



Cocoa Beach Police Department

Standard Operating Procedure



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Approving Authority: Chief of Police Wes Mullins		
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1. PURPOSE

The purpose of this policy is to establish guidelines for the Florida Risk Protection Order, as established by the Marjory Stoneman Douglas High School Public Safety Act. The process is intended to prevent persons who are at high risk of harming themselves or others from accessing or possessing firearms and/or ammunition.

2. SCOPE

This policy shall apply to all members of the Cocoa Beach Police Department with special emphasis on sworn police officers, Telecommunications Officers, and members of the Records Division.

3. POLICY

It is the policy of the Cocoa Beach Police Department to quickly and properly respond to any threat to public safety, while safeguarding the rights of citizens. To this end, the Department shall take necessary steps, as outlined hereafter, to procure a Risk Protection Order when there is demonstrable evidence that a person poses a significant danger to themselves or others.

4. DEFINITION(S)

- A. EX PARTE ORDER – A temporary court order pending a formal hearing.
- B. PETITIONER – A law enforcement officer or agency that petitions a court for a Risk Protection Order.
- C. RESPONDENT – The individual against whom the Risk Protection Order is filed.
- D. RISK PROTECTION ORDER (RPO) – A court order issued by a judge, on a temporary or final basis, which is intended to prevent individuals who are at high risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement to obtain a court order when there is demonstrable evidence 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.

5. PROCEDURES

A. DUTIES AND RESPONSIBILITIES

1. Officers

- a. Officers responding to a situation where it is alleged 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, ammunition, or a license to carry a firearm is involved, shall:
 - 1) Ensure the scene is safe and there is no longer an immediate danger to law enforcement or the public and secure all firearms and ammunition involved in the initial incident. (CFA 24.06MA)
 - 2) Notify the on-duty Shift Supervisor
 - 3) Gather any evidence, sworn written/audio/video statements, or any other useful information.

- 4) Complete the [Petition for Risk Protection Order \(With Request for Temporary Ex Parte Risk Protection Order\)](#) (Appendix A).
 - 5) If additional firearms or ammunition are believed to still be in the residence, that information will be documented in the case report and the [Petition for Risk Protection Order \(With Request for Temporary Ex Parte Risk Protection Order\)](#)
2. Shift Supervisors
 - a. The on-duty Shift Supervisor shall gather details from the officer(s), assess the situation, and make a determination if a Risk Protection Order (RPO) may be warranted. If so, the on-duty Shift Supervisor will notify a Criminal Investigations Division Supervisor. It is the responsibility of the on-duty Shift Supervisor to ensure their direct Supervisor is notified of the investigation. The on-duty Shift Supervisor will ensure that all reports, supplements, and supporting documentation are completed prior to the end of the shift, in accordance with Standard Operating Procedure [114.00 – Reporting Requirements and Review.](#)
 3. Criminal Investigations Division
 - a. If a response is warranted, a detective will respond to the appropriate location to assist.
 4. Patrol Major
 - a. The Patrol Major (or designee) may designate other sworn members to assume the aforementioned responsibilities in lieu of an on-call detective at their discretion. The Patrol Major (or designee) will ensure the [Petition for Risk Protection Order \(With Request for Temporary Ex Parte Risk Protection Order\)](#) and all necessary documents are forwarded to the City attorney for review.
- B. PETITION FOR RISK PROTECTION ORDER
1. A Petition for an RPO may be filed by a law enforcement officer or department under F.S. [790.401.](#)
 2. There are two exhibits that must accompany the Petition for an RPO.
 - a. Exhibit A - [Temporary Risk Protection Officer Affidavit](#) (Appendix B). Exhibit A will have a copy of the case report and a Report of Law Enforcement Officer Initiating Involuntary Examination (Baker Act) form.
 - b. Exhibit B - [Risk Protection Order Weapons Affidavit](#) (Appendix C). Exhibit B will have a copy of the property receipts.
 3. The Petition for an RPO may be filed in Brevard County or the county where the respondent resides.
 4. Neither party is required to be represented by an attorney.
 5. The Petition for an RPO must:
 - a. Allege that the respondent poses a significant danger of causing personal injury to themselves or others by having a firearm or any ammunition in their custody or control or by purchasing, possessing, or receiving a firearm or any ammunition, and must be accompanied by a [Witness Affidavit](#) (Appendix D) made under oath stating that 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 F.S. [741.30](#), [784.046](#), and [784.0485](#), or any other applicable statute.
 - d. The petitioner must make a good faith effort to provide notice to a family member or household member of the respondent and to any known third party who may be at risk of violence by completing a [Good Faith Written Notice](#) (Appendix E). The notice must state that the petitioner intends to petition the court for an RPO or has already done so. The notice must include referrals to appropriate resources, including mental health, domestic violence, and counselling resources. The petitioner must attest in the [Petition for Risk Protection Order \(With Request for Temporary Ex Parte Risk Protection Order\)](#) to having provided such notice or must attest to the steps that will

be taken to provide such notice. A copy of the [Good Faith Written Notice](#) will be kept with the case report.

