

POLICY 514.0	RISK PROTECTION ORDERS	
	REVISED: 07/18, 12/18	RELATED POLICIES: 508.0
	CFA STANDARDS: 24.06M	REVIEWED: AS NEEDED

A. PURPOSE

The purpose of this policy is to enhance public safety by temporarily preventing 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/herself or others, including significant danger as a result of a mental health crisis or violent behavior. The intent 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.

B. POLICY

It is the policy of The Fort Lauderdale Police Department to comply with all applicable laws when petitioning and servicing Risk Protection Orders while respecting the individuals’ constitutional rights and due process of law.

C. DEFINITIONS:

1. RISK PROTECTION ORDER

- a. Petitioner: A law enforcement officer or a law enforcement agency who petitions the court for a risk protection order.
- b. Respondent: The individual who is identified as the respondent in the petition. (The person who is identified as posing a threat or of high risk of harming themselves or others.)
- c. Risk Protection Order (“RPO”) may be a Temporary Ex Parte Order or a Final Order.
- d. Petition for a Risk Protection Order: Verified court filing which initiates the request for a Temporary Ex Parte or Final Risk Protection Order.
- e. Venue: Petition must be filed in the county where the petitioner’s law enforcement office is located or the county where the respondent resides;

2. THREAT:

An expression of intent to do harm or act out violently against someone or something (including self). A threat can be spoken, written, or symbolic.

3. **THREAT ASSESSMENT:**

Threat assessment is a structured group process used to evaluate the risk posed by a person, typically as a response to an actual or perceived threat or concerning behavior. Critical factors in evaluating a threat includes but not limited to investigations, background checks, collection of evidence, and analysis of facts and evidence to help identify the victim or victims; reason for making the threat; the means, weapon, and method by which it is to be carried out; date, time, and place where the threatened act will occur; concrete information about plans or preparations that have already been made.

D. PROCEDURES

1. **OFFICERS**

Officers or employees encountering an individual, who they feel qualifies for the issuance of a RPO, based on the known circumstances, shall do the following:

- a. Notify their immediate supervisor to determine if the RPO should be requested.
- b. Document all facts, evidence and statements in a sworn police report.
- c. Secure any evidence as necessary and within the scope of the law.
- d. Assist the Threat Response Unit designee and Legal Advisor in the application of the Risk Protection Order.

2. **SUPERVISORS**

A supervisor notified of a potential RPO situation shall notify the Threat Response Unit Supervisor and inform him/her of the situation to determine if a callout will be made.

3. **THREAT RESPONSE UNIT:**

- a. The Threat Response Unit Supervisor will determine if a callout from the unit is necessary based on the circumstances.
- b. Detectives assigned to The Threat Response Unit shall conduct a thorough investigation upon notification of a threat or a person posing a serious threat of harming themselves or others as a result of a mental health crisis or potential violent behavior.
- c. The detective will evaluate/analyze the evidence gathered to determine whether the individual meets the requirement for a RPO.
- d. Detectives will assess necessary incidents using a variety of investigative techniques, including but not limited to an approved Risk Assessment

System profile and/or consultation with a department approved forensic psychologist.

- e. Detectives will consult the Threat Response Unit Supervisor, as well as the Legal Advisor, and make an application for a RPO, if the situation warrants.
- f. The Threat Response Unit and/or officer(s) involved in the investigation, shall assist the Legal Advisor in the preparation and filing of the application for an RPO, assist in the presentation of the facts to the Court and attend court hearings, if deemed necessary by the Legal Advisor.
- g. The application form will be drafted and submitted to the Legal Advisor for review. After his/her review, the Legal Advisor will submit the request to the Circuit Court for consideration.

4. **PETITION FOR EX PARTE RISK PROTECTION ORDER AND FOR FINAL RISK PROTECTION ORDER:**

- a. The Department (petitioner) may request that a Temporary Ex Parte Risk Protection Order be issued prior to a hearing for a Final RPO, without notice to the respondent, by filing a petition which contains the following:
 - (1). That 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 by purchasing, possessing or receiving a firearm or any ammunition.
 - (2). An affidavit made under oath by an officer/detective stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by respondent (evidence collected).
 - (3). Identification of the quantities, types, and locations of all firearms and ammunition the officer/detective believes to be in the respondent's current ownership, possession, custody, or control.
 - (4). Identification of whether there is a known existing protection order governing the respondent pursuant to F.S.S. 741.30, s. 784.046, or s. 784.0485 or under any other applicable statute.
 - (5). A statement attesting that the department/petitioner has provided notice or will be providing notice to members of the respondent's household/family and to any known third party who may be at risk of violence indicating that the department intends to seek or has already sought a risk protection order and have provided the individuals with referrals to appropriate resources, including mental health, domestic violence, and counseling.

