

STATE OF MINNESOTA
IN SUPREME COURT

ADM04-8001
ADM09-8009
ADM10-8050

FILED

December 31, 2023

**OFFICE OF
APPELLATE COURTS**

**ORDER EXEMPTING EXTREME RISK PROTECTION ORDER FILINGS
FROM ADMINISTRATIVE FILING REQUIREMENTS AND ADDRESSING
ACCESS TO CASE RECORDS**

On January 1, 2024, a new law takes effect in Minnesota that authorizes certain petitioners, including family or household members, to request that the court issue an extreme risk protection order prohibiting a person who poses a significant danger of bodily harm to others or is at significant risk of suicide from possessing or purchasing firearms for as long as the order remains in effect. *See* Minn. Stat. §§ 624.7171–.7178 (2023). This court previously ordered that notwithstanding the extreme risk protection order legislation, the filing of health records and health information under this new law will continue to be governed by the Rules of Public Access to Records of the Judicial Branch. *See* Order Regarding Minn. Stat. § 624.7171 and the Rules of Public Access to Records of the Minnesota Judicial Branch, No. ADM10-8050 (Minn. filed August 8, 2023). Petitions filed and court orders issued in civil cases are presumed to be accessible to the public and are remotely accessible. Minn. R. Pub. Access to Recs. of Jud. Branch 2, 8, subd. 2(g). The prior order further provided that notwithstanding the extreme risk protection order legislation, all submissions shall continue to comply with Rules 11 and 14 of the General

Rules of Practice for the District Courts, which address the appropriate submission of documents containing non-public information.

This order addresses two related concerns: First, ensuring that filings in extreme risk protection order cases are not rejected for failure to comply with otherwise applicable requirements for submitting information that contain restricted identifiers or other non-public information, which raises access to justice concerns. Second, ensuring that any entity or agency responsible for enforcing the order or firearms possession prohibition is able to access the case records in these cases.

Foreclosing Administrator Rejection of Non-Compliant Filings

Consistent with the presumption that documents filed in civil cases are publicly accessible, the General Rules of Practice for the District Courts set forth an exception process for submitting filings that contain restricted identifiers or other non-public information and authorize court administrators to strike non-compliant filings. Minn. Gen. R. Prac. 11.03, 11.05. In general, filers are required to designate filings containing non-public information through the use of a cover sheet or an electronic filing code designated for non-public documents. The Rules of Civil Procedure also authorize court administrators to reject non-compliant filings. Minn. R. Civ. P. 5.04(c)(4).

The court by order, however, has recognized that certain types of filings require an exception from this process for access to justice purposes. For example, as noted in a previous order, for petitions for orders for protection (OFPs) and harassment restraining orders (HROs), the expanded administrative rejection and striking could result in an unintended and critical loss of access to justice. *See* Order Exempting Certain Submissions

from Administrative Filing Requirements and Clarifying the Application of the Rules of Public Access, No. ADM04-8001, ADM09-8009, ADM10-8050 (Minn. filed November 20, 2020). Accordingly, this court ordered that for petitions for an OFP or HRO or the documents that accompany the petition, district court administrators shall not reject such documents under the authority of Minn. R. Civ. P. 5.04(c)(4); require a cover sheet or an electronic filing code designated for non-public documents pursuant to Minn. Gen. R. Prac. 11.03; or administratively strike such documents pursuant to Minn. Gen. R. Prac. 11.05. *See Order Exempting Certain Submissions from Administrative Filing Requirements and Clarifying the Application of the Rules of Public Access, No. ADM04-8001, ADM09-8009, ADM10-8050 (Minn. filed November 20, 2020).*

Similar to petitions for OFPs and HROs, the expanded administrative rejection and striking of documents in filings related to extreme risk protection orders could result in a critical loss of access to justice in this new case type as well. We thus similarly order that district court administrators not reject or strike such documents submitted in extreme risk protection order cases.

Public and Not Sealed Records

As previously stated, documents filed and court orders issued in civil cases are presumed to be accessible to the public and are remotely accessible. Minn. R. Pub. Access to Recs. of Jud. Branch 2; 8, subd. 2(g). Although this court by prior order has made clear that it is the Rules of Public Access to Records of the Judicial Branch that govern in extreme risk protection order cases, the new law likewise recognizes that the presumption is that extreme risk protection orders remain public: “All extreme risk protection orders

based on the respondent being a danger to others shall remain public.” Minn. Stat. § 624.7172, subd. 2(h).¹ Moreover, under the statute, even if a respondent consents to imposition of an extreme risk protection order and requests that the petition be sealed, the respondent’s sealing request must be denied if “the court finds that there is clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the respondent of not sealing the petition.” *Id.*

