



# SOUTH MIAMI POLICE DEPARTMENT

<b>GENERAL ORDER NUMBER: 19-05</b>	<b>DATE OF ISSUE:</b> June 21, 2018	<b>EFFECTIVE DATE:</b> August 31 2018	<b>NUMBER OF PAGES:</b> 10
<b>CFA STANDARD: 24</b> <b>SUBJECT: Risk Protection Orders</b>	<b>NEW (XX) RESCINDS ( )</b>  <b>AMENDS ( ) OTHER ( )</b>	<b>By Order Of:</b>   <b>Rene Landa,</b> <b>CHIEF OF POLICE</b>	

**CFA STANDARDS: 24.06M**

**SECTIONS:**

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**19.05.1 RISK PROTECTION ORDERS**

**I. Purpose:**

The purpose of this policy is to provide guidelines for implementing the Risk Protection Order Act, § 790.401, Florida Statutes. More specifically, this policy will: assist officers in the identification of individuals who may qualify for a Risk Protection Order (RPO); outline the procedures for petitioning the court for an RPO; provide guidelines for the service of an RPO; provide guidance for the collection and accounting of firearms seized as a result of an RPO; and ensure that the department is in compliance with the reporting requirements per statute.

### **19.05.2 Risk Protection Order**

- A. An agency can petition the court for an RPO if the agency believes that a person poses a significant danger of causing personal injury to himself/herself or others by having a firearm or any ammunition in his/her custody or control, or by purchasing, possessing, or receiving a firearm or ammunition.
- B. Once an RPO is issued and served upon the respondent, the respondent is prohibited by law from having firearms or any ammunition in his/her custody or control, or purchasing, possessing, or receiving a firearm or ammunition. Violating the RPO with knowledge of the existence of the RPO, is a third-degree felony in violation of § 790.401(11)(b), Florida Statutes.
- C. The department shall designate one or more persons to be the “RPO Coordinator” for the agency. The RPO Coordinator or his/her designee is responsible for all aspects of the RPO process, such as filing the Petition and Affidavit for the RPO with the Clerk of Courts, coordinating witnesses, discovery, and representing the agency at the RPO hearings.
  - 1. The RPO Coordinator or his/her designee must be thoroughly familiar with Florida Statutes Section 790.401, Procedures for Handling Petitions for Risk Protection Orders established by the Eleventh Judicial Circuit, and any Administrative Orders established by the Chief Judge of the Eleventh Judicial Circuit regarding RPOs.
  - 2. The RPO Coordinator or his/her designee will fill out an FCCC ePortal Law Enforcement Administrator Account Request Form and forward it to the Clerk of Courts in order to set up a law enforcement agency account for filing RPOs. The RPO Coordinator will be the administrator of the agency account and may add users to the account as deemed necessary.

### **19.05.3 Procedure for Obtaining an RPO**

- A. Factors that an officer may take into consideration regarding whether an individual is a candidate for an RPO are as follows:
  - 1. The individual was involved in a recent act or threat of violence against himself/herself or others;

2. The individual engaged in an act or threat of violence, including but not limited to acts or threats of violence against himself/herself, within the past 12 months;
  3. The individual is seriously mentally ill or has recurring mental health issues;
  4. The individual has violated a risk protection order or no contact order issued under §§ 741.30, 784.046, or 784.0485, Florida Statutes;
  5. The individual has been convicted of, had adjudication withheld on, or pled *nolo contendere* in Florida or in any other state to a crime that constitutes domestic violence as defined in § 741.28, Florida Statutes;
  6. The individual has used, or threatened to use, against himself/herself or others, any weapons;
  7. The individual has unlawfully or recklessly used, displayed or brandished a firearm;
  8. The individual has used or threatened to use on a recurring basis physical force against another person or has stalked another person;
  9. The individual has been arrested for, convicted of, had adjudication withheld, or pled *nolo contendere* to a crime involving violence or a threat of violence in Florida or in any other state;
  10. The individual has abused or is abusing controlled substances or alcohol;
  11. The individual has recently acquired firearms or ammunition.
- B. If an officer believes that a particular individual meets the criteria for an RPO, the officer should immediately contact the Department's RPO Coordinator or his/her designee or if none are available, complete an Offense Incident Report outlining the pertinent facts that are needed to make the individual and the general public safe. Any weapons in possession by the person at the time and can be impounded for safekeeping pending the issuance of an RPO.
- C. After the RPO Coordinator or his/her designee receives any and all relevant information from the reporting officer, the RPO Coordinator and officer will do a thorough background investigation including but not limited to:

