



PATROL			508.00		
		RISK PROTECTION ORDERS			
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PURPOSE

The purpose of this standard operating procedure is to provide detailed guidance and procedures for Department members to quickly and properly respond to any threat to public safety, while still safeguarding due process rights of a respondent.

SCOPE

This procedure shall apply to all Punta Gorda Police Department personnel.

DISCUSSION

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 (or Temporary RPO) when the respondent poses a significant danger of causing personal

injury to themselves 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, and their concealed weapons permit (if they have one) pending a subsequent final hearing. At the final hearing, the Court will consider a request for an RPO which can last up to 12 months. At the conclusion of the 12 months, an extension of the RPO may be requested and granted for additional 12 months. It is the policy of the Punta Gorda Police Department to quickly and properly respond to any threat to public safety, while still safeguarding due process rights of a respondent.

DEFINITIONS

1. **PETITIONER:** A law enforcement officer or a law enforcement agency that petitions at court for a risk protection order in [Section 790.401, Florida Statutes](#).
2. **RESPONDENT:** An individual who is identified as the respondent in a petition filed in [Section 790.401, Florida Statute](#)
3. **RISK PROTECTION ORDER (RPO):** An order entered by a judge that prohibits the possession or purchase of firearms or ammunition by Respondent for the length of time the order is in effect.
4. **Temporary Ex-Parte Risk Protection Order:** The signed order of a circuit Judge requiring the respondent surrender to the named Law Enforcement entity any and all firearms and other weapons and ammunition respondent has in their possession, and any license to carry a concealed weapon or firearm issued to respondent under [Section 790.06, Florida Statutes](#). Unless otherwise stated within the order, the order will be valid for a period of fourteen (14) days after the date the order was signed.

PROCEDURE

- I. **INITIAL ASSESSMENT AND RISK PROTECTION ORDER PROCEDURE:**
 - A. The officer identifies the situation as a potential for an RPO.
 - B. If the situation could be an RPO situation, the following criteria must be met:
 1. Does the respondent pose a significant danger of causing personal injury to themselves or others?
 2. Does the respondent pose a significant danger of causing personal injury to themselves or others, in the near future? And

3. Does the respondent have a firearm or any ammunition in their custody or control or have the ability of to purchase, possess, or receive a firearm or any ammunition?
- C. If the respondent meets all three requirements, the officer shall have the Watch Commander respond to their location.
- D. The Watch Commander will 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.
- E. Once the Watch Commander has confirmed that the situation meets the criteria for an RPO, the officer shall complete the following forms:
1. Law Enforcement Officer Checklist for Filing RPO (Form RP423)
 2. Law Enforcement Officer Affidavit (Form RP 420)
 - a. The affidavit includes the specific statements, actions or facts giving rise to a reasonable fear of significant dangerous acts by the Respondent,
 - b. The affidavit includes a list of firearms and ammunition (type, quantity and location) that the Officer believes the Respondent has in their current ownership, possession, custody or control, and
 - c. The affidavit must be signed by the Officer and notarized
 3. The officer provides witness affidavit(s) to all witnesses that have any information regarding whether Respondent poses a significant danger of causing personal injury to self or others for their immediate completion and signature (Form RP 426).
 - a. The witness must sign the Affidavit on scene,
 - b. The officer must attest to the Witness Affidavit, and
 - c. The officer must advise the witness that a hearing will be scheduled within 1 business day if seeking a temporary ex parte RPO and that they are required to attend (the witness will be contacted further by the officer or a member of the Farr Law Firm once a hearing is set).
 4. The officer must complete the RPO Notice to Family, Household Member, or Third Party if applicable (Form RP 422).
 - a. The officer must make a good faith effort to provide a notice to any family or household member or known third party at risk of violence by Respondent that the officer is seeking an RPO and provides a list of local resources.

