

317.2 RISK PROTECTION ORDERS - THE RISK PROTECTION ORDER ACT

I. DISCUSSION:

This directive establishes the policy and procedures for officers for identifying appropriate candidates, referring those candidates for review by the Legal Unit, collecting and maintaining firearms, ammunition, and licenses under The Risk Protection Order Act ("The RPO Act"), and serving court orders issued under the RPO Act.

The RPO Act under F.S. §790.401 and involuntary examination F.S. §394.463 allows Tampa Police Department ("TPD") to seek a Temporary Risk Protection Order ("TRPO") and a Risk Protection Order ("RPO") prohibiting an individual from having in his or her custody or control, or purchasing, possessing, or receiving, a firearm or ammunition, or a license for carrying concealed weapon ("CCW") or carrying concealed firearm ("CCF") for an initial period of up to 12 months and extended thereafter. RPOs are civil and heard in Mental Health Division, but violations of a RPO are criminal.

The purpose of The RPO Act 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 agencies to obtain a court order temporarily restricting a person's access to firearms and ammunition. The procedures established should ensure the purpose of The RPO Act is lawfully carried out by providing guidance on: i) how to identify appropriate individuals; ii) what to do when an individual is identified; iii) collecting and maintaining of firearms, ammunition, and licenses surrendered under The RPO Act; iv) serving court orders issued under The RPO Act; and v) violations of The RPO Act.

The operational guidelines for patrol's initial response to a person actively in mental or behavioral health crisis and the functions of the Behavioral Health Unit (BHU) is covered under SOP 625.1 Mental and Behavioral Health Response.

II. POLICY:

Officers shall identify any situation in which the officer has reason to believe a person poses a **significant danger of harming himself or herself or others by possessing a firearm or ammunition. Those cases shall be referred to the Legal Unit who will evaluate the case and petition the court if appropriate.** TPD Legal Unit will seek TRPOs and RPOs after being notified and reviewing the individual cases in accordance with Legal Unit IDP's. Officers will be required to testify at Risk Protection Hearings as needed.

III. DEFINITIONS:

A. Petitioner: The Tampa Police Department.

B. Respondent: The subject of the RPO.

- C. Temporary Risk Protection Order (TRPO): Once served, a temporary ex-parte order granted by the court under The Risk Protection Order Act, F.S. §790.401, which shall remain in place until the Final Risk Protection Order hearing is held.
- D. Risk Protection Order (RPO) or Final Risk Protection Order (RPO): An order under The Risk Protection Order Act, F.S. §790.401, granted for a term of up to 12 months. A Risk Protection Order is civil, however once a subject has been served with a RPO, it is a felony for that person to possess a firearm, ammunition, or concealed carry permit while the order is active F.S. §790.401(11)(b).
- E. RPO Attorney: Legal Advisor assigned to the TPD Legal Unit who can be contacted during business hours at (813) 276-3769.
- F. RPO Officer: Officer assigned to the TPD Legal Unit who can be contacted during business hours at (813) 276-3767.

IV. PROCEDURES:

A. IDENTIFICATION OF INDIVIDUALS:

1. QUALIFICATION

An individual qualifies for a RPO if based on statements, actions, or facts:

- a. There is a reasonable fear of significant dangerous acts by the individual; and
- b. The individual poses a significant danger of causing personal injury to himself/herself or others by either:
 - i. Having a firearm or ammunition in his or her custody or control;
 - ii. Purchasing a firearm or ammunition;
 - iii. Possessing a firearm or ammunition; or
 - iv. Receiving a firearm or ammunition.