C. HEARINGS AND ISSUANCE

1. Upon filing of the Petition for an RPO, the court must set a hearing no later than fourteen (14) days after the date of the order and must issue a [Temporary Ex Parte Risk Protection Order and Notice of Further Proceedings](#) (Appendix F) (completed by the court) to the respondent for the same.
2. Upon notice and a hearing for a RPO, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to themselves or others by having in their custody or control, or by purchasing, possessing, or receiving a firearm or any ammunition, the court must issue an RPO for a period that it deems appropriate, up to and including but not exceeding twelve (12) months.
3. Relevant evidence for establishing grounds for a RPO are to include, but not limited to any of the following:
 - a. A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threats of violence involves a firearm.
 - b. An act or threat of violence by the respondent within the last twelve (12) months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others.
 - c. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.
 - d. A violation by the respondent of an RPO or a no contact issued under F.S. [741.30](#), [784.046](#), or [784.0485](#).
 - e. A previous or existing RPO issued against the respondent.
 - f. A violation of a previous or existing RPO against the respondent.
 - g. Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled no contest to a crime that constitutes domestic violence as defined in F.S. [741.28](#).
 - h. Whether the respondent has used, or has threatened to use, against themselves or others any weapons.
 - i. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.
 - j. The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.
 - k. Whether the respondent, in this state or any other state, has been arrested for, convicted of, had adjudication withheld on, or pled no contest to a crime involving violence or threat of violence.
 - l. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.
 - m. Evidence of recent acquisition of firearms or ammunition by the respondent.
 - n. Any relevant information from family and/or household members concerning the respondent, as documented in sworn statements when possible.
 - o. Witness testimony, taken while the witness is under oath, relating to the matter before the court.
4. 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 their attorney, if one is retained, or must present the evidence under oath at a hearing in which all parties present.
5. In a hearing under F.S. [790.401](#), the rules of evidence apply to the same extent as in a domestic violence injunction proceeding under F.S. [741.30](#).
6. During the hearing, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and, if such determination is made, may order such evaluations, if appropriate.

D. RECEIPT OF RISK PROTECTION ORDER

- a. An RPO must include a statement of the grounds supporting the issuance of the order, the date the order was issued, the date the order ends, whether a mental health or chemical dependency evaluation was ordered, the address of the court in which a responsive pleading should be filed, and a description of the requirements for the surrender of all firearms and ammunition that the respondent owns. This advisement can be found on the [Petition for Risk Protection Order \(With Request for Temporary Ex Parte Risk Protection Order\)](#)

- 1) “To the subject of this risk protection order: This order will last until the date noted above. If you have not done so already, you must surrender immediately to the Cocoa Beach Police Department, 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 [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 related to this order.” (CFA 24.06ME)

2.

E. TEMPORARY EX PARTE RISK PROTECTION ORDER

1. A petitioner may request that a Temporary Ex Parte RPO be issued before a hearing for an RPO, without notice to a respondent, by including in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to themselves or others in the near future by having in their custody or control, or by purchasing, possessing, or receiving a firearm or ammunition.
2. In considering whether to issue a Temporary Ex Parte RPO, the court shall consider all relevant evidence, including evidence described in paragraph (3)(c) of F.S. [790.401](#).
3. If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to themselves or others in the near future by having in their custody or control, or by purchasing, possessing, or receiving a firearm or ammunition, the court must issue a Temporary Ex Parte RPO.
4. 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.
5. A Temporary Ex Parte RPO must include a statement of the grounds for which the order was issued, the date the order was issued, the address of the court in which any responsive pleading may be filed, the date and time of the scheduled hearing, a description of the requirements for the surrender of all firearms and ammunition the respondent owns, and the following statement:
 - a. “To the subject of this risk protection order: This order will last 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 Cocoa Beach Police Department all firearms and ammunition in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under F.S. [790.06](#). A hearing will be held on the date and at the time noted above to determine if a risk protection should be issued. Failure to appear at the hearing may result in the 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.” (CFA 24.06ME)

F. SERVICE

1. 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 Sheriff of the county where the respondent resides or can be found, 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 Clerk of the Court shall be responsible for furnishing the Sheriff with information on the respondent's physical location and description. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate Sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency effecting service pursuant to this section shall use service and verification procedures consistent with those of the Sheriff. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature. (CFA 24.06MD)
2. Orders shall be entered into FCIC/NCIC by the Sheriff, or the Cocoa Beach Police Department, if authorized by the courts. (CFA 24.06MF)

