

ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE

1146.2, RISK PROTECTION ORDERS

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1. PURPOSE

The purpose of this policy is to enhance public safety by establishing agency guidelines as to when and how to petition for an RPO or an Ex Parte Temporary Risk Protection Order (TRPO) pursuant to Florida Statute [790.401](#) in an effort to prevent deaths and injuries while also respecting the individual's constitutional rights and due process of law.

2. POLICY

It shall be the policy of the Orlando Police Department to ensure that individuals who are at high risk of harming themselves or others are prevented from accessing firearms or ammunition. Risk Protection Orders should only be sought when there is demonstrated evidence that a person poses a significant danger to himself or herself or to others, including significant danger as a result of a mental health crisis or violent behavior. Officers are required to use their sound discretion based on training and experience to determine when seeking such an order is appropriate.

All sworn members will receive initial training on Risk Protection Orders. The 'Risk Protection' test is located in PowerDMS for all sworn members to complete upon being given access to PowerDMS.

3. DEFINITIONS

"Affidavit for a Risk Protection Order" is a written document made under oath which details the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent. It must also identify the quantities, types, and locations of all firearms and ammunition believed to be in the respondent's current ownership, possession, custody, or control. It must be attached to the Petition for an RPO and may take the form of one or more sworn incident reports.

"Petition for a Risk Protection Order" is a signed written request for an RPO, accompanied with an affidavit, filed by a law enforcement officer or the agency alleging the respondent poses a significant danger of causing personal injury to himself/herself or others by having a firearm or any ammunition in his/her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition.

"Petitioner" means a law enforcement officer or a law enforcement agency that petitions a court for a risk protection order.

"Respondent" is the individual who is the subject of a petition for an RPO (i.e., the individual who poses a significant danger to himself/herself or others by having a firearm or ammunition in his/her custody or control).

"Risk Protection Order" or "RPO" is a court order which restricts an individual's access to firearms/ammunition. It can be an ex parte temporary order or a final order granted by a court pursuant to Florida Statute 790.401.

"Temporary Risk Protection Order" or "TRPO" is an ex parte temporary risk protection order that is emergency in nature and appropriate when there is a reasonable belief the respondent poses a significant danger of causing personal injury to himself/herself or others in the near future by way of firearms and/or ammunition.

For purposes of this policy, "household member" shall include all persons residing in the same residence as the respondent, regardless of the nature of their relationship.

4. PROCEDURES

4.1 SEEKING A RISK PROTECTION ORDER

When an officer encounters an individual who has made or acted on threats of violence, especially those involving the use of a firearm, he/she should consider whether an RPO is necessary. If the officer believes an RPO is necessary, he/she shall immediately contact his/her supervisor. The following is a list of factors that should be considered in deciding whether to pursue an RPO:

1. Recent acts or threats of violence by respondent against himself or others, whether or not the act or threat involved a firearm.
2. Evidence of unlawful or reckless use, display, or brandishing of a firearm.
3. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.
4. Violation of any previous or current injunction by the respondent.
5. Whether the respondent has been convicted of, had adjudication withheld on, or pled no contest to a crime that constitutes domestic violence.
6. 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.
7. Corroborated evidence of the abuse of a controlled substance or alcohol by the respondent.

8. Evidence of recent acquisition of firearms or ammunition by the respondent.
9. Any relevant information from family, household members or other witnesses concerning the respondent.
10. Past acts or threats of violence by the respondent against himself or others, whether or not the act or threat involved a firearm.

The supervisor shall review the facts of the case and if he/she believes an RPO is appropriate, he/she shall instruct the officer to contact the Police Legal Advisor's Office (or to call the on-call legal advisor if the encounter is taking place outside of normal business hours) to pursue an RPO.

The Police Legal Advisor's Office shall review the facts of the case and determine whether the evidence is legally sufficient to obtain an RPO. If the reviewing attorney determines that the evidence is sufficient and an RPO is appropriate, the Police Legal Advisor's Office will either file a petition for the RPO or will authorize the officer to file the petition.