1. Prior arrests;
  2. Prior offense incident reports;
  3. Prior incidents involving mental health or involuntary examination;
  4. Witness statements regarding the current incident (preferably written);
  5. Body Worn Camera footage;
  6. Prior and current domestic violence injunctions (must obtain certified copies);
  7. Social media posts by the individual;
  8. LEO alerts;
- D. If the RPO Coordinator has any questions or concerns regarding the filing of an RPO, he/she can contact the Miami-Dade Police Legal Bureau at (305) 471-2550 and speak with a Police Legal Advisor.
- E. Once the RPO Coordinator gathers all of the relevant information, the RPO Coordinator or his/her designee will draft an affidavit that outlines the factors that the court should consider when deciding whether to issue an RPO. The individual will be listed as the “Respondent” on the Petition for RPO.
- F. In addition to the Affidavit, the RPO Coordinator will also complete the Petition for the RPO.
- G. Once the Petition and the Affidavit are signed, notarized, and ready for filing, the RPO Coordinator or his/her designee will then file the documents through the State of Florida’s ePortal. Petitions for RPO must be filed before 4:45pm each business day. Petitions filed after 4:45pm or on weekends will be processed and reviewed by a Judge on the next business day.
- H. Upon filing the Petition and Affidavit within normal business hours, the on-call domestic violence court judge must hold a hearing on the petition for an RPO that same business day or the next business day. This hearing will be over the telephone. Therefore, the affiant (officer or RPO Coordinator) MUST be prepared to answer a telephone call from the on-call judge.
- I. If the Temporary RPO is granted, the Clerk of Courts will prepare a service packet that will be sent via email and facsimile to the RPO Coordinator who filed the petition.
- J. The RPO COORDINATOR or his/her designee will send the Temporary RPO to the following entities:

1. The agency's records section – The record's section shall enter the order into the Florida Crime Information Center and National Crime Information Center. The order must remain in the system for the period stated in the order, and the law enforcement agency may only remove an order from the system which has ended or been vacated.
  2. The General Investigations Unit (GIU) - The GIU will be responsible for serving the RPO on the Respondent and impounding any and all firearms and ammunition in the Respondent's care, custody and control. See Service of Temporary RPO section below.
- K. The Temporary RPO expires within fourteen (14) days of its issuance.

**19.05.4 Notice Requirement [CFA24.06M(e)]**

- A. Prior to filing the petition for an RPO, the RPO Coordinator or his/her designee must 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.
- B. The notice must state that the Petitioner (law enforcement agency) intends to petition the court for an RPO or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling services.
- C. The Petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice.

**19.05.5 Service of the Temporary RPO (CFA24.06M(d))**

- A. The RPO Coordinator will coordinate the service of the Temporary RPO with the GIU for immediate service. In addition to serving the Temporary RPO on the Respondent, the GIU is also responsible for immediately taking any and all firearms and/or ammunition into the agency's custody. If the respondent is a concealed weapon permit holder, that permit must also be impounded.
- B. Upon service of the Temporary RPO, the Respondent must voluntarily surrender his/her firearms, ammunition, and firearm related licenses. [CFA24.06M(a)] In order for the GIU detectives to enter the residence to take custody of the firearms and/or ammunition, there must be consent by the appropriate person/persons lawfully allowed to give consent.

- C. Absent consent to enter the residence to take custody of any and all firearms and/or ammunition, there must be probable cause to believe that there are firearms and/or ammunition inside the residence. If there is probable cause, the RPO Coordinator will assist GIU detectives with obtaining a search warrant. Once the decision has been made to apply for a search warrant, the Respondent can be removed and prevented from reentering the home while waiting for the search warrant to be issued for the third degree felony violation of Florida Statutes § 790.401(11)(b), having in his/her custody a firearm or ammunition with knowledge that he/she is prohibited by an RPO. The search warrant may be submitted for approval through the e-warrant system.
- D. Whether searching with consent or a search warrant, if there is reason to believe that there may be additional firearms and/or ammunition inside the residence that GIU detectives are unable to locate, the GIU should call a gun-detection K-9 to assist with the search.
- E. Since there is probable cause to believe that the Respondent is in possession of firearms and/or ammunition and that he/she is in violation of the RPO (Florida Statutes § 790.401(11)(b)), the subject may be detained and searched.
- F. Once all the firearms, ammunition, and/or firearms related licenses have been taken into custody by the GIU, the GIU detectives must complete a property receipt. {CFA24.06M(b)} The “safekeeping” box should be checked off, and the impounding officer should indicate in writing on the property receipt that the firearms, ammunition, and/or firearms related licenses were taken pursuant to an RPO, noting the RPO case number.
- G. If it is determined that any of the firearms and/or ammunition are owned by an individual other than the Respondent, the GIU detectives should contact the RPO Coordinator so that appropriate conditions can be implemented for the true owner to remain in possession of the firearms and/or ammunition.
- H. After the Temporary RPO is served, the completed Return of Service must immediately be forwarded to the RPO Coordinator and the Miami-Dade Police Department Governmental Services Bureau. As soon as practicable, the RPO Coordinator must file the Return of Service through the E-filing Portal.
- I. The GIU detectives must forward the property receipt(s) immediately to the RPO Coordinator. The RPO Coordinator must file copies of the property receipts through the E-filing Portal pursuant to Florida Statutes § 790.401.

