
	Florida State University Police Department	
Florida Risk Protection Order Act		
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Rescinds/Amends: New	Distribution: Sworn Officers	References: 790.401 Florida Statutes, CFA 24.06M
	Pages: 6	

Policy - Risk Protection Orders

In March, 2018, the Florida Legislature passed the Marjory Stoneman Douglas High School Public Safety Act. One of the provisions of the Act was creating a new Florida Statute, 790.401 which allows a law enforcement agency to petition the court for an Ex Parte Risk Protection Order (RPO) (or Temporary RPO) when the respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm. A Temporary RPO requires the respondent to temporarily surrender to law enforcement all firearms and ammunition owned, pending a subsequent hearing that may consider a request for a longer period of protection (or RPO) if necessary. The statute does not affect the ability of a law enforcement officer to remove a firearm or ammunition or license to carry a concealed weapon or concealed firearm from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.

It is the policy of the Florida State University Police Department to quickly and properly respond to any threat to public safety, while still safeguarding due process rights of a respondent. The following procedures represent an abbreviated version of FS 790.401.

Procedure

A. Petition for a Risk Protection Order

1. A petition for a risk protection order may be filed by a law enforcement officer or law enforcement agency. An action under FS 790.401 must be filed in the county where the petitioner’s law enforcement office is located or the county where the respondent resides. A petition must:
 - a. Allege that the respondent poses a significant danger of causing personal injury to himself/herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition, and must be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;
 - b. Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent’s current ownership, possession, custody, or control; and
 - c. Identify whether there is a known existing protection order governing the respondent under FS 741.30, 784.046, or 784.0485 or under any other applicable statute.

2. The petitioner must make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a Risk Protection Order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice. [CFA 24.06 E]

B. Process for Obtaining a Risk Protection Order

1. An Officer who becomes aware of a situation where there is demonstrated evidence that a person poses a significant danger to themselves or others, including a significant danger as a result of a mental health crisis or violent behavior, and a firearm, weapon, or ammunition is involved, shall immediately notify their Supervisor.
2. The Supervisor shall assess the situation, and if they determine that an RPO may be warranted, they shall immediately contact the Support Services Captain or designee.
3. The FSU General Counsel's Office will be notified immediately to assist with preparation of the RPO Affidavit. If this is not possible, the investigations section will assist in the preparation and submission of the affidavit to the court. In this case, the FSU General Counsel's Office will be provided with a copy of the affidavit and/or issued order within 24 hours.
4. A good faith effort will be made to provide notice to the family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a risk protection order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice.

C. Risk Protection Order Hearings & Issuance

1. Upon receipt of a petition, the court must order a hearing to be held no later than 14 days after the date of the order and must issue a notice of hearing to the respondent. Upon notice and a hearing, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself/herself or others by having in her/her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court must issue a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months.

D. Temporary Ex Parte Risk Protection Orders

1. A petitioner may request that a Temporary Ex Parte Risk Protection Order be issued before a hearing for a Risk Protection Order, without notice to the respondent, by including in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to himself/herself or others in the near future by having in his/her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.
2. A Temporary RPO ends upon the hearing on the risk protection order, and must be served by a law enforcement officer in the same manner as provided for service of the notice of hearing and

petition and must be served concurrently with said notice. If the court denies a petitioner's request for a Temporary RPO, the court must state the particular reasons for the denial.

E. Service [CFA 24.06 D]

1. The clerk of the court will furnish a copy of the notice of hearing, petition, and Temporary RPO or RPO, as applicable, to the sheriff of the county where the respondent resides or can be found, and/or the petitioning agency who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. The chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service.

F. Surrender of Firearms & Ammunition [CFA 24.06 A]

1. Upon issuing an RPO or temporary RPO, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in his/her custody, control, or possession, and any license to carry a concealed weapon or firearm issued under FS 790.06, held by the respondent.
2. The officer serving an RPO or Temporary RPO will request the respondent immediately surrender all firearms and ammunition owned by and in his/her custody, control, or possession and any license to carry a concealed weapon or firearm issued under FS 790.06, held by the respondent. The officer will take possession of all firearms and ammunition and any license to carry a concealed weapon or firearm, held by the respondent, which are surrendered. If personal service by an officer is not possible or is not required because the respondent was present at the RPO hearing, the respondent must surrender any firearms and ammunition owned by the respondent and any license to carry a concealed weapon or firearm, held by the respondent, in a safe manner to the control of law enforcement immediately after being served with the order by service or immediately after the hearing at which the respondent was present. An officer may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned by the respondent if the officer has probable cause to believe that there are firearms or ammunition owned by the respondent in his/her custody, control, or possession which have not been surrendered.
3. An officer taking possession of any firearm or ammunition owned by the respondent, or a license to carry a concealed weapon or firearm, held by the respondent shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered or seized, and any license surrendered or seized and shall provide a copy of the receipt to the respondent or responsible party. Within 72 hours after service of the order, the officer serving the order shall file the original receipt with the court and ensure that the agency retains a copy of the receipt.
4. Upon sworn statement or testimony of any person alleging that a respondent has failed to comply with the surrender of firearms or ammunition, as required by an order issued under FS 790.401, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition owned by and in his/her custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant describing the firearms or ammunition owned by the respondent and authorizing a search of the locations where the firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.

