

*“Keep Orlando a safe city by reducing crime and maintaining livable neighborhoods.”*

## ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE

### 1146.1, RISK PROTECTION ORDERS

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#### CONTENTS:

#### RISK PROTECTION ORDERS

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.

#### PROCEDURES:

### 1. RISK PROTECTION ORDERS

#### 1.1 DEFINITIONS

- a. “Petitioner” means a law enforcement officer or a law enforcement agency that petitions a court for a risk protection order under this section.
- b. “Respondent” means the individual who is identified as the respondent in a petition filed under this section.
- c. “Risk protection order” or “RPO” means a temporary ex parte order or a final order granted under this section.

#### 1.2 PETITION FOR RISK PROTECTION ORDER

##### a. FILING THE PETITION FOR A RISK PROTECTION ORDER

Law enforcement officers or the law enforcement agency may file for a petition for a risk protection order. **However, an OPD member shall not file a petition for Risk Protection Order without the approval of the Police Legal Advisor’s Office.**

##### b. PETITION REQUIREMENTS

- i. There are several specific requirements that shall be contained within the petition for a risk protection order. Any member seeking to file a petition for an RPO shall prepare an affidavit, under oath, stating the specific statements, actions or facts that give rise to a reasonable fear of significant dangerous acts by the respondent.
- ii. A template petition can be obtained from the Police Legal Advisor’s Office.

##### c. NOTICE REQUIREMENTS

- i. The petitioner (e.g. the officer) shall 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.
- ii. The notice shall state that the petitioner intends to petition the court for an RPO or has already done so.
- iii. The notice shall include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. A packet containing that information is available from the Police Legal Advisor.

- iv. Notice may be provided to family or household member(s) either in-person, orally over the phone, or through fax or e-mail if the officer has good contact information for the family or household member(s). If no good contact information exists, or if the officer is unable to reach the family or household member(s), the officer shall mail a physical copy of the information to the family or household member(s) at their last known address. The officer shall document how notice was provided in an incident report.
- d. TEMPORARY EX PARTE RISK PROTECTION ORDERS (“TPRO”)
- i. The court must hold a TRPO hearing either on the same day that the petition was filed, or on the next business day.
  - ii. 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.
  - iii. A TRPO ends upon the hearing of the full risk protection order.
  - iv. If the court denies a petition for the TRPO, the court must state the particular reasons for the denial.
  - v. 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.
  - vi. If the court issues a TRPO, the member shall serve a copy of the order on the respondent.
- e. RISK PROTECTION ORDER HEARINGS
- i. 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.
  - ii. The clerk of the court will make a copy of the notice of hearing and petition and forward it to the agency for service upon to the respondent.
  - iii. 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.
  - iv. 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 at s. 790.401(3)(c), Fla. Stat. and in in section 2.1(d), below.
- f. RISK PROTECTION ORDER ISSUANCE
- Upon issuing an 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.
- g. 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. Should the respondent reside outside city limits, the documents will be provided to the sheriff’s office for service to the respondent.
- h. TERMINATION OF ORDERS
- i. Risk Protection Orders end either when:
    - 1. The court grants the respondent’s request to terminate an RPO; or

2. The RPO expires without being extended by the court.

i. SURRENDER OF FIREARMS AND AMMUNITION

- i. Upon the issuance of an RPO, including a temporary ex parte order, the court shall order the respondent to surrender to the local law enforcement agency:
  1. All firearms and ammunition owned by the respondent in the respondent's custody, control, or possession, except for those transferred to a person who is willing and legally able to receive them; AND
  2. Any license to carry a concealed weapon or firearm.
- ii. The respondent must immediately surrender all required items in a safe manner to the control of a local law enforcement officer.
- iii. 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.
- iv. **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 file the original receipt with the court. A copy shall also be retained by the agency. (3 receipts total – the original and two copies).**
- v. 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.
- vi. 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.

j. RETURN AND DISPOSAL OF FIREARMS AND AMMUNITION

- i. When returning a firearm, OPD members are required to comply with Policy and Procedure 1123, Property and Evidence.
- ii. 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.
- iii. A law enforcement agency 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.
- iv. Notice shall be provided in the same manner as the petition in Section 1.2(c), above.
- v. 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.

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

k. TRANSFER OF ALL FIREARMS AND AMMUNITION

- i. 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 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.
- ii. Upon the transfer of a firearm, the member shall complete an incident report, documenting the transfer.

l. REPORTING OF ORDERS – POLICE DEPARTMENT RESPONSIBILITIES

- i. 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.
- ii. 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.

m. PENALTIES

- i. A person who makes a false statement, which he or she does not believe to be true, under oath in a hearing under this section in regard to any material matter commits a felony of the third degree pursuant to s. 790.401(11)(a), Fla. Stat.
- ii. A person who has in his or her custody or control a firearm or any ammunition; or who purchases, possesses, or receives any firearm or any ammunition with knowledge that she or he is prohibited from doing so by an RPO or a TRPO commits a felony of the third degree, pursuant to s. 790.401(11)(b), Fla. Stat.

n. OTHER AUTHORITY

Nothing in this section affects the ability of a law enforcement officer to remove a firearm or ammunition, or license to carry a concealed weapon or firearm from any person or to conduct any search or seizure for firearms or ammunition pursuant to any other lawful authority.

o. FORMS

Form Petition for Risk Protection Order, Temporary Ex Parte Risk Protection Orders, and Final Risk Protection Orders are available in the Police Legal Advisor's Office. The "Receipt for Prisoner's Personal Property" forms are available from the Quartermaster.