Note: It is the investigative detective's responsibility to provide the notice to the appropriate family/household members and others who may be at risk of violence, by using

the Department's Notice of Potential Risk of Violence and Risk Protection Order Proceedings.

- (6). Identify the address of record on the petition as being the location/ address of the Fort Lauderdale Police Department.
- b. In considering whether to issue a temporary ex parte RPO, the court shall consider all relevant evidence, including, but not limited to, any of the following:
- (1). A recent act or threat of violence by the respondent against himself/herself or others, whether or not such violence or threat of violence involves a firearm;
 - (2). An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself/herself or others;
 - (3). Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
 - (4). A violation by the respondent of an RPO or a no contact order;
 - (5). A previous or existing RPO issued against the respondent;
 - (6). Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence;
 - (7). Whether the respondent has used, or has threatened to use, against himself/herself or others any weapons;
 - (8). The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
 - (9). The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person;
 - (10). 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 threat of violence;
 - (11). Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
 - (12). Evidence of recent acquisition of firearms or ammunition by the respondent;
 - (13). Any relevant information from family and household members concerning the respondent; Witness testimony, taken while the witness is under oath, relating to the matter before the court.

- c. Upon receipt of the petition, the court must hold a temporary Ex Parte RPO hearing in person or by telephone on the day the petition is filed or on the business day immediately following the day the petition is filed.
- d. If the court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to himself/herself or others in the near future by having his/her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition, the court must issue a Temporary Ex Parte RPO pending the final hearing, which must be held no later than 14 days after the date of the Temporary RPO.
- e. A Temporary Ex Parte RPO must be served by the law enforcement officer in the same manner as provided for service of notice of hearing and petition and must be served concurrently with the notice of hearing and petition. *See Service section.*
- f. A Temporary Ex Parte RPO ends upon the hearing on the risk protection order.

5. PETITION FOR FINAL RISK PROTECTION ORDER:

- a. If a petition for a Temporary Ex Parte RPO has not previously been filed with the court, the Department may petition the court for a final risk protection order.
- b. The petition must:
 - (1). Allege that 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 by purchasing, possessing or receiving a firearm or any ammunition.
 - (2). Contain an affidavit made under oath by the officer/ petitioner stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by respondent (evidence collected).
 - (3). Identify the quantities, types, and locations of all firearms and ammunition the officer/petitioner believes to be in the respondent's current ownership, possession, custody, or control.
 - (4). Identify whether there is a known existing protection order governing the respondent under F.S.S. 741.30, s. 784.046, or s. 784.0485 or under any other applicable statute.
 - (5). Attest that the department /petitioner has provided notice or will be providing notice to members of the respondent's household/family and to any known third party who may be at risk of violence indicating that the department intends to seek or has already sought a risk protection order and provided same with referrals to appropriate resources, including mental health, domestic violence, and counseling.

Note: It is the investigative detective's responsibility to provide the notice to the appropriate family/household members and others who may be at risk of violence by using the Department's Notice of Potential Risk of Violence and Risk Protection Order Proceedings.

- (6). List the address of record on the petition as being the location/address of the Fort Lauderdale Police Department.
- c. Upon receipt of a petition, the court must order a hearing to be held no later than 14 days from receipt and must issue a notice of hearing to the respondent for the final hearing.
- d. The clerk of court shall cause a copy of the notice of hearing and petition to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent.
- e. During the final 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 his/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.
- f. In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including, but not limited to the criteria described in Section 4.c. of this policy.
- g. During the final hearing, a person, including an officer of the court, who offers evidence or recommendations relating to the cause of action either must present the evidence or recommendations in writing to the court with copies to each party and his or her attorney, or must present evidence under oath at a hearing at which all parties are present.

6. SERVICE OF ORDERS, PETITION AND NOTICE OF HEARING:

- a. Within 24 hours after issuance, the clerk of court shall forward a copy of the order to the appropriate law enforcement agency specified in the order. Upon receipt, the law enforcement agency shall enter the order into the Florida Crime Information Center and National Crime Information Center (FCIC/NCIC). 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 has 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.
- b. The clerk of the court shall furnish a copy of the notice of hearing, petition, and Temporary Ex Parte RPO or RPO, as applicable, to the law

enforcement agency who submitted the petition, who shall serve it upon the respondent as soon thereafter on any day of the week and at any time of the day or night.