4.1.1 PETITION FOR RISK PROTECTION ORDER

To obtain an RPO, the petitioner must file a petition alleging the respondent poses a significant danger of causing personal injury to himself or others by:

1. Having a firearm or ammunition in his/her custody or control, or
2. Purchasing, possessing, or receiving a firearm or ammunition

Law enforcement officers or the law enforcement agency (through the Police Legal Advisor's Office) may file a petition for a risk protection order. All Police Legal Advisors and the City Prosecutor are authorized to file the petition on behalf of the agency. **However, an OPD member shall not file a petition for Risk Protection Orders without the approval of the Police Legal Advisor's Office.**

Any member seeking to obtain an RPO shall prepare an affidavit for a risk protection order and provide it along with any witness statements that may be needed to the Police Legal Advisor's Office as soon as practicable.

The Police Legal Advisor's Office shall finalize all the necessary forms to request an RPO, including: the Petition, a proposed Order Granting a Temporary Ex Parte RPO, and a proposed Final Order Granting the RPO. Depending on the circumstances, the Police Legal Advisor's Office may also prepare a proposed written stipulation to the entry of the final RPO to be provided to the respondent.

4.1.2 NOTICE REQUIREMENTS

The petitioner is required to make good faith efforts to provide notice of the intent to seek an RPO to family and household members of the respondent and to any known third parties who may be at risk of violence (e.g., boyfriends, girlfriends, employers when threats have been directed towards the workplace).

The officer taking the initial report and initiating the RPO must include the name and contact information of the family/household member and the known third party who may be at risk of violence by the respondent in the reports. This contact information will assist the agency with any future notices required by law. The officer shall make good faith efforts to identify such individuals and obtain contact information for them, and shall provide referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The officer shall document their efforts to provide such notice in the incident report.

Additionally, the Police Legal Advisor's Office shall provide written notice via certified mail that the petitioner intends to petition the court for an RPO or has already done so to all persons identified by the responding officer as being family or household members or other third parties who may be at risk of violence from the respondent at the addresses obtained by the officer.

4.2 TEMPORARY EX PARTE RISK PROTECTION ORDERS (TRPO)

The court must hold a TRPO hearing either on the same day that the petition is filed, or on the next business day. Generally, the court does not conduct an actual in-person hearing, but instead reviews the petition and exhibits filed by OPD in their chambers and then files an order with the Clerk of Courts.

If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition, the court must issue a TRPO.

Upon issuing a TRPO, the court shall order a new hearing date and require the respondent to appear no later than **3 business days after the issuance of the order** for the respondent to provide proof that he or she has surrendered any firearms or ammunition within his or her custody, control or possession. This hearing may be canceled upon satisfactory showing that the respondent is in compliance with the TRPO. The officer who served the TRPO must make themselves available to testify at this hearing if necessary.

If the court issues a TRPO, the officer initiating the RPO shall serve a copy of the order on the respondent if the respondent can be located in OPD jurisdiction.

4.3 RISK PROTECTION ORDER HEARINGS

The court must hold a hearing on a petition for an RPO **within 14 days** after receipt of the order and must issue a notice of the hearing to the respondent.

At the hearing, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury by having in his or her control or by purchasing, possessing or receiving a firearm or ammunition, the court must issue an RPO for a period up to and including 12 months.

Factors the court will consider in issuing an RPO include recent acts or threats of violence, mental health issues, and improper use of firearms. A full list of the determining factors is listed in Florida Statute 790.401(3)(c), and in section 4.1 above.

The Final Hearing is similar to a bench trial. Legal will call witnesses and present evidence at the hearing.

Upon issuing a final RPO, the court shall order a new hearing date and require the respondent to appear no later than **3 business days after the issuance of the order**. There the respondent must provide proof that he or she has surrendered any firearms or ammunition within his or her custody, control or possession. This hearing may be canceled upon satisfactory showing that the respondent is in compliance with the RPO. If a TRPO was previously a satisfactory showing of compliance, the court may forgo setting a new compliance hearing date.