- b. Once the notice is given, the officer shall keep a copy of the signed Notice of RPO form for family members or third parties.
 - c. The notice should be given after the RPO to avoid Respondent being notified.
5. The officer shall ask the Respondent if they will voluntarily surrender their firearm(s) or ammunition. If the Respondent voluntarily surrenders their firearm(s) or ammunition, the officer will complete the Risk Protection Order Receipt of Firearm/Ammunition Surrender form (Form RP 425).
- a. The officer will provide the Respondent with a copy of the Risk Protection Order Receipt of Firearm/Ammunition Surrender form.
 - b. The officer will provide the Respondent with a property receipt for surrendered firearms.
- F. The Watch Commander will contact the Operations Commander for approval to move forward with obtaining an RPO.
- G. Once approval has been granted by the Operations Commander, the officer shall submit the completed forms to the Records Unit and RPO@farr.com.
- H. The incident report shall be labeled RPO.

II. COURT PROCEDURES TO OBTAIN RPO:

- A. A petition is prepared by Farr Law Firm and submitted to the Clerk of Court as a new case.
- B. After submitted, the Farr Law Firm contacts Judicial Assistant for duty judge or Clerk to schedule a hearing at either first appearance or at the first available time slot available with the judge.
- C. The officer and all the witnesses must be at the hearing.
- D. Once the hearing is scheduled, the Farr Law Firm will notify the officer and will coordinate notice to the witnesses.
- E. At the hearing, the Farr Law Firm will present evidence to support a temporary ex parte RPO.
- F. If a Temporary Ex-Parte RPO is granted, a compliance hearing will be set within 3 days to confirm the surrender of firearms/ammunition.

- G. A final hearing will be scheduled for a date within 14 days of the date of the temporary ex parte RPO.
- H. The officer and all witnesses must be present at the final hearing.

III. POST-ORDER PROCEDURE

- A. If the temporary RPO is granted, the officer will be provided with a copy of the Order on or before the next business day by the Clerk of Court or the Farr Law Firm for service on the Respondent.
 - 1. The officer will notify the Operations Commander upon receipt of the copy of the Order.
 - 2. The officer and Watch Commander must serve the temporary ex parte RPO on the Respondent with notice of final hearing and Petition where the Respondent resides or can be found as soon thereafter as possible on any day of the week and at any time of the day or night.
- B. The officer shall be responsible for the following record:
 - 1. Date(s) and time served or attempted;
 - 2. Name of server;
 - 3. Reason for non-service, if applicable;
 - 4. Method of service;
 - 5. Location of service or attempted service; and
 - 6. To whom the process was served or on whom executed.
- C. At time of service, the officer will request that the Respondent immediately surrender all firearms and ammunition owned in their custody, control or possession and any license to carry a concealed weapon or firearm held. The officer will take possession of all items surrendered.
 - 1. The officer shall compare the firearms/ammunition surrendered with the list attached to the Petition to ensure all have been seized.
 - 2. The officer shall complete a receipt identifying all firearm and ammunition that have been surrendered and any license surrendered.

- a. The original receipt shall be forwarded to the Farr Law Firm in order to be filed with the court.
 - b. A copy of the receipt shall be issued to the Respondent.
 - c. A copy of the receipt shall be forwarded to records to be attached to the case file.
3. Firearms and ammunition surrendered to the department will be handled and stored as described in [Standard Operating Procedure 800.00 – Evidence and Property](#).
- a. The Evidence Technician will be provided with a copy of the RPO to attach to the firearms.
4. If the Respondent refuses to surrender the firearm, ammunition or license to carry a concealed weapon or firearm, the officer can:
- a. Charge the Respondent with a third degree felony under [F.S.S. 790.401\(11\)](#), a person who has in their custody or control a firearm or any ammunition or who purchases, possess, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by an RPO issued under [F.S.S. 790.401](#) or
 - b. Obtain a warrant to search for and seize firearms and ammunition.
5. The Respondent can elect to transfer all firearms and ammunition owned by Respondent that have been surrendered to another person who is willing to receive the Respondent's firearms and ammunition. The officer must allow transfer only if determined that the recipient:
- a. Is eligible to own or possess a firearm and ammunition under state and federal law after confirmation through a background check;
 - b. Attests to storing the firearms and ammunition in a manner that the Respondent does not have access to or control of the firearms and ammunition until the RPO is vacated or ends without extension;
 - c. Attests not to transfer the firearms or ammunition back to the Respondent until the RPO is vacated or ends without extension; and
 - d. Both Respondent and third party fill out and sign the transfer forms (Form RP 421 and Form RP 424).
6. If the Respondent has already turned their firearms and ammunition over to officers or a third party on the date of the incident, they are in compliance of the Temporary Ex Parte Risk Protection Order. Upon serving the Temporary Ex Parte Risk Protection Order the officer shall complete and serve the Return of Service- Firearm Statement (RP427).

