?

Under Virginia law, a law enforcement officer, a Commonwealth's attorney, a licensed mental health practitioner*, certain medical practitioners**, a certified evaluator***, an immediate family member****, an intimate partner*****, and certain school personnel***** may file a petition for a substantial risk order.

*Licensed mental health practitioners include:

- Licensed professional counselors;
- Licensed clinical social workers;
- Licensed marriage and family therapists; and
- Licensed clinical psychologists

** Medical practitioners include:

- Licensed clinical psychiatrists;
- Licensed psychiatric nurse practitioners;
- Psychiatric physician assistants;
- Psychiatric clinical nurse specialists;
- Doctors of medicine; and
- Doctors of osteopathy

*** A certified evaluator means an individual with an educational attainment of a master's or doctoral degree with an associated professional license who (i) is skilled in the assessment and treatment of mental illness; (ii) has completed a training and certification program approved by the Department; (iii) has received a prescreener orientation presentation developed by the Department in consultation with the Virginia Association of Community Services Boards.

**** Immediate family member or household member includes:

- Spouses;
- Former spouses;
- Children;
- Parents;
- Siblings; or
- Any other person living in the same household as the individual

***** Intimate partner means an individual who, within the last year, was in a romantic, dating, or sexual relationship with the person

***** School personnel who can be petitioners are:

School administrators or superintendents or their designee (who may be a representative of the school's threat assessment team) of any school which the person is currently enrolled or has been enrolled in the previous six months

What happens after the request for a substantial risk order has been filed?

Concern for the safety of the person, or of the public, may demand that action be taken before the scheduled hearing date, to prevent immediate danger. So once the court receives a request (called a "petition") for a substantial risk order, the court will determine whether to issue an emergency order.

If, after reviewing a petition, the court determines that it's necessary to protect a person or public safety during this time, a judge will issue an emergency substantial risk order that restricts a person's access to firearms before a full hearing is held. An emergency order only lasts until the court hearing on a final substantial risk order, which must be held within 14 days.

Because temporary orders only stay in place for a short period of time—up to 14 days—these orders balance the urgent need for public safety with the due process rights of all involved.

I'm afraid to wait until a court hearing is scheduled. What if the person is in immediate danger of harming themselves or someone else?

As stated above, concern for the safety of the public or of the person may demand that action be taken before the scheduled hearing date to prevent immediate danger. To protect a person or public safety during this time, a judge may issue a temporary substantial risk order that restricts a person's access to firearms before the person has been notified of the petition, and before a full hearing is held. A temporary order will only be issued if the judge has determined that it is necessary to prevent imminent danger.

How long does an emergency substantial risk order last?

If an emergency order is issued, the court will notify the person and schedule a court hearing about whether a final substantial risk order should be issued. If at the hearing a court finds that a person poses a substantial risk of causing injury to themselves or others by having access to firearms, the judge will issue a court order that prohibits the person from having firearms in their possession for as long as the order is in effect and that advises them to relinquish any firearms currently in their possession to law enforcement. Under certain circumstances, the person may, if permitted by the court, transfer their guns being held by law enforcement to a third party who is legally allowed to hold them.

How long does a final substantial risk order last?

A final substantial risk order lasts for a period of up to six months. At the end of the six months, law enforcement may ask the court to extend the order. It can only be extended after a court hearing.

Will a substantial risk order go on someone's criminal record?

No. A substantial risk order is a civil court order. Its sole purpose is to remove firearms from a person who is at high risk of causing harm to themselves or to others. The court's decision to issue the order does not cause the person to have a criminal record.

What if I am not able to request a substantial risk order myself? Is there anything I can do?

Even if you don't fall into any of the categories mentioned above, you can still take action in moments of crisis. If you are worried about someone who is showing warning signs of being at risk of self-harm or harming someone else, you can contact a law enforcement officer and ask that they seek a substantial risk order.

If you or someone you know is in crisis, **text or call 988** for 24/7 connection to free, confidential support. If you have immediate safety concerns, **call 911**.