## 2. FILING REQUIREMENTS – POLICE LEGAL ADVISOR

### 2.1 PETITION FOR RISK PROTECTION ORDER

- a. POLICE LEGAL ADVISOR RESPONSIBLE FOR FILING RPO
  - i. Law enforcement officers or the law enforcement agency may file for a petition for an RPO. All Police Legal Advisors and the City Prosecutor are authorized to file the petition on behalf of the agency.
  - ii. The petition for an RPO shall be filed in circuit court either:
    - a. In the county where the petitioner's law enforcement office is located; OR
    - b. In the county where the respondent resides.
      - NOTE: This means if OPD pursued an individual into Seminole County and made the assessment of risk there, unless the arrestee lives in Seminole County, the action may not be filed in Seminole County, but may be filed in Orange County.
  - iii. Neither party needs to have an attorney for the petition to be filed.
  - iv. There are no filing fees, clerk fees, or bond requirements for filing this petition.
- b. PETITION REQUIREMENTS
  - i. The petition must:
    - a. 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, or by purchasing, possessing, or receiving a firearm or any ammunition; AND
    - b. 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; AND
    - c. Identify the quantities, types, and locations of all firearms and ammunition that the officer believes to be in the respondent's current ownership, possession, custody, or control; AND
    - d. Identify where there is a known or existing protection order governing the respondent under s. 741.30 (domestic violence injunction), s. 784.046 (repeat violence, dating violence, or sexual violence injunction), or s. 784.0485 (stalking injunction) or any other statute; AND
    - e. Attest that the officer has provided notice or that the steps to provide notice will be taken by the officer; AND
    - f. List the address of record on the petition as being where the appropriate law enforcement agency is located.
      - NOTE: After January 1, 2019, officers shall use the standard petition and order forms created by the Office of the State Courts Administrator.
- c. TEMPORARY EX PARTE RISK PROTECTION ORDERS
  - i. A petitioner may request that a TRPO 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 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.
  - ii. A TRPO must include all of the following:
    - a. A statement of the grounds asserted;
    - b. The date the order was issued
    - c. The address of the court in which any responsive pleading may be filed;
    - d. The date and time of the scheduled hearing;

e. A description of the requirements for the surrender of all firearms and ammunition that the respondent owns;

f. The following statement:

“To the subject of this protection order: This order is valid until the date noted above. You are required to surrender all firearms and ammunition that you own in your custody, control, or possession. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You must surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes. A hearing will be held on the date and at the time noted above to determine if a risk protection order should be issued. Failure to appear at that hearing may result in a court issuing an order against you which is valid for 1 year. You may seek the advice of an attorney as to any matter connected with this order.”

d. RISK PROTECTION ORDER HEARINGS

i. The court will consider in issuing an RPO include recent acts or threats of violence, mental health issues, and improper use of firearms.

a. In determining whether grounds for an RPO exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

1. A recent act or threat of violence by the respondent against himself or 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 or 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 a risk protection order or a no contact order issued under s. 741.30, s. 784.046, or s. 784.0485.
5. A previous or existing risk protection order issued against the respondent.
6. A violation of a previous or existing risk protection order issued against the respondent.
7. 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 as defined in s. 741.28.
8. Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons.
9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.
10. The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.
11. 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.
12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.
13. Evidence of recent acquisition of firearms or ammunition by the respondent.
14. Any relevant information from family and household members concerning the respondent.
15. Witness testimony, taken while the witness is under oath, relating to the matter before the court.

ii. The evidence for the hearing may be provided in writing to the court with copies to each party and his or her attorney, if one is retained, or must present the evidence under oath at a hearing at which all parties are present.

iii. The hearing will be conducted in the same manner as a domestic violence injunction proceeding.

iv. The court may order a mental health or chemical dependency evaluation if it is determined that such evaluation is necessary.

e. RISK PROTECTION ORDER ISSUANCE

i. An RPO must include all of the following:

a. A statement of the grounds supporting the issuance of the order;

- b. The date the order was issued;
  - c. The date the order ends;
  - d. Whether a mental health or chemical dependency evaluation of the respondent is required;
  - e. The address of the court in which any responsive pleading should be filed;
  - f. A description of the requirements for the surrender of all firearms and ammunition that the respondent owns; and
  - g. The following statement:
    - “To the subject of this protection order: This order will last until the date noted above. If you have not done so already, you must surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition that you own in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You have the right to request one hearing to vacate this order, starting after the date of the issuance of this order, and to request another hearing after every extension of the order, if any. You may seek the advice of an attorney as to any matter connected with this order.”
  - ii. If the court issues an RPO, the court must inform the respondent that he or she is entitled to request a hearing to vacate the order and the court shall provide the respondent with a form to request a hearing to vacate.
  - iii. If the court denies the petitioner’s request for an RPO, the court must state the particular reasons for the denial.
  - iv. Upon issuing an 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.
- f. TERMINATION OF ORDERS
- i. Request to Vacate the Order
    - a. The respondent may submit a written request to vacate an RPO. Such request may be made one time after the issuance of the order, and one additional time after every extension of the order.
    - b. Notice of the request to terminate an order must be served on the petitioner. A hearing will be held no sooner than 14 days and no later than 30 days after the date of service.
    - c. If the court orders the order to be terminated, the petitioner will be served with notice of the decision.
  - ii. Expiration of the Order
    - a. At least 30 days before the date the order ends, the court will notify the petitioner of the impending end of the RPO.
    - b. At any time within 30 days before the end of the order, the petitioner may make a motion to request an extension of the order.