7. The Respondent has to appear no later than 3 business days for proof of surrender. The hearing will be set by the Court in the temporary ex parte RPO.
 - a. The officer will likely have to attend this hearing if the Respondent has not surrendered the firearms or ammunition to attest to the circumstances.
 - b. This may be canceled if the Return of Service –Firearm Statement (RP 427) was submitted to the courts and agreed to by the Judge.
8. During the 14 day period between the temporary ex parte RPO and the final hearing, the officer needs to conduct an investigation via background checks, etc. for the Farr Law Firm to use as evidence at the final hearing. The officer may seek the assistance of the criminal investigations unit if needed.
9. If the final RPO is issued, an officer and the Watch Commander must serve the final RPO on the Respondent and again ensure that all firearms or ammunition are surrendered (if not previously done by temporary ex parte RPO).

IV. MONITORING OF RPO

- A. The final RPO is generally issued for 1 year.
- B. The clerk must notify the Petitioner of impending end of RPO within at least 30 days before the date the Order ends.
- C. The petitioner may, by motion, request an extension of the RPO at any time within 30 days before the end of the Order.
- D. A hearing will be held within 14 days. The Respondent must be personally served with notice by an officer.
- E. The RPO can be extended for up to and including but not exceeding 12 months.

V. RETURN AND DISPOSAL OF FIREARMS AND AMMUNITION

- A. When the RPO is vacated or ends without extension, the officer holding the firearm or ammunition or a license to carry must return such items after:
 1. Confirming through a background check that the Respondent is currently eligible to own or possess firearms and ammunition under federal and state law; and
 2. Confirming with the Court that the RPO has been vacated or has ended without extension.

- B. The officer must provide notice to any family or household members of the Respondent before the return of any surrendered firearm and ammunition owned by the Respondent.
 - 1. The officer shall complete a supplement documenting notification to family and household members.
- C. Any firearm and ammunition that remains unclaimed for 1 year by the lawful owner after an order to vacate the RPO shall be disposed of in accordance with [Standard Operating Procedures 800.00](#).

VI. REPORTING OF RISK PROTECTION ORDERS

- A. Upon receipt of the copy of the order, the Communications Section shall enter the order into the Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC):
 - 1. The order must remain in each system for the period stated in the order, and;
 - 2. The Punta Gorda Police Department 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.)
- B. 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 Department of Agriculture and Consumer Services and the Punta Gorda Police Department specified in the order to vacate.
- C. Upon receipt of the order, the Communications Section shall promptly remove the order from any computer-based system in which it was entered.

VII. BAKER ACT PROVISIONS

- A. All Punta Gorda Police Officers acting in accordance with an ex parte order issued by a Circuit or County Court, pursuant to [FS 394.463\(2\)](#) shall follow the guidelines set forth in [Standard Operating Procedure 519.00 “Baker Act and Marchman Act”](#).

VIII. TRAINING

- A. All sworn agency members shall be trained on [Standard Operating Procedure 508.00 – Risk Protection Order](#).

APPROVED

A handwritten signature in black ink that reads "Pamela R. Smith". The signature is written in a cursive style with a large initial "P" and "S".

PAMELA R. SMITH, CHIEF OF POLICE

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