

# WINTER HAVEN POLICE DEPARTMENT

## GENERAL ORDER 41.11

### Risk Protection Orders

**ACCREDITATION STANDARDS:** CFA - 24.06

**EFFECTIVE DATE:** May 24, 2018

**RESCINDS:** G.O. 41.11 May 24, 2018 and all applicable Amended/Temporary Orders prior to August 20, 2018

**LAST REVISED DATE:** August 20, 2018

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### POLICY

It shall be the policy of the Winter Haven Police Department to quickly and properly respond to any threat to public safety, while still safeguarding due process of rights of a respondent. The following procedures represent an abbreviated version of Florida State Statute 790.401.

### PURPOSE

The purpose of this General Order is to provide law enforcement officers with detailed guidance and procedures on the Risk Protection Order process.

### SCOPE

This General Order shall apply to all sworn members of the Winter Haven Police Department.

### DISCUSSION

In March of 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 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. A Temporary RPO requires the respondent to temporarily surrender to law enforcement all firearms and ammunition owned, pending a subsequent hearing that may consider a request for a longer period of protection (or RPO) if necessary.

## **I. Petition for a Risk Protection Order**

- A** A petition for a risk protection order may be filed by a law enforcement officer of law enforcement agency. An action under FS 790.401 must be filed in the county where the petitioner's law enforcement office is located or the county where the respondent resides. Such petition for a risk protection order does not require either party to be represented by an attorney.
- B** The petition must:
1. Allege that the respondent poses a significant danger of causing injury to himself/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 must 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.
  2. 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
  3. 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.
- C.** The petitioner must make a good faith effort to provide written notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a Risk Protection Order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence and counseling resources. 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.
- D.** The petitioner must list 125 North Lake Silver Drive NW Winter Haven, Florida 33881 as the address of record on the petition. A court or a public agency may not charge fees for filing or for the service of process to a petitioner seeking relief under the section and must provide the necessary number of certified copies, forms, and instructional brochures free of charge. A person is not required to post a bond to obtain relief in any proceeding under this section. The circuit courts for this state have jurisdiction over proceedings under FS 790.401

## **II. Risk Protection Order Hearings & Issuance**

- A.** Upon the filing of a petition the court must order a hearing to be held no later than fourteen (14) days after the date of the order and must issue a notice of hearing to the respondent for the same. At the conclusion of a hearing on the matter, if the court finds clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself/herself or others by having in his/her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition, the court must issue a risk protection order for a period that it deems appropriate, up to and including, but not exceeding thirteen (13) months.

- B.** In determining whether grounds for a risk protection order exist, the court may consider any

relevant evidence, including, but not limited to, any of the following:

1. Recent act or threat of violence by the respondent against himself/herself or others, whether or not such violence or threat of violence involves a firearm.
- C.** An act or threat of violence by the respondent within the past twelve (12) months, including, but not limited to, acts or threats of violence by the respondent against himself/herself or others.
- D.** Evidence of the respondent being seriously mentally ill or having recurring mental health issues.
- E.** A violation by the respondent of a risk protection order or a no contact order issued under FS 741.30, 784.046 or 784.0485.
- F.** A previous or existing risk protection order issued against the respondent.
- G.** A violation of a previous or existing risk protection order issued against the respondent.
- H.** Whether the respondent, in this state or any other state had been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in FS 741.28.
- I.** Whether the respondent has used, or has threatened to use, against himself/herself or others any weapons.
- J.** The unlawful or reckless use, display, or brandishing of a firearm by the respondent.
- K.** The recurring use of, or threat to use physical force by the respondent against another person or, the respondent stalking another person.
- L.** 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.
- M.** Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.
- N.** Evidence of recent acquisition of firearms or ammunition by the respondent.
- O.** Any relevant information from family and household members concerning the respondent officers shall obtain sworn statements whenever possible.
- P.** Witness testimony, taken while the witness is under oath, relating to the matter before the court.
- Q.** 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 his or her attorney, if one is retained, or must present the evidence under oath at a hearing at which all parties are present. In a hearing under this section, the rules of evidence apply to the same extent as in a domestic violence injunction proceeding under FS 741.30. During the hearing, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and, if such determination made, may order such evaluations, if appropriate.
- R.** A risk protection order 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 evaluation or chemical dependency evaluation of the respondent is required; the address of the

court in which any responsive pleading should be filed; a description of the requirements for the surrender of all firearms and ammunition that the respondent owns; and 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 Winter Haven 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 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.”*

- S.** If the court issues a risk protection order, the court must inform the respondent that he or she is entitled to request a hearing to vacate the order in the manner provided by subsection six (6) of the statute (see Section V *Termination and Extension of Orders*). The court shall provide the respondent with a form to request a hearing to vacate. If the court denies the petitioner’s request for a risk protection order, the court must state the particular reasons for the denial.