2. CRITERIA

- a. In determining whether an individual meets these criteria, you should consider whether the individual meets **any** of the following criteria:
 - i. Was involved in a recent act or threat of violence against himself/herself or others, **whether or not** such violence or threat of violence involves a firearm;

- ii. Engaged in an act or threat of violence within the past 12 months, including but not limited to, acts or threats of violence by the individual against himself/herself or others;
- iii. Is seriously mentally ill or has recurring mental health issues;
- iv. Has violated a risk protection order or no contact order issued under domestic violence injunction (F.S. § 741.30), repeat violence, sexual violence, or dating violence injunction (F.S. §784.046), or stalking (F.S. §784.0485);
- v. Is the subject of a previous or existing risk protection order;
- vi. Has violated a previous or existing risk protection order;
- vii. Has, in this state or any other state, been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence (as defined in F.S. §741.28);
- viii. Has used, or has threatened to use, against himself/herself or others, any weapons;
- ix. Has unlawfully or recklessly used, displayed or brandished a firearm;
- x. Has used or threatened to use, on a recurring basis, physical force against another person or the respondent has stalked another person;
- xi. Has, in this state or any other state, been arrested for, convicted of, had adjudication withheld, or pled nolo contendere to a crime involving violence or a threat of violence;
- xii. Has abused or is abusing controlled substances or alcohol;
- xiii. Has recently acquired firearms or ammunition;
- xiv. Any relevant information from family and household members concerning the respondent; and
- xv. Witness testimony taken under oath about the above criteria.

- b. All incidents involving the threat of mass violence, whether or not the mechanism of violence is a firearm will be referred to the Legal Unit.
 - c. The individual need not have been arrested or have committed a criminal offense. All involuntary examination commitments (i.e.: Baker or Marchman Act) need to be considered along with any other investigation or contact. An individual who may not ever lawfully possess a firearm will not need to be considered for a RPO since the individual is already prohibited from possessing a firearm, i.e. a convicted felon. While juveniles are restricted from possessing firearms in most circumstances cases involving juveniles **will** be referred to the Legal Unit for consideration for RPO based on the same criteria as adults. Officers should follow notification procedures outlined below if in doubt as to whether a person may ever lawfully possess a firearm. An individual who only has a temporary injunction, probation, or parole criteria prohibiting him or her from possessing a firearm may still meet the criteria for seeking a RPO.
 - d. A subject need not meet all the listed criteria to be considered for RPO.
3. The officer should obtain relevant sworn statements from witnesses, complainants, victims, and family or household members and document such in the related general offense report. Sworn written statements should also be obtained when possible.

B. OBTAINING FIREARMS, AMMUNITION, AND LICENSE:

The laws for search and seizure of property and persons still apply when officers initially identify an individual who may be a significant danger to himself or others with a firearm and throughout the entire process of carrying out the provisions of The RPO Act.

1. INVOLUNTARY EXAMINATION:

- a. Officers who are taking custody of an individual based on involuntary examination under F.S. §394.463 (Baker Act), may seize and hold a firearm or any ammunition the person possesses at the time of taking him or her into custody if the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person.
- b. If the above criteria are met and the custody occurs at the person's residence, the officer may seek the voluntary surrender of firearms or ammunition kept in the residence which have not already been seized.
- c. Firearms or ammunition not voluntarily surrendered or seized during an involuntary examination custodial detention, may still be seized after a RPO is obtained as provided for herein and, when necessary, a search warrant.

2. ARREST:

When an officer arrests an individual who meets the criteria for RPO, the officer should initiate RPO review unless the officer determines the person is permanently not eligible to legally possess a firearm. If in doubt, initiate an RPO review.

- a. Firearms seized as evidence will be eligible for seizure under RPO. If an RPO is obtained, it ensures that the individual will not get his or her firearm back until the expiration of a RPO regardless of the outcome of the criminal case.
- b. If an arrested individual meets the criteria for a RPO and is believed to have firearms or ammunition that were not seized as evidence or voluntarily relinquished for safekeeping, the firearms or ammunition will be required to be turned over upon the service of a RPO or TRPO. Officers should document any evidence that a person may have firearms or ammunition that was not seized.
- c. An individual who is not involuntary committed or arrested may still qualify for a RPO. The process for such a person is the same as an individual who is arrested, and firearms were not seized as evidence.