4.4 SERVICE OF ORDERS

The Chief Judge of the Circuit has authorized members of the Orlando Police Department to effect service of Temporary and Final RPOs within the City of Orlando. The clerk of court will furnish a copy of all necessary documents to the department for service to the respondent as soon thereafter as possible on any day of the week and at any time of the day or night.

If the respondent is not in custody with a possible known location within the City of Orlando, the officer shall meet with his/her supervisor. The supervisor will consider available options for the safety of the officers serving the RPO. When serving a TRPO or RPO, officers shall:

- Serve copies Petition for RPO and Order Granting the TRPO or RPO on the Respondent.
- Collect the firearms and ammunition, and, if applicable, concealed weapons permit,

- Document service of the Petition and Order on the respondent in a sworn supplemental report. The report should include details concerning how the identity of the respondent was verified, whether the respondent acknowledged receipt of the documents, whether the respondent indicated they would agree to the entry of a final RPO, and the names of any additional officers who observed service of the petition and order.

Officers shall provide a sworn copy of the supplemental report documenting service to the Police Legal Advisor's Office within 24 hours of service via email or hand delivery along with a copy of the Property Receipt for all firearms, ammunition, and concealed carry permits taken. Officers should also provide the Legal Advisor with any phone numbers, mailing addresses, or email addresses provided by the Respondent. If the respondent signed a joint stipulation to the entry of a final RPO, the officer should also provide a signed copy of the joint stipulation. Officers may make use Attachment A (Risk Protection Order Service Checklist) to assist them in ensuring that all necessary steps are taken when service RPOs.

If the respondent is known to be located outside of the City of Orlando but within Orange County, the documents will be provided to the Orange County Sheriff's Office for service to the respondent. If the respondent is known to be located in another county in Florida, the officer assigned will immediately transmit the TRPO or the RPO, Affidavit, and Petition to the Sheriff's Office of the county where the Respondent resides or can be found in order to effect service.

4.5 SURRENDER OF FIREARMS AND AMMUNITION

The law enforcement officer serving a TRPO or RPO shall request that the respondent immediately surrender all firearms and ammunition owned by the respondent in his or her custody, control, or possession as well as any license to carry a concealed firearm held by the respondent.

The law enforcement officer taking possession of any firearm, ammunition or concealed weapons permit **shall issue a receipt** identifying all firearms and the quantity and type of ammunition that have been surrendered, and any license surrendered.

When taking and storing a firearm, officers are required to comply with Policy and Procedure 1123, Property and Evidence. Officers shall use the "Receipt for Prisoner's Personal Property" form for this purpose. Officers are encouraged to cross-out "Prisoner's" whenever it appears on the form.

A copy of the receipt shall be given to the respondent at the time of the surrender. Within 72 hours after the service of the order, the law enforcement officer shall provide a copy of the receipt to the Police Legal Advisor who shall be responsible for filing the appropriate documentation with the court.

If a person other than the respondent claims to be the owner of any firearm or ammunition surrendered pursuant to an RPO, and is determined to be the rightful owner, then the firearm or ammunition should be given to that person if:

1. The lawful owner provides a sworn, written statement agreeing to store the firearm or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition; AND
2. The firearm or ammunition is not otherwise unlawfully possessed by the owner.

4.5.1 TRANSFER OF FIREARMS AND AMMUNITION TO THIRD PARTIES

Instead of surrendering his or her firearms and ammunition, a respondent may elect to transfer it to another person who is willing to receive them. OPD members shall allow the transfer if the recipient:

1. Is currently eligible to own or possess a firearm or ammunition under federal and state law after a confirmation through a background check; AND
2. Attests in to store the firearms and ammunition so that the respondent does not have access to or control of them until the RPO is no longer in effect; AND
3. Attests not to return them to the respondent until the RPO is no longer in effect.