### **III. Temporary Ex Parte Risk Protection Orders**

- A.** A petitioner may request that a Temporary Ex Parte Risk Protection Order 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/herself or others in the near future by having in his/her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition
- B.** In considering whether to issue a Temporary RPO, the court shall consider all relevant evidence, including the evidence described in paragraph II.B, above. If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to himself/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 temporary ex parte risk protection order. The court must hold a Temporary 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.
- C.** A Temporary RPO must include a statement of the grounds asserted for the order; 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 that the respondent owns; and 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 Winter Haven 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 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 one year. You may seek the advice of an attorney as to any matter connected with this order.”*

- D.** A Temporary RPO ends upon the court decision at the end of the hearing on the risk protection order, and must be served by a law enforcement officer in the same manner as provided for service of the notice of hearing and petition and must be served concurrently with said notice. If

the court denies a petitioner's request for a Temporary RPO, the court must state the particular reason for the denial

#### **IV. Service**

- A.** The clerk of the court shall furnish a copy of the notice of hearing, petition, and Temporary 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. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of a Temporary RPO or RPO that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. The clerk of the court shall be responsible for furnishing to the sheriff information on the respondent's physical description and location. 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.
- B.** All orders issued, changed, continued, extended, or vacated after the original service of documents specified in paragraph above must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. Parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was affected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to FS 790.401, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

#### **V. Termination and Extension of Risk Protection Orders**

- A.** The respondent may submit one written request for a hearing to vacate an RPO issued under FS 790.401, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.
- 1.** 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.
  - 2.** 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/herself or others by having in his/her 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 above.
  - 3.** If the court finds after the hearing that the respondent has met his/her burden of proof, the court must vacate the order.
- D.** 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.

- E.** 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. The petitioner may, by motion, request an extension of an RPO at any time within thirty (30) days before the end of the order.
- 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 shall schedule such hearing. The court may schedule a hearing by telephone. The respondent must be personally served in the same manner provided by Section 4, above.
  - 2.** In determining whether to extend an RPO issued under FS 790.401, the court may consider all relevant evidence, including evidence of the considerations listed in paragraph II.B, above.
  - 3.** If the court finds by clear and convincing evidence that the requirements for issuing an RPO continue to be met, the court must extend the order. However, if, after notice, the for extension is uncontested and no modification of an RPO is sought, an RPO may be extended on the basis of a motion or affidavit stating that there been no material change in relevant circumstances since entry of the RPO, stating the reason for a requested extension.
  - 4.** 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 or to another extension order by the court.

## **VI. Surrender of Firearms & Ammunition**

- A.** Upon issuing an RPO (or Temporary RPO), the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in his/her custody, control, or possession (except as provided in Section VIII below), and any license to carry a concealed weapon or firearm issued under FS 790.06, held by the respondent.
- B.** The officer serving an RPO or Temporary RPO will request the respondent immediately surrender all firearms and ammunition owned by and in his/her custody, control, or possession and any license to carry a concealed weapon or firearm issued under FS 790.06, held by the respondent. The officer will take possession of all firearms and ammunition and any license to carry a concealed weapon or firearm, held by the respondent, which are surrendered. Alternatively, if personal service by an 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, held by the respondent, in a safe manner to the control of law enforcement immediately after being served with the order by service or immediately after the hearing at which the respondent was present. Notwithstanding FS 933.02 and 933.18, an officer 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 his/her custody, control, or possession which have not been surrendered.
- C.** 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, held by the respondent shall issue a receipt identifying all firearms 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. Within seventy (72) hours after service of the order, the officer serving the order shall file the original receipt with the court, and ensure that the agency retains a copy of the receipt.