C. INITIATION OF RPO REVIEW:

1. AFFIDAVITS:

Once an officer determines an individual meets the criteria for RPO, the officer must complete an Affidavit for RPO. The Affidavit for the RPO can be found in the MRE templates and must be completed by the officer prior to the end of his or her shift. All officers who initiate a report or author a supplemental report will complete an Affidavit for RPO.

2. NOTIFYING LEGAL:

By the end of their shift the referring officer will originate a report using offense code "Risk Protection Order" as the primary, or as a secondary offense code if appropriate.

D. REVIEW OF REPORT AND BACKGROUND HISTORY:

1. SUPERVISORS

Sergeants will ensure that all reports are reviewed for RPO eligibility. Reports involving a subject who may meet the RPO criteria will be routed to the “HRISK” handle for review by Legal Unit. They will ensure that the Risk Protection Affidavits are completed for appropriate cases to begin the initiation of RPO review procedures.

2. FIREARMS UNIT

- a. Firearms Unit is responsible for reviewing all incoming firearm cases and all return of firearms requests for RPO criteria and notifying Legal if RPO consideration is appropriate.
- b. Firearms Unit will be notified by the Legal Unit of all individuals who have a RPO entered against him or her. Subjects with active RPOs will be flagged in RMS.

3. LEGAL

- a. The RPO Officer will be responsible for reviewing all cases referred for RPO consideration.
- b. An RPO Attorney will ensure all cases are promptly reviewed by the RPO Officer. If the RPO Officer is unavailable, an RPO Attorney shall review.
- c. The Legal Unit will follow the procedures as provided under Legal Unit IDP’s.
- d. The Legal Unit will maintain a list of all cases referred along with the status of the RPO review.
- e. RPO statistics will be monitored by the RPO Officer.

E. PROCESS FOR FILING AND OBTAINING RPO:

The process for filing and obtaining RPOs will be handled by the Legal Unit as provided for under Legal Unit IDP’s.

F. SERVICE OF ORDERS, FIREARM RETURN FORM, AND SURRENDER OF FIREARMS AND AMMUNITION:

TPD is authorized to serve process of TRPOs and RPOs in accordance with local administrative order.

1. SERVICE

Service of a TRPO, RPO, and Firearm Return Form:

- a. TPD will serve process in the same manner as HCSO.
- b. Upon receipt of a TRPO or RPO packet from HCSO or the Legal Unit, the Communications Bureau supervisor will initiate a call for service. The Pick-Up Desk will retain a digital copy of the packet. In the RPO Manager Application on TPDNet, officers shall obtain digital copies of TRPO/RPO packets from “RPO Manager” application. The digital copy shall be retained by the Pick-Up Desk and available to officers upon request until the order is successfully served. The RPO packets will be printed at the districts or at a location where non-thermal paper can be used. RPO service packets will not be printed using thermal in car printers except in unusual or exigent circumstances such as when coming into contact with someone with an unserved Risk Protection Order or related court order on another type of call or contact. Service packets may be printed on any in car printer which uses standard office copy paper and ink.
- c. Within 24 hours of receiving a TRPO or RPO packet for service an attempt shall be made to serve the TRPO or RPO.
- d. Service will be attempted at least three times prior to the day of the scheduled hearing. Due diligence must be done on all RPO and TRPO’s needing service.
- e. The second and subsequent attempts shall be made on different days of the week and at different times of the day from the prior attempt(s). The Communications Bureau supervisor will schedule attempts for service during business hours barring unusual circumstances.
- f. An officer clearing an attempted service of a TRPO or RPO will advise the Pickup Desk if the attempt was successful or not. It shall be the sole responsibility of the personnel assigned to the Pickup Desk to update the RPO Manager App along with the disposition of each service attempt. The officer will include detailed call notes if the attempt was not successful i.e. no answer at the door, resident advised subject arrives home from work at 1700 hours, neighbor advised house is vacant, etc.

Officers will document a successful service of TRPO or RPO by originating a “Risk Protection Order” report detailing the contact, what if any firearms, ammunition, or CCW or CCF were taken, and

whether or not the respondent is believed to be in compliance with the order.