- J. If there is a situation where an immediate surrender of firearms and/or ammunition is impossible, (i.e., when the Respondent is incarcerated or in a treatment facility), the Respondent is responsible for complying with the RPO as soon as the condition prohibiting his/her compliance ends. In that case, the Respondent shall immediately surrender any and all firearms and/or ammunition to the agency in the same manner in which a Respondent would comply with the surrender of firearms pursuant to a Domestic Violence Injunction.

#### **19.05.6 Compliance Hearing**

- A. Pursuant to statute, the court must schedule a Compliance Hearing within 3 days of the issuance of a Temporary RPO. The Respondent is required to attend to attest that he/she has surrendered any and all firearms and/or ammunition to the agency.
- B. If the GIU detectives and the RPO Coordinator agree that the Respondent is in compliance with the RPO, the RPO Coordinator must contact the Domestic Violence Case Manager to advise that compliance has been met. If the Judge is satisfied, the Compliance Hearing will be cancelled.

#### **19.05.7 Final RPO Hearing**

- A. The Final RPO Hearing must be held within fourteen (14) days of the issuance of the Temporary RPO. If a Final RPO is granted, the judge may issue it for a time period not to exceed twelve (12) months.
- B. In preparation for the Final RPO Hearing, the RPO Coordinator must ensure that:
1. Service of the RPO has been accomplished;
  2. The respondent is available to appear at the hearing (i.e. not in a treatment facility or incarcerated);
  3. All witness officers are subpoenaed via the eNotify;
  4. All civilian witnesses are sent a Notice of Hearing;
  5. All video, audio, and written documents are authenticated or that a record custodian is available to testify to the authenticity of the records;
  6. If necessary, notify the Judge' Judicial Assistant that a foreign language interpreter is needed;

- C. If the Final RPO is granted, and the Respondent is present for the hearing, MDPD's Governmental Services Bureau staff will serve the Respondent with the Final RPO at the conclusion of the hearing.
- D. If the Final RPO is granted, and the respondent is not present for the hearing, the RPO Coordinator will coordinate service with the agency's GIU.
- E. If it is appropriate, and is agreed upon by the Court and the agency, a third party may take possession of the firearms and/or ammunition upon showing that the third party will take affirmative measures to ensure that the Respondent will not violate the RPO. If a third party takes custody and control of the firearms and/or ammunition, the third party must fill out a Third Party Firearms Affidavit.
- F. If a third party will be receiving the firearms, the RPO Coordinator must check to ensure that the third party is lawfully allowed to possess a firearm. If the third party is lawfully allowed to possess firearms, the RPO Coordinator shall then prepare a "Release of Firearm Safekeeping Hold" Memorandum and forward it along with the Third-Party Firearms Affidavit and a copy of the property receipt(s) to the agency's property section.

**19.05.8 FCIC/NCIC {CFA24.06M(f)}**

- A. The RPO Coordinator or his/her designee shall immediately forward the Final RPO and the Return of Service to the records bureau for entry into FCIC/NCIC.

**19.05.9 Penalties**

- A. A person who has in his/her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he/she is prohibited by doing so by a Risk Protection Order commits a felony of the third degree. (Florida Statutes § 790.401(11)(b))

**19.05.10 Termination and/or Extension of Orders**

**A. Early Termination**

- 1. 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.

2. If the court finds by clear and convincing evidence that the Respondent has met his/her burden of proof that he/she does not pose a significant danger of causing personal injury to himself/herself or others by having in his/her custody or control a firearm or ammunition, the court must vacate the order.

#### **B. Expiration**

1. The court must notify the Petitioner law enforcement agency of the impending end of an RPO at least thirty (30) days prior to the expiration of the order.
2. The agency may, by motion, request an extension of the RPO at any time within the thirty (30) days before the end of the order.
3. The court shall then order a hearing, and after hearing all relevant evidence, will make a determination whether the RPO will be extended.
4. If the RPO is extended, it shall be served in the same manner as the Final RPO.

#### **C. Return of Firearms**

1. The agency must provide notice to any family or household members of the Respondent before the return of any surrendered firearms and ammunition owned by the Respondent.
2. If an RPO is vacated, or expires without extension, the agency must return such surrendered firearms, ammunition, or license to carry a concealed weapon or firearm as requested by the Respondent only after confirming through a background check that the Respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the RPO has been vacated or had ended without extension. [CFA 24.06M(c)]
3. Any firearm or ammunition surrendered by Respondent which remains unclaimed by the lawful owner for one (1) year after an order to vacate the RPO or if the Final RPO has expired, shall be disposed of in accordance with the agency's policies and procedures for the disposal of firearms in police custody.

**19.05.11 Training [CFA24.06M(g)]**

All Department members will be trained in the procedures required for the issuance of a Risk protection Order. Periodic refresher training will take place as directed by the Chief or in case of changes in the law.