G. TERMINATION AND EXTENSION OF ORDERS

1. TERMINATION

- a. The respondent may submit one written request for a hearing to vacate an RPO, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.
- b. Upon receipt of the request for a hearing to vacate an RPO, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance with the statute. The hearing must occur no sooner than fourteen (14) days and no later than thirty (30) days after the date of service of the request upon the petitioner.
- c. The respondent shall have the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger of causing personal injury to himself or others by having in their custody or control, purchasing, possessing, or receiving a firearm or ammunition. The court may consider any relevant evidence, including evidence of the considerations listed in paragraph (3)(c) of F.S. [790.401](#).
- d. If the court finds after the hearing that the respondent has met their burden of proof, the court must vacate the order.
- e. The law enforcement agency holding any firearm or ammunition or license to carry a concealed weapon or firearm that has been surrendered pursuant to this section shall be notified of the court order to vacate the RPO.

2. EXTENSION

- a. The court must notify the petitioner of the impending end of an RPO. Notice must be received by the petitioner at least thirty (30) days before the date the order ends.
- b. The petitioner may, by motion, request an extension of an RPO at any time within thirty (30) days before the end of the order. If there is relevant evidence for the court's consideration to extend the RPO the petitioner will complete a [Petitioner's Motion to Extend Final Risk Protection Order](#) (Appendix G)
 - 1) Upon receipt of the motion to extend, the court shall order that a hearing be held no later than fourteen (14) days after the date the order is issued and schedule such hearing.
 - 2) The court may schedule a hearing by telephone.
 - 3) The respondent must be personally serviced in the same manner provided by paragraph (3)(c) of F.S. [790.401](#).
 - 4) In determining whether to extend an RPO issued under F.S. [790.401](#), the court may consider all relevant evidence, including evidence of the considerations listed in paragraph (3)(c) of F.S. [790.401](#).

- 5) If the court finds by clear and convincing evidence that the requirements for an issuance of an RPO continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended on the basis of a petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for a requested extension.
- 6) The court may extend an RPO for a period that it deems appropriate, up to and including but not exceeding twelve (12) months, subject to an order to vacate as provided by statute or to another extension order by the court.

H. SURRENDER OF FIREARMS AND AMMUNITION

1. Upon issuance of an RPO or Temporary Ex Parte RPO, the court shall order the respondent to surrender to law enforcement all firearms and ammunition owned by the respondent in the respondent's custody, control, or possession except as provided by F.S. [790.401](#), and any license to carry a concealed weapon or firearm issued under F.S. [790.06](#), held by the respondent.
2. When feasible, an officer from the Cocoa Beach Police Department will accompany the Brevard County Sheriff's Office deputy when they serve the RPO or Temporary Ex Parte RPO. The deputy will request the respondent immediately surrender all firearms and ammunition owned by the respondent in their custody, control, or possession and any license to carry a concealed weapon or firearm issued under F.S. [790.06](#), held by the respondent. (CFA 24.06MA)
 - a. The officer will take possession of all firearms and ammunition owned by the respondent and any license to carry a concealed weapon or firearm issued under F.S. [790.06](#), held by the respondent, which are surrendered, in plain sight, or discovered pursuant to a lawful search. (CFA 24.06MA)
 - b. Alternatively, if personal service by a law enforcement 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 issued under F.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. (CFA 24.06MA)
 - c. Notwithstanding F.S. [933.02](#) and [933.18](#), an officer or detective 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 their custody, control, or possession which have not been surrendered. (CFA 24.06MA)
3. At the time of surrender, an 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 property receipt identifying all firearms with serial number, make, model, caliber, 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. All firearms with a serial number shall be checked via FCIC/NCIC to determine they are not stolen.
 - a. Within 72 hours after service of the order, the original property receipt shall be filed with court. The petitioner will complete a [Notice of Filing Property Receipt and Certificate of Compliance](#) (Appendix F). The Cocoa Beach Police Department will retain a copy of the property receipt.
4. Notwithstanding F.S. [933.02](#) and [933.18](#), 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 F.S. [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 their custody, control, or possession.

- a. 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 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 they are determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, the firearm shall be returned to them, 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 is not otherwise unlawfully possessed by the owner.
6. Upon issuance of an RPO, the court shall order a new hearing date and require the respondent to appear no later than three (3) business days after the issuance of the order. The court shall require proof that the respondent has surrendered all firearms and ammunition in the respondent's custody, control or possession. If the petitioning officer believes the respondent has surrendered all of their firearms and or ammunition the officer will complete [Motion to Cancel Compliance Hearing](#) (Appendix G). The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.
7. Firearms, ammunition, and licenses surrendered to the department shall be stored for the duration of the RPO and in accordance with Standard Operating Procedure [206.00 - Property and Evidence Management](#). (CFA 24.06MB)