- g. Juvenile respondents will be served in the same manner as an adult with the exception that a juvenile will be served in the presence of their parent, guardian, school principal, or any other adult who is in charge of them at the time of service such as another adult family member. The adult present at the time of service will be documented in the "Risk Protection Order" report along with their relationship to the juvenile.
- h. An officer coming in contact with a respondent who has been flagged as an unserved subject of a TRPO or RPO will print (on non-thermal paper when possible) the unserved packet using the RPO Manager Application on TPDNet and perfect the service. If an officer comes into contact with a subject and a FCIC/NCIC hit indicates they are the unserved subject of a TRPO or RPO (FCIC/NCIC may refer to this as Extreme Risk Protection Order (ERPO) from another jurisdiction the officer will contact HCSO Records Transcription Unit (RTU) at (813) 247-8247 to obtain a copy of the packet and serve the respondent in the same manner as a TRPO or RPO petitioned for by TPD.
- i. When an order has been successfully served, the officer will immediately notify the Pick-Up Desk. The Pick-Up Desk will send a teletype to HCSO and dispose of their copy of the order.
- j. Service of TRPO and RPO documents (packets).
 - i. Service packets are prepared by HCSO Records Transcription Unit (RTU). Copies of outstanding TRPO and RPOs in which TPD is the petitioner will be available on the RPO Manager Application located on TPDNet. Due to the number of pages, TRPOs and RPOs should not be printed on in-car printer systems. Copies of all unserved TRPOs and RPOs regardless of the petitioning agency are available through HCSO RTU 24/7 and can be obtained by contacting them at (813) 247-8247.
 - ii. When an officer is attempting to serve a TRPO or RPO they will obtain two copies of the service packet along with a RPO Firearm Receipt (TPD Form 13). One copy of the RPO packet in its entirety will be provided to the respondent upon service, the other copy will be retained by the officer. A Firearm Receipt will be provided upon surrender of firearms, ammunition or licenses as provided below.

- iii. The officer shall write the date and time of service, the agency, and the officer's badge number and initials (i.e.: "served by Tampa Police Department on (date) at (time) by (badge number) (initial)") on the Certificate of Service page of the packet. The information must be written on both the copy provided to the respondent and the copy retained by the officer, and the information must be identical on both. The officer's copy of the certificate of service will be routed to the Legal Unit with a copy scanned into the report.
 - iv. At the time of service of a TRPO or RPO, an officer shall seek the surrender of firearms, ammunition, and CCW or CCF and provide a RPO Firearm Receipt (TPD Form 13) as provided under paragraph F.2. "Surrender of Firearms" below. This form may be printed on in car printers when necessary.
 - v. If an officer has probable cause to believe the respondent possesses firearms, ammunition, or a license for CCW after being served with an RPO requiring the respondent forfeit firearms and the person has refused, the on scene officer will coordinate with the RPO Officer or his or her supervisor to determine grounds for a search warrant and/or RPO criminal charges under F.S. § 790.401(7)(b). The RPO Officer can be contacted at (813) 276-3767 or 3769. This information will be documented in the officer's report. If unable to contact the RPO Officer, the RPO Officer should be notified via email at TPD-service@tampagov.net before the end of the officer's shift.
 - vi. Depending on the case there may be additional orders required to be served as well and the same process shall be followed.
- k. Service of RPO Extensions and related documents:
- i. Upon the expiration of an active RPO the Legal Unit reviews each case and may choose to file an extension for RPO. When that occurs, officers may be asked to serve an "Order Setting Hearing on Petitioner's Motion to Extend Final Risk Protection Order." These will be served and documented in the same manner as TRPO's and RPO's; however, TPD Form 13 is not applicable and should not be issued.