If the chosen recipient of the firearms and ammunition meets the above criteria, they must sign a sworn written statement attesting that they will store the firearms and ammunition such that the respondent does not have access to them and that they will not allow the respondent to have access or control over the firearms and ammunition until the RPO is no longer in effect. The respondent must sign a sworn statement authorizing release of the firearms and ammunition to the chosen recipient. Both statements shall be completed and signed before any transfer of firearms or ammunition occurs. Upon the completion of the transfer, the law enforcement officer initiating the RPO shall complete an incident report documenting the transfer.

4.6 RISK PROTECTION ORDER SEARCH WARRANTS

A search warrant may be obtained to conduct a search for firearms or ammunition owned by the respondent if the officer develops probable cause to believe that after the service of the TRPO or RPO on the respondent there remains firearms or ammunition owned by the respondent or in the respondent's custody, control, or possession which have not been surrendered.

A search warrant may be issued by a judge if there is a probable cause to believe that there are firearms or ammunition in the respondent's custody, control, or possession which have not been surrendered. The execution of any search warrant shall be done in accordance with Policy and Procedure 1402, Search Warrants.

4.7 TERMINATION AND EXTENSION OF ORDERS

Risk Protection Orders end when either:

1. The court grants the respondent's request to terminate an RPO; or
2. The RPO expires without being extended by the court.

The court must notify the petitioner of the impending end of a risk protection order. Notice must be received by the petitioner at least 30 days before the date the order ends. The petitioner may, by motion, request an extension of a risk protection order at any time within 30 days before the end of the order. If an officer becomes aware that there may be grounds (e.g., the respondent has engaged in an act of violence subsequent to the RPO being issued, etc.) to extend an RPO obtained by OPD, the officer should notify the Police Legal Advisor. Prior to the expiration of an RPO, the Police Legal Advisor will assess whether legal grounds exist to seek an extension of the RPO and will seek such extensions if appropriate.

4.8 RETURN AND DISPOSAL OF FIREARMS AND AMMUNITION

If an RPO is vacated or ends without extension, a law enforcement agency must return the surrendered firearms, ammunition, or licenses to carry a concealed weapon or firearm as requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the RPO has been vacated or has ended without extension.

When returning a firearm, OPD members are required to comply with Policy and Procedure 1123, Property and Evidence.

If an RPO is vacated or ends without extension, any surrendered firearm, ammunition, or license to carry a concealed weapon, shall be returned only if requested by a respondent. Before such return, the member shall:

1. Confirm through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law; and
2. Confirm with the court that the RPO has been vacated or has ended without extension.

Prior to returning any surrendered firearm or ammunition, the officer initiating the risk protection order or another representative of OPD shall provide notice to any family or household members of the respondent before the return of

any surrendered firearm and ammunition owned by the respondent. The member providing such notice shall document providing notice using the RPO Notification to Household Member form found in Police and Procedure 1123.

Any firearm and ammunition surrendered by a respondent pursuant to an RPO or TRPO which remains unclaimed for 1 year by the lawful owner after an order to vacate the RPO or after the RPO has expired, shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

Upon the return or disposal of a firearm, the member shall complete an incident report, documenting the return or disposal.

4.9 REPORTING OF ORDERS

Within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency (OPD) shall enter the order into the Florida Crime Information Center and National Crime Information Center. **Orders shall be delivered to OCSO warrants department (located in the Orange County Courthouse) for entry into FCIC/NCIC.** The order shall remain in each system for the period stated in the order, and the law enforcement agency may only remove an order from the systems which has expired or been vacated. Entry of the order into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

If an RPO is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, **the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered.** To do so, a copy of the signed order vacating the RPO shall be delivered to OCSO warrants for removal from FCIC/NCIC.

5. FORMS AND APPENDICES

ATTACHMENT A- Risk Protection Order Service Checklist