I. BAKER ACT PROVISIONS

1. Under F.S. [394.463](#), an officer taking custody of a person for the purpose of an involuntary examination may seize and hold a firearm or any ammunition the person possesses at the time of taking them into custody if the person poses a potential danger to themselves or others and has made a credible threat of violence against another person.
 - a. If an officer takes custody of the person at the person's residence and the criteria above has been met, the officer may seek the voluntary surrender of firearms or ammunition kept in the residence which have not already been seized.
 - b. 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 they were taken into custody, an officer may petition the appropriate court, under F.S. [790.401](#), for an RPO or Temporary RPO, following the procedures described in the previous sections of this policy.
 - c. Firearms or ammunition seized or voluntarily surrendered under F.S. [394.463\(2\)](#) must be made available for return no later than twenty-four (24) hours after the person taken into custody can document that they are no longer subject to involuntary examination and has been released or discharged from any inpatient or involuntary outpatient treatment provided or ordered under F.S. [394.463\(2\)\(g\)](#), unless an RPO entered under F.S. [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 F.S. [790.065\(2\)](#), or a firearm possession and firearm ownership disability under F.S. [790.06](#). The process for the actual return of firearms or ammunition seized or voluntarily surrendered under F.S. [394.463\(2\)](#) may not take longer than seven (7) days.
 - d. Firearms/ammunition surrendered under F.S. [394.463\(2\)](#) will be handled and stored as described in Standard Operating Procedure [206.00 - Property and Evidence Management](#).

J. RETURN AND DISPOSAL OF FIREARMS AND AMMUNITION

1. If an RPO is vacated or ends without extension, a law enforcement agency holding a firearm, ammunition, or license owned by the respondent that has been surrendered or seized pursuant to F.S. [790.401](#) must return such surrendered firearm, ammunition, or license to carry as requested by the

respondent, only after confirming through a background check that the respondent is currently eligible to own or possess firearms or ammunition under federal and state law and after confirming with the court that the RPO has been vacated or has ended without extension. Prior to returning the firearms or ammunition the following steps shall be completed: (CFA 24.06MC)

- a. The agency shall make a good faith effort to provide notice to any family or household members of the respondent before returning any surrendered firearm and ammunition owned by the respondent.
- b. The firearms will be checked through FCIC/NCIC to determine they are not stolen.
- c. It shall be the responsibility of the Staff and Administrative Services Lieutenant (or designee) to track the status of each order petitioned for by the Cocoa Beach Police Department and ensure the applicable notices are completed by the assigned investigator.
- d. Any firearm and ammunition surrendered by a respondent pursuant to a RPO which remains unclaimed for a period of One (1) year by the lawful owner after an order to vacate the RPO shall be disposed of in accordance with Standard Operating Procedure [206.00 - Property and Evidence Management](#).

K. TRANSFER OF FIREARM AND AMMUNITION

1. 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:
 - a. Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
 - b. 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
 - c. Attests not to transfer the firearms or ammunition back to the respondent until the RPO against the respondent is vacated or ends without extension;
 - d. Signs a [Transfer/Receipt of Firearm\(s\)/Ammunition & Affidavit](#) (Appendix H).

L. TRAINING

1. Newly Sworn, Communications, and Records Division members hired by the Department will receive training in RPOs during their initial administrative/indoctrination training block. (CFA 24.06MG)

6. APPENDIX

- A. [Petition for Risk Protection Order \(With Request for Temporary Ex Parte Risk Protection Order\)](#)
- B. [Temporary Risk Protection Officer Affidavit](#)
- C. [Risk Protection Order Weapons Affidavit](#)
- D. [Witness Affidavit](#)
- E. [Good Faith Written Notice](#)
- F. [Temporary Ex Parte Risk Protection Order and Notice of Further Proceedings](#)
- G. [Petitioner's Motion to Extend Final Risk Protection Order](#)
- H. [Notice of Filing Property Receipt and Certificate of Compliance](#)
- I. [Motion to Cancel Compliance Hearing](#)
- J. [Transfer/Receipt of Firearm\(s\)/Ammunition & Affidavit](#)

7. REFERENCES

- A. [Standard Operating Procedure 114.00 – Reporting Requirements and Review](#)
- B. [Florida Statute 790.401 – Risk Protection Orders](#)

- C. [Florida Statute 741.30 - Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption](#)
- D. [Florida Statute 784.046 – Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption](#)
- E. [Florida Statute 784.0485 - Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement](#)
- F. [Florida Statute 741.28 - Domestic violence; definitions](#)
- G. [Florida Statute 790.06 - License to carry concealed weapon or concealed firearm](#)
- H. [Florida Statute 933.02 - Grounds for issuance of search warrant](#)
- I. [Florida Statute 933.18 - When warrant may be issued for search of private dwelling](#)
- J. [Standard Operating Procedure 206.00 - Property and Evidence Management](#)
- K. [Florida Statute 394.463 - Involuntary examination](#)