Broward County 17th Judicial Circuit Administrative Order 2018-23-Civ, authorizes the Fort Lauderdale Police Department to effect service pursuant to F.S.S. 790.401.

- c. When requested by the serving law enforcement agency, the clerk of the court may transmit a facsimile copy of a Temporary Ex Parte RPO or Final RPO that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy.
- d. Upon receiving a facsimile copy, the serving agency shall verify receipt with the sender before attempting to serve it upon the respondent.
- e. The clerk of the court shall be responsible for furnishing to the serving law enforcement agency information on the respondent's physical description and location.
- f. A law enforcement agency effecting service shall use service and verification procedures consistent with those of the sheriff.
- g. In circumstances where the individual resides or will be served within the City of Fort Lauderdale, the Threat Response Unit will handle the service procedure. A uniformed officer shall be present during the service of the RPO. If the RPO is being executed in another jurisdiction, a uniformed officer from the corresponding jurisdiction shall be requested.
- h. Upon receipt of an issued Temporary RPO or Final RPO, the detective will consult the Threat Response Unit supervisor to determine the safest, most efficient method and strategy to serve the order.
- i. All orders issued, changed, continued, extended or vacated after the original service of documents must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order.
- j. The parties may acknowledge receipt of such order in writing on the face of the original order.
- k. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was affected.
- l. If delivery of a risk protection order at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is completed upon mailing. When an order is served pursuant to this section, the clerk shall prepare a written certification to be placed in the court file specifying the time, date and method of service and shall notify the sheriff.
- m. After serving the RPO, the detective shall provide the service packet to Teletype, for the purpose of having the individual's status entered into NCIC/FCIC in accordance with the directive of the Florida Department of Law Enforcement.

- n. The detective will provide a copy of the Proof of Service form to the Legal Unit, who will then file same with the Clerk of the Courts, certifying that the RPO was served and providing the required information to the Court.

7. SURRENDER OF FIREARMS AND AMMUNITION

- a. Upon issuance of a RPO, Ex Parte or Final, the court SHALL ORDER the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent or in the respondent's custody, control or possession.
- b. A respondent may elect to transfer all firearms and ammunition owned by the respondent that have been surrendered or seized by a local law enforcement agency to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency must allow such a transfer only if it 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 against the respondent is vacated or ends without an extension;
 - (3). Attests not to transfer the firearms or ammunition back to the respondent until the RPO against the respondent is vacated or ends without an extension.
 - (4). Any transfer of firearms or ammunition to a third party shall be reviewed by the Legal Advisor, who will prepare the necessary documents to effect the transfer.
- c. The respondent shall also surrender to law enforcement any license to carry a conceal weapon.
- d. The law enforcement officer serving a RPO under this section, including a Temporary Ex Parte RPO shall request the respondent immediately surrender all firearms and ammunition owned by the respondent in his or her custody, control or possession and any concealed weapon license.
- e. A law enforcement officer shall take possession of all firearms and ammunition owned by the respondent and any license to carry a concealed weapon. All firearms, ammunition and licenses surrendered to the Department shall be handled and stored in accordance with policy 105.1, Evidence and Property Procedures.
- f. If the respondent refuses to surrender all firearms and ammunition, a law enforcement 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 the respondent's custody, control, or possession which have not been surrendered.

- g. 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 owned by the respondent are reasonably believed to be found and the seizure of any firearms or ammunition owned by the respondent discovered pursuant to such search.
- h. At the time of surrender, 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 F.S. 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.
- i. Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent must surrender any firearms and ammunition owned by the respondent and any license to carry a concealed weapon or firearm issued under s. 790.06, held by the respondent, in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present
- j. 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.

E. RETURN OF FIREARMS AND AMMUNITION

- 1. Upon receiving notice from the Court that an RPO has been vacated or has ended without extension, the Department shall return any firearm(s) 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 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.
- 2. The Police Legal Unit shall provide notice prior to the release of any firearm(s) to the appropriate family/household members and others who may be at risk of violence, by using the Department's Notice of Return of Firearm(s) and Ammunition Form.

3. Any firearm and ammunition surrendered by a respondent pursuant to a Risk Protection Order 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 for disposing of firearms.

F. TRAINING

Affected agency members shall receive initial and refresher training in the investigation, petition and service of Risk Protection Orders once each year.