- D. Notwithstanding FS 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 FS 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 his/her custody, control, or possession. 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 found and the seizure of any firearms or ammunition discovered pursuant to such search.
- E. If a person other than the respondent claims title to any firearms or ammunition surrendered and he/she is determined by the law enforcement agency to be the lawful owner of the firearm ammunition, the firearm or ammunition shall be returned to him/her, if:
  - 1. 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.
  - 2. The firearm or ammunition is not otherwise unlawfully possessed by the owner.
- F. Upon the 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 any firearms or ammunition owned by the respondent in his/her custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.
- G. Firearms and ammunition surrendered to this Department will be handled and stored as described in General Order 84.1, Property and Evidence Control.

## **VII. Return and Disposal of Firearms & Ammunition**

- A. If an RPO is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition owned by the respondent or a license to carry a concealed weapon or firearm held by the respondent, that has been surrendered or seized pursuant to FS 790.401 must return such surrendered firearm, ammunition, or license to carry, as requested by a 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 risk protection order has been vacated or has ended without extension. The returning of firearms, ammunition and/or concealed weapon permit shall not exceed seven (7) days for the date the order was vacated.
- B. A law enforcement agency must provide notice to any family or household members of the respondent before returning any surrendered firearm and ammunition owned by the respondent.
- C. Any firearm and ammunition surrendered by a respondent pursuant to an RPO which remains unclaimed for one year by the lawful owner after an order to vacate the RPO shall be disposed of in accordance with the General Order 84.1 Property and Evidence Control.

## **VII. Transfer of Firearms & Ammunition**

- A. 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:

1. Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
2. 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
3. Attests not to transfer the firearms or ammunition back to the respondent until the RPO against the respondent is vacated or ends without extension.

## **IX. Reporting of Risk Protection Orders**

- A. Within twenty four (24) hours after issuance, the clerk of the court shall enter an RPO or Temporary RPO into the uniform case reporting system and forward a copy of any order issued to the appropriate law enforcement agency specified in the RPO. Upon receipt of the copy of the order, the agency shall enter the order into the Florida Crime Information Center and National Crime Information Center. The order must 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 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. The issuing court shall, within three (3) business days after issuing an RPO or Temporary RPO, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services (DACS). Upon receipt of the information, DACS will determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.
- C. 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 DACS 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.

## **X. Baker Act Provisions**

- A. A law enforcement officer acting in accordance with an ex parte order issued by a Circuit or County Court, pursuant to FS 394.463(2) may:
  1. Serve and execute such order on any day of the week, at any time of the day or night; and
  2. Use such reasonable physical force as is necessary to gain entry to the premises and any dwellings, buildings or other structures located on the premises, and take custody of the person who is the subject of the ex parte order. When practicable, a law enforcement officer who has received Crisis Intervention Team (CIT) training shall be assigned to serve and execute the ex parte order.
- B. An officer taking custody of a person under the above provision may seize and hold a firearm or any ammunition the person possesses at the time of taking him/her into custody if the person poses a potential danger to himself/herself or others and has made a credible threat of violence against another person.
- C. If an officer takes custody of the person at the person's residence and the criteria in paragraph X. B have been met, the officer may seek the voluntary surrender of firearms or ammunition

kept in the residence which have not already been seized under paragraph X. 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 he/she was taken into custody, an officer may petition the appropriate court under FS 790.401 for a Risk Protection Order or Temporary RPO, following the procedures described in the previous sections of this General Order

- D. Firearms or ammunition seized or voluntarily surrendered under FS 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 he/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 FS 394.463(2)(g), unless an RPO entered under FS 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 FS 790.065(2), or a firearm possession and firearm ownership disability under FS 790.064. The process for the actual return of firearms or ammunition seized or voluntarily surrendered under FS 394.463(2) may not take longer than seven (7) days.
- E. Firearms/ammunition surrendered under FS 394.463(2) will be handled and stored as described in General Order 84.1

#### **XI. City Attorney's Office Notification**

- A. Although a petition for a Temporary RPO does not require an attorney for preparation and submission to the court, a reasonable effort should be made to contact the City of Winter Haven Attorney's Office in advance, if possible. If it is not possible, or no City Attorney's Office response is received, their office will still be immediately notified that a petition has been filed. Consultation with and assistance of the City Attorney's Office staff is highly recommended due to the relatively short time frames for requesting an RPO or preparing for a hearing, coupled with potential infringement of an individual's constitutional rights.

#### **XII. Training**

- A. Agency members shall receive initial training regarding Risk Protection Orders policy and procedures via PowerDMS and retraining during in-service training if needed.

#### **XIII. Definitions**

- A. *PETITIONER*: "Petitioner" means a law enforcement