

NEW SMYRNA BEACH POLICE DEPARTMENT
NEW SMYRNA BEACH, FLORIDA

POLICY AND PROCEDURE DIRECTIVE

TITLE: RISK PROTECTION ORDER ACT

NUMBER: 15-5

EFFECTIVE: 7/18

REFERENCE:

RESCINDS/ AMENDS: NEW

REVISED: 5/21

ATTACHMENTS: [790.401, 790.06.](#)
[PETITION FOR RISK PROTECTION ORDER.pdf](#)
[AFFIDAVIT - PETITION FOR RISK PROTECTION ORDER FDLE.PDF](#)

A. PURPOSE

The Legislature finds there is a need to comprehensively address the crisis of gun violence, including but not limited to, gun violence on school campuses. The Legislature intends to address this crisis by providing law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence, and by promoting school safety and enhanced coordination between education and law enforcement entities at the state and local level.

It is the purpose of this directive to delineate procedures for complying with Florida Law.

B. DISCUSSION

Section [790.401](#), Florida Statutes, is intended to temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement officers to obtain a court order when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.

The purpose and intent of [FS 790.401](#), Florida Statutes, is to reduce deaths and injuries as a result of certain individuals' use of firearms while respecting constitutional rights by providing a judicial procedure for law enforcement officers to obtain a court order temporarily restricting a person's access to firearms and ammunition. The process established by s. 790.401, Florida Statutes, is intended to apply only to situations in which the person poses a significant danger of harming himself or herself or others by possessing a firearm or ammunition and to include standards and safeguards to protect the rights of respondents and due process of law.

The process is similar to domestic violence injunctions in that a law enforcement officer or agency first obtains an ex-parte temporary **Risk Protection Order** (RPO) and then, after a hearing, a final or long term RPO may be issued. A long-term RPO issued under the act may last up to 12 months.

The Florida Legislature created a system for a law enforcement officer or agency to seek a risk protection order against any person who poses a significant danger of causing personal injury to themselves or others by having a firearm or ammunition in their custody or control or by purchasing, possessing, or receiving a firearm or ammunition. When the petition is granted, the person must surrender, and cannot purchase or otherwise possess, any firearm or ammunition.

There are significant factors that a law enforcement officer must establish by clear and convincing evidence before a court may issue an RPO.

C. POLICY

It is the policy of the New Smyrna Beach Police Department to petition for and serve RPOs in compliance with Florida law and to properly account for firearms obtained by the Department pursuant to such orders.

D. DEFINITIONS

PETITIONER - means a law enforcement officer or a law enforcement agency that petitions a court for a risk protection order under this section.

RESPONDENT - means the individual who is identified as the respondent in a petition filed under this section.

RISK PROTECTION ORDER - means a temporary ex parte order or a final order granted under this section.

E. PROCEDURE

15.5.1 Petition Risk Protection Order

To obtain an RPO, a law enforcement officer or agency must file a petition alleging that the respondent poses a significant danger of causing personal injury to him/herself or others by:

1. Having a firearm or ammunition in their custody or control; or
2. Purchasing, possessing, or receiving a firearm or ammunition.

15.5.2 The petition must be accompanied by an affidavit stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent. It must identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current possession, ownership, custody, or control. It must also state whether there is a known existing protection order governing the respondent for domestic violence, dating violence, or stalking.

1. A standard form is used for the petition and may be found in the Agency Forms portal and or the attachments section of the Directive's Manual located on the network drive.

15.5.3 Upon receipt of the petition, the court must order a hearing within 14 days and provide notice of the hearing to the respondent. Pending this hearing, a temporary RPO may be issued - notice to the respondent is not required for a temporary RPO.

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

15.5.5 To determine whether grounds exist to issue an RPO, the court may consider the following:

1. A recent act or threat of violence by respondent against himself or others, whether or not the act or threat involved a firearm.
2. An act or threat of violence by the respondent against himself or others within the past 12 months.
3. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.
4. A violation by the respondent of any injunction against domestic violence, dating violence, or stalking.
5. A violation of a previous or existing RPO or no contact order.
6. A previous or existing RPO.
7. Whether respondent has been convicted of, had adjudication withheld on, or pled no contest to a crime that constitutes domestic violence.

8. Whether respondent has used, or threatened to use, against himself or others any weapons.
9. The unlawful or reckless use, display, or brandishing of a firearm by respondent.
10. The recurring use of, or threat to use, physical force by the respondent against another or the respondent stalking another.
11. Whether respondent has been arrested for, convicted of, had adjudication withheld on, or pled no contest to a crime involving violence or threat of violence.
12. Corroborated evidence of the abuse of a controlled substance or alcohol by the respondent.
13. Any relevant information from family and household members concerning respondent.
14. Evidence of recent acquisition of firearms or ammunition by respondent.

15.5.6 If an RPO is entered, the order will command the respondent to immediately surrender to the relevant law enforcement agency all: (1) firearms and ammunition they own that are in their custody, control, or possession; and (2) any license to carry a concealed firearm. Respondent will also be prohibited from having custody or control of, or to purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while the order is in effect.

1. Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.
2. 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 *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. 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.
3. The officer serving a risk protection order under this section, including a temporary ex parte risk protection order, shall request that the respondent immediately surrender all firearms and ammunition owned by the respondent in his or 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 law enforcement officer shall take possession of all firearms and ammunition owned by the respondent and any license to carry a concealed weapon or firearm issued under [FS 790.06](#), held by the respondent, which are surrendered.
 - Generally, RPO's will be served by the Volusia County Sheriff's Department, however, the New Smyrna Beach Police Department has been authorized to effect civil service by the Chief Judge. Such service and verification procedures will be consistent with those of the Sheriff.

15.5.7 Respondent can ask the court to vacate the RPO, but may only do so one time unless the order is extended. Upon every extension of the RPO, respondent may request the order be vacated.

1. As mentioned above, a LEO or agency may request a temporary RPO be issued before the hearing for a final or long term RPO. The same criterion applies to a temporary RPO (poses a significant danger of causing personal injury to themselves or others by possessing a firearm, etc.). If the court issues the temporary RPO, the order will require the respondent to surrender all firearms and ammunition just as required in a long term RPO.

15.5.8 If a respondent fails to surrender the firearms or ammunition, law enforcement may seek a search warrant based on probable cause to believe there are firearms or ammunition owned by the respondent in their custody, control, or possession (have not been surrendered). The location of those items must be listed.

15.5.9 There are also procedures to extend an RPO beyond 12 months as well as procedures to vacate an RPO. Hearings are required for either action. Should a court vacate an RPO, or not extend an RPO, any firearm, ammunition, or concealed firearm permit surrendered by respondent to law enforcement must be returned to them.

1. Written notice must be given to any family or household members of the respondent before the return of any firearm or ammunition.

15.5.10 In addition, a respondent may elect to transfer all seized or surrendered firearms and ammunition to another person willing to receive them. The transfer must be allowed if the recipient:

1. Is eligible to own or possess a firearm and ammunition under federal and state law (confirmed through a background check);
2. Attests to storing the firearm and ammunition in a way the respondent does not control or have access to; and
3. Attests not to transfer the firearm and ammunition to the respondent until the RPO is vacated or ends without extension.

F. Involuntary Examination

15.5.11 The legislature also amended [Florida Statute 394.463](#), “Involuntary Examination,” to allow a law enforcement officer executing an ex parte order for involuntary examination to use reasonable force to enter the premises, dwelling, buildings, or other structures located on the premises, to take custody of the person subject to the ex parte order. When practicable, an officer trained in crisis intervention will be assigned to serve and execute the order.

15.5.12 An officer taking a person into custody under the Baker Act may seize and hold firearms or ammunition the person possesses at the time of taking them into custody when the person poses a potential danger to themselves or others, and they have made a credible threat of violence against another person.

15.5.13 If the officer takes custody of the person at their residence, and the criteria above for seizing firearms and ammunition is met, the officer may ask the person to voluntarily surrender firearms or ammunition kept in the residence that have not already been seized. If the person does not voluntarily surrender the firearms or ammunition, the officer may petition the court for an RPO as described above.

G. Surrender/ Seizure

15.5.14 Taking Custody of Firearms, Ammunitions, and Licenses

1. At the time of surrender/seizure, a law enforcement officer taking possession of any firearm or ammunition owned by the respondent, or a license to carry a concealed weapon or firearm issued under [FS 790.06](#), held by the respondent shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered, and any license surrendered and shall provide a copy of the receipt to the respondent
2. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

15.5.15 Storing firearms, ammunitions, and licenses

1. All firearm(s), ammunition or licenses that have been surrendered and are listed on the RPO receipt must be submitted to evidence/property before the officer ends their shift. The Evidence Technician will then clearly mark the package “RPO” in red to signify that the contents are the result of a Risk Protection Order.

15.5.16 If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to this section and he or 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 or her, if:

1. 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.
2. The firearm or ammunition is not otherwise unlawfully possessed by the owner.

15.5.17 Returning firearms, ammunitions and license

1. If a risk protection order 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 issued under [FS](#)

[790.06](#), held by the respondent, that has been surrendered or seized must return such surrendered firearm, ammunition, or license to carry a concealed weapon or firearm issued under [FS 790.06](#), 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 (refer to Directive 27-3 Firearms Eligibility System, subsection 27.3.2) and after confirming with the court that the risk protection order has been vacated or has ended without extension.

15.5.18 Any firearm and ammunition surrendered by a respondent which remains unclaimed for 1 year by the lawful owner after an order to vacate the risk protection order shall be disposed of in accordance with the department's policies and procedures for the disposal of property.

H. TRAINING

15.5.19 All officers will be trained with respect to this policy and relevant Florida Statute(s). Review of this policy and referenced statutes will satisfy the training requirement. Training shall be documented via PDMS.

New: RR 05/21

**Approved: Signature on File
Chief Mike Coffin**