

**ORDER CONCERNING 12th
JUDICIAL DISTRICT
PROCESS FOR EXTREME
RISK PROTECTION
ORDERS PER CRS
13-14.5-101 *et seq.***



**CHIEF JUDGE
ADMINISTRATIVE ORDER
2019-01**

On April 12, 2019, Governor Jared Polis signed into law the provisions of House Bill 19-1177 (the “Deputy Zackari Parrish III Violence Prevention Act”), which adds article 14.5 to title 13, C.R.S. and sets forth procedures for obtaining an extreme risk protection order based on allegations that the respondent poses a significant risk of causing personal injury to self or others in the near future by having in his or her custody or control a firearm, or by purchasing, possessing, or receiving a firearm. C.R.S. §§13-14.5-103(1), -104(3). Colorado courts shall begin accepting petitions requesting the issuance of an extreme risk protection order on January 1, 2020. C.R.S. §13-14.5-114(4).

The purpose of Administrative Order 2019-___ is to ensure that the 12th Judicial District provides quick access to the courts for persons seeking the issuance of a temporary extreme risk protection order or an extreme risk protection order, and to safeguard the due process rights of all parties involved in the proceedings.

A petition for a temporary extreme risk protection order must be heard on the day the petition is filed or the day following the day the petition was filed. C.R.S. §13-14.5-103(4). Upon entry of a temporary extreme risk protection order, the court must schedule a hearing within fourteen days from the date the temporary order was issued to determine whether grounds exist to issue a three-hundred-sixty-four-day extreme risk protection order. C.R.S. §13-14.5-103(5)(a). If a petition pursuant to C.R.S. §27-65-106 (a mental health proceeding) is also filed against the respondent, “a court of competent jurisdiction can hear that petition at the same time as the hearing for a temporary extreme risk protection order or the hearing for a continuing extreme risk protection order.” C.R.S. §13-14.5-103(1). Thus, there are times when it may be necessary for the court to hear the petition for a temporary extreme risk protection order and a mental health petition during the same expedited hearing.

Although a petition for an extreme risk protection order filed pursuant to C.R.S. §13-14.5-104 (as opposed to a petition for a temporary extreme risk protection order filed under C.R.S. §13-14.5-103) does not specify the time period in which the hearing must be held, the nature of the relief requested invokes the need for the court to hold the hearing as expeditiously as possible, giving due consideration to the representations contained in the petition, the procedural requisites of the statute, and other legal requirements.

Before issuing an extreme risk protection order under C.R.S. §13-14.5-105, the court must consider whether the respondent meets the standard for a court-ordered evaluation for persons with mental health disorders pursuant to C.R.S. §27-65-106, and if the court so finds, the court must order a mental health treatment and evaluation pursuant to C.R.S. §27-65-106(6). C.R.S.

§13-14.5-105(8)(a). The court must also, prior to issuing an extreme risk protection order, consider whether the respondent meets the criteria for an emergency mental health commitment, under C.R.S. §§27-81-111 or 27-82-107, and if the court so finds, the court must also order an emergency commitment. C.R.S. §13-14.5-105(8)(b).

Accordingly, it is possible that the court will have to make determinations concerning the respondent's mental health in the context of deciding a petition for a temporary extreme risk protection order or a petition for an extreme risk protection order. Under Colorado law, however, county courts do not have jurisdiction over mental health matters. C.R.S. §13-6-105(b). Therefore, the district judges in the 12th Judicial District will be primarily responsible for hearing petitions for temporary extreme risk protection orders and extreme risk protection orders. When a petition for such a protection order is filed, the clerks of the courts in this judicial district shall first seek a district judge to preside over the case and shall make every effort to find a district judge to expeditiously hear the petition.

However, because of the need to hold such hearings as expeditiously as possible, there will be times when only a county judge will be available to hear such a petition. In that unusual circumstance, the court believes it is imperative that the county court judges of the 12th Judicial District be authorized to preside over hearings on petitions for temporary and regular extreme risk protection orders. Moreover, pursuant to the Act, "the district and county courts of the state of Colorado shall have jurisdiction over proceedings pursuant to this article 14.5," C.R.S. §13-14.5-104(8), which confirms a recognition by the Colorado general assembly of the need for both county and district court judges to have jurisdiction to preside over temporary extreme risk protection order and extreme risk protection order hearings.

The statute also provides that "the court may schedule a hearing by telephone pursuant to local court rule to reasonably accommodate a disability or, in exceptional circumstances, to protect a petitioner from potential harm." C.R.S. §§13-14.5-103(4) and -105(1)(a). There is not a judge present in each of the courthouses in the 12th Judicial District on a daily basis. When a judge is not present in a courthouse, the only way the district can accommodate the requirement that there be an expeditious hearing on a petition for a temporary extreme risk protection order and, at times, on a petition for an extreme risk protection order, is to allow the judge to appear at the courthouse for the hearing by telephone or videoconference.

Finally, the statute requires that the court provide "a copy of the telephone hearing" on the temporary extreme risk protection order to the respondent "prior to the hearing for an extreme risk protection order." C.R.S. §13-14.5-103(4). Because the statute requires the hearing on the extreme risk protection order to be held as expeditiously as possible, it will be difficult, if not impossible, to obtain a transcript of the hearing on the temporary extreme risk protection order prior to the hearing on the longer-term extreme risk protection order. The only way the courts of the 12th Judicial District can expeditiously provide a copy of the hearing on the temporary extreme risk protection order is to provide an electronic recording of the hearing. Chief Judge Administrative Order 2005-06 as amended 9-17-18, however, prohibits the courts of the 12th Judicial District from providing digital recordings of court proceedings except for appeals from small claims cases. Concurrent with the execution of this Chief Judge Administrative Order, the

Chief Judge is amending 2005-06 to also allow the provision of digital recordings of temporary extreme risk protection order hearings.

Based on the foregoing, it is hereby ordered by the Chief Judge of the Twelfth Judicial District that the district judges of the 12th Judicial District will be primarily responsible for hearing all petitions for temporary extreme risk protection orders and extreme risk protection orders; and

IT IS FURTHER ORDERED that pursuant to Chief Justice Directive 95-01(4)(a)(ii), Assignment of Judges, that the county court judges in Alamosa, Conejos, Costilla, Mineral, Rio Grande and Saguache Counties are assigned to act as district court judges to preside over temporary extreme risk protection order and extreme risk protection order cases when there is no district court judge available to hear the petition. The county judge may elect to transfer the case to a district judge or the county judge may preside over the case from inception to conclusion of all matters relating to that particular case. As authorized in article 14.5 of title 13, C.R.S., the county court judge acting as a district court judge under this order shall have authority to issue orders under C.R.S. §§27-65-106, 27-81-111, and 27-82-107, whether the order issued is part of the extreme risk protection order case or a separate mental health case that is being heard at the same time as the extreme risk protection order case. The county court judge shall sign any orders issued while acting under the authority provided by this administrative order as an “acting district court judge.”; and

IT IS FURTHER ORDERED that, if a judge cannot be personally present in a county for an expeditious hearing on a petition for a temporary extreme risk protection order or an extreme risk protection order, the judge may appear for the hearing by telephone or videoconference; and

IT IS FURTHER ORDERED that the courts of this judicial district will provide a digital recording of hearings on temporary extreme risk protection orders to respondents in those cases prior to the hearing on the longer-term extreme risk protection order.

SO ORDERED this 31st day of December 2019.

BY THE COURT:



Pattie P. Swift, Chief Judge