With regards to the records at issue here, the interests of public safety require that extreme risk protection order case records not be sealed. If an order were to be sealed, no entity or agency who is responsible for enforcement of the order or of the firearms possession prohibition would have access to the order when performing a search or background check in any state or federal database, including but not limited to Minnesota Government Access (MGA), Minnesota Court Records Online (MCRO), the Bureau of Criminal Apprehension data communications network including the “Hot Files,” the federal National Instant Criminal Background Check System (NICS), and the National Crime Information Center (NCIC). The inability to access this information would prevent

¹ The extreme risk protection order legislation states:

The court shall seal the petition filed under this section and section 624.7174 if a respondent who consents to imposition of an extreme risk protection order requests that the petition be sealed, unless the court finds that there is clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the respondent of not sealing the petition. All extreme risk protection orders based on the respondent being a danger to others shall remain public. Extreme risk protection orders issued for respondents who are solely at risk of suicide shall not be public.

Minn. Stat. § 624.7172, subd. 2(h).

enforcement of the order and of the law. Similarly, if any petition were to be sealed, the entities and agencies responsible for investigation and enforcement of the law would be limited in the information they would have access to regarding a particular respondent, which could negatively impact public safety.

All case records required to be available in state and/or federal law enforcement systems for purposes of enforcing protection orders and/or firearms prohibitions, including non-public case records and race data, need to be available to the BCA and the federal NICS/NCIC. Although sealed case records cannot be shared with any government agency or entity outside the judicial branch, non-public or confidential records can be shared with government agency partners when authorized. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 8, subd. 4. When a similar need has arisen in other circumstances, this court has previously issued orders authorizing the State Court Administrator to provide to the FBI's NICS Section electronic access to non-public case records in certain cases to facilitate the performance of background checks to determine if a person may be disqualified from possessing firearms. *See, e.g.*, Order Authorizing Disclosure of Certain Case Records to FBI's National Instant Criminal Background Check System Section, No. ADM10-8050 (Minn. filed December 15, 2022); Order Authorizing Disclosure of Certain Case Records to Government and Law Enforcement Agencies, No. ADM10-8050 (Minn. filed June 25, 2015). This court has also previously issued orders authorizing the sharing of race data with the BCA for purposes of enforcement of protection orders. *See, e.g.*, Order Authorizing Disclosure of Race Data to BCA for OFP and DANCO Enforcement Purposes,

No. ADM10-8050 (Minn. filed July 5, 2011). We issue a similar order here based on a similar need.

IT IS HEREBY ORDERED THAT:

1. For petitions for an extreme risk protection order, pursuant to Minn. Stat. §§ 624.7171–.7178, or the documents that accompany the petition, district court administrators shall not reject such documents under the authority of Minn. R. Civ. P. 5.04(c)(4); require a cover sheet for such documents or electronic filing code designated for non-public documents pursuant to Minn. Gen. R. Prac. 11.03; or administratively strike such documents pursuant to Minn. Gen. R. Prac. 11.05.
2. District court administrators shall not make any petition for an extreme risk protection order, any extreme risk protection order, or any extreme risk protection order case non-public absent a court order specifically making the petition, order, or case non-public.
3. In order to ensure that any entity or agency responsible for enforcement of the extreme risk protection order or of the firearms possession prohibition has access to the order and all needed information when performing a records search or background check in any state or federal database, any extreme risk protection order case record ordered by a judge in a specific case to be sealed is instead designated by virtue of this order as confidential and must be classified as confidential by district court administrators consistent with State Court Administrator case and document access and security policies and procedures.

4. Nothing in this order shall be construed to otherwise modify district court administrators' authorities and obligations with respect to rejection and striking of filings and case record access classification.
5. The State Court Administrator is authorized to make non-public extreme risk protection order case records, including non-public document images, accessible electronically to any authorized government and law enforcement agencies based on a demonstrated legitimate business need, including NICS/NCIC via the BCA.
6. Notwithstanding any rule, statute, or order to the contrary, the State Court Administrator is authorized to include non-public data, including race data under Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(e), in any transmittal of case record information relating to protection orders and/or firearms prohibitions to the BCA and FBI NICS/NCIC for purposes of enforcement.
7. Notwithstanding the above provisions, except where extreme risk protection order case records ordered by a judge in a specific case to be sealed are instead designated by virtue of this order as confidential, no electronic access to sealed or expunged cases, or to documents that are part of a case that has been expunged, shall be provided.
8. This Order is effective immediately.

Dated: December 31, 2023

BY THE COURT:



Natalie E. Hudson
Chief Justice