- ii. If a respondent is found to be in possession of a firearm or ammunition while serving an “Order Setting Hearing on Petitioner’s Motion to Extend Final Risk Protection Order” the officer shall verify the current RPO is valid and in effect and take appropriate law enforcement action in accordance with F.S. §790.401(11)(b).
 - iii. The copy of the service packet retained by the officer upon service, RPO Firearm Receipt (TPD form 13), and Joint Stipulation Agreement if applicable, will be forwarded to the Legal Unit via inter office mail before the officer’s end of shift. When possible, a copy will be emailed to TPD-Service@tampagov.net as well.
 - iv. Unsuccessful attempts to service TRPO, RPO, or other RPO related documents will be documented with detailed call notes. Successful service will be documented in a “Risk Protection Order” report.
- l. The RPO Officer shall be responsible for service of subpoenas for any RPO hearings and may request assistance as needed.
 - m. The RPO Officer or Attorney will file the joint stipulation agreements, RPO firearm receipts, and Certificate of Service documents with Clerk of the Court within 72 hours after service of the TRPO or RPO and ensure a copy is kept for the file.
 - n. The RPO Officer is responsible for overseeing the service of TRPOs, RPOs and related documents.

2. SURRENDER OF FIREARMS:

An officer serving a TRPO or RPO **shall request** the immediate surrender of all firearms and ammunition owned by the respondent in respondent’s custody, control, or possession, and license for CCW or CCF.

- a. At the time of surrender of any firearms, ammunition, or license, a officer taking possession shall issue a RPO Firearm Receipt (TPD Form 13) identifying all firearms and the quantity and type of ammunition surrendered and any license surrendered. A copy of TPD Form 13 shall be provided to the respondent. A copy of the receipt will be scanned and attached to the report.
- b. At the time of service of a TRPO or RPO - Officers will submit all firearms, ammunition, and licenses as evidence. Officers will document the collection and submission of items in the “Risk

Protection Order” report originated to document service of the TRPO or RPO.

- c. After service of TRPO or RPO - any firearms, ammunition, or license not surrendered to the officer serving the TRPO or RPO shall be immediately surrendered by the respondent to TPD District 3 at 3808 N. 22nd St. Firearms, ammunition, or licenses surrendered will be placed into property as evidence. Officers receiving evidence will write a supplemental report and prepare a RPO Firearm Receipt (TPD Form 13). A copy will be provided to the respondent, and a copy will be attached to the report.
- d. Firearm receipts (TPD Form 13) shall be filed with the court by the RPO Officer within 72 hours after service. See IDP 102.09 Risk Protection Order Act Procedures.
- e. If a respondent has been served with a TRPO/RPO and the officer has probable cause to believe the respondent still possess a firearm and/or has a firearm in his or her custody or control, the officer should detain the respondent pending an investigation into criminal charges and review the matter with the RPO Officer or his or her supervisor for probable cause to secure the residence while seeking a search warrant if probable cause exists that there is a firearm in a residence.

G. SEARCH WARRANTS

1. GROUND FOR OBTAINING A SEARCH WARRANT

- a. At the time of the service of the TRPO or RPO, the respondent shall immediately surrender all firearms or ammunition as required by the order. If the respondent is unable to provide them on scene the respondent is authorized to immediately turn them in to TPD District 3 at 3808 N. 22nd St. The Risk Protection Order Act allows officers to obtain a search warrant for a location or private dwelling even though the grounds for a search warrant under F.S. §933.02 or F.S. §933.18, may not exist. An officer in consultation with the RPO Officer may seek a search warrant with guidance from the RPO Attorney for a search of the location where the firearm or ammunition owned by the respondent are reasonably believed to be found and allows the seizure of any firearms or ammunition owned by the respondent discovered during the search.
- b. The search warrant affidavit can be based upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition owned or

possessed by the respondent. Therefore, officers should speak with others who may have knowledge about whether or not all firearms and ammunition owned or possessed by the respondent have been surrendered and obtain a sworn statement if any person alleges the respondent has not surrendered all firearms or ammunition. An officer who develops information may also provide a sworn statement by signing a search warrant affidavit.