5. If a person other than the respondent claims title to any firearms or ammunition surrendered and he/she is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to him/her, if:
 - a. The lawful owner agrees 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.
 - b. The firearm or ammunition is not otherwise unlawfully possessed by the owner.
6. Firearms, ammunition and concealed carry licenses seized or surrendered will be properly packaged and submitted to the Evidence Custodian as described in General Order 1302 – Evidence and Property Control System. The items will be entered in the ACE Tracking System and properly secured in the Evidence Vault. [CFA 24.06 B]

G. Return and Disposal of Firearms & Ammunition [CFA 24.06 C]

1. If an RPO is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition owned by the respondent or a license to carry a concealed weapon or firearm held by the respondent, that has been surrendered or seized pursuant to FS 790.401 must return such surrendered firearm, ammunition, or license to carry, 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 risk protection order has been vacated or has ended without extension. Refer to General Order 1302 – Evidence and Property Control System prior to returning any firearm, ammunition or concealed carry license.
2. A law enforcement agency must provide notice to any family or household members of the respondent before returning any surrendered firearm and ammunition owned by the respondent. [CFA 24.06 E]
3. Any firearm and ammunition surrendered by a respondent pursuant to an RPO which remains unclaimed for one year by the lawful owner after an order to vacate the RPO shall be disposed of in accordance with the General Order 1302 – Evidence and Property Control System.

H. Transfer of Firearms & Ammunition

A respondent may elect to transfer all firearms and ammunition owned by the respondent that have been surrendered to or seized by law enforcement to another person who is willing to receive the respondent's firearms and ammunition. The agency must allow such a transfer only if it is determined that the chosen recipient:

1. Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
2. Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the RPO is vacated or ends without extension; and
3. Attests not to transfer the firearms or ammunition back to the respondent until the RPO against the respondent is vacated or ends without extension.

I. Reporting of Orders [CFA 24.06 F]

1. Within 24 hours after issuance, the clerk of the court shall enter an RPO or Temporary RPO into the uniform case reporting system and forward a copy of any order issued to the appropriate law enforcement agency specified in the RPO. Upon receipt of the copy of the order, the agency shall enter the order into the Florida Crime Information Center and National Crime Information Center. The order must 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 ended or been vacated. Entering an RPO into FCIC/NCIC constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in Florida.
2. If an RPO is vacated before its end date, the clerk of the court will forward a copy of the order to 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.

J. Baker Act Provisions

1. A law enforcement officer acting in accordance with an ex parte order issued by a Circuit or County Court, pursuant to FS 394.463(2) may:
 - a. Serve and execute such order on any day of the week, at any time of the day or night; and
 - b. Use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and take custody of the person who is the subject of the ex parte order. When practicable, a law enforcement officer who has received crisis intervention team (CIT) training shall be assigned to serve and execute the ex parte order.
2. An officer taking custody of a person under the above provision may seize and hold a firearm or any ammunition the person possesses at the time of taking him/her into custody if the person poses a potential danger to himself/herself or others and has made a credible threat of violence against another person.
3. If an officer takes custody of the person at the person's residence and the criteria in paragraph have been met, the officer may seek the voluntary surrender of firearms or ammunition kept in the residence which have not already been seized. If such firearms or ammunition are not voluntarily surrendered, or if the person has other firearms or ammunition that were not seized or voluntarily surrendered when he/she was taken into custody, an officer may petition the appropriate court under FS 790.401 for a Risk Protection Order or Temporary RPO, following the procedures described in the previous sections of this Directive.
4. Firearms or ammunition seized or voluntarily surrendered under FS 394.463(2) must be made available for return no later than 24 hours after the person taken into custody can document that he/she is no longer subject to involuntary examination and has been released or discharged from any inpatient or involuntary outpatient treatment provided or ordered under FS 394.463(2)(g), unless an RPO entered under FS 790.401 directs the law enforcement agency to hold the firearms or ammunition for a longer period or the person is subject to a firearm purchase disability under FS 790.065(2), or a firearm possession and firearm ownership disability under FS 790.064. The process for the actual return of firearms or ammunition seized or voluntarily surrendered under FS 394.463(2) may not take longer than 7 days.

5. Firearms, ammunition and concealed carry licenses seized or surrendered under FS 394.463(2) will be properly packaged and submitted to the Evidence Custodian as described in General Order 1302 – Evidence and Property Control System. The items will be entered in the ACE Tracking System and properly secured in the Evidence Vault. [CFA 24.06 B]

K. Training [CFA 24.06 G]

Sworn members will receive training on the Florida Risk Protection Order Act.

Glossary

License – refers to Concealed Weapon or Firearm License issued by the Florida Department of Agriculture and Consumer Services.

Periodic – an event occurring once every three years.

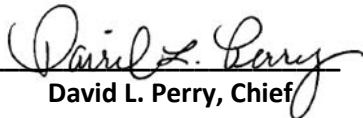
Petitioner: means a law enforcement officer or a law enforcement agency that petitions a court for a risk protection order under 790.401.

Respondent: means the individual who is identified as the respondent in a petition filed under 790.401.

Risk Protection Order (RPO) – means a temporary ex parte order or a final order granted under 790.401.

MTC 10/26/18 Filed: General Order 725

Title: Florida Risk Protection Order Act

Approved: 
David L. Perry, Chief

Date: 10/26/18