- c. The court will issue a search warrant if probable cause exists to believe the respondent has failed to surrender all firearms or ammunition owned by respondent in the respondent's custody, control, or possession. If the court finds probable cause, the warrant must describe the firearms or ammunition owned by the respondent and authorize a search of the locations where the firearms or ammunition are reasonably believed to be found. The warrant must also authorize the seizure of the firearms and ammunition.

H. STORING AND RETURNING FIREARMS, AMMUNITION, AND LICENSE

1. The Evidence Section in conjunction with the Firearms Unit and the RPO Officer shall ensure firearms, ammunitions, and licenses held under a RPO are labeled in a manner identifying the evidence as held for RPO.
2. In accordance with the RPO Act, firearms, ammunition, and licenses held under a RPO and owned by the respondent shall be returned upon the termination of the RPO (i.e.: order vacating or term of RPO ends) if:
 - a. The respondent has requested the return;
 - i. A background check verifies the respondent is currently eligible to own or possess firearms and ammunition under federal and state law;
 - ii. A good faith effort is made to provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition; and
 - iii. Confirming with the court that the RPO has been vacated or has ended without extension.
3. Firearms or ammunition seized or voluntarily surrendered in relation to an involuntary examination under F.S. §394.463(2) (Baker Act), must be made available for return no later than 24 hours after the person taken into custody can document that he or she is no longer subject to involuntary examination and has been released or discharged from any inpatient or involuntary outpatient treatment provided or ordered under a Baker Act, unless:

- a. A risk protection order has been entered in accordance with The RPO Act and is currently in place;
- b. The person is subject to a firearm disability under F.S. §790.065(2);
or
- c. The person is subject to a firearm possession and firearm ownership disability under F.S. §790.064. The process for the actual return of firearms or ammunition seized or voluntarily surrendered during an involuntary examination (Baker Act) may not take longer than 7 days. Additional policies for seizure, storage, and return of firearms or ammunition held due to an involuntary examination as provided herein shall be in accordance with Legal Unit IDP's.

I. DISPOSAL OF FIREARMS AND AMMUNITION

1. Any firearm and ammunition subject to a RPO which remains unclaimed by the lawful owner for 1 year after an order to vacate a RPO has been entered shall be disposed of in accordance with SOP 339 (Entry and Disposition of Property Deposited in the Evidence Control Section) and IDP 603.15 (Evaluation of Confiscated Firearms).
2. The Evidence Section is responsible for enacting a retention schedule and shall be notified by the Legal Unit upon the entry of any RPOs and order to vacate a RPO.

J. VERIFICATION OF ACTIVE RPOS

1. FDLE has created an FCIC file for "Extreme Risk Protection Order" of "ERPO" in order to enhance officer and public safety by providing warning to law enforcement of individuals restricted from purchasing or possessing a firearm since, by court order, the person has been deemed a threat to themselves of others.
2. Officers who identify a suspect who may be in violation of an RPO as described herein shall verify the RPO is active and that the person was served with the RPO via the warrants channel.
3. RPOs will appear in a FCIC/NCIC check in the same fashion as a warrant or injunction and will be verified through the same process.

K. CRIMINAL OFFENSES

1. VIOLATION OF TRPO or RPO

- a. A person who has an active TRPO or RPO and who has knowledge of the active TRPO or RPO (i.e.: been served with a copy of the TRPO or RPO) commits a third-degree felony if he or she:
 - i. Is in custody or control of a firearm or ammunition;
 - ii. Possesses a firearm or ammunition;
 - iii. Receives a firearm or ammunition; or
 - iv. Purchases a firearm or ammunition.
- b. Charge as a violation of section **F.S. §790.401(11)(b)**, Florida Statutes.

2. **FALSE STATEMENTS AT HEARINGS**

- a. A material statement known to be false under oath made during any hearing held under the Risk Protection Order Act is a third- degree felony.
- b. Charge as a violation of section **F.S. §790.401(11)(a)**, Florida Statutes.

L. **LIABILITY**

The Risk Protection Order Act states that it does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a TRPO or RPO.

Supersedes SOP 317.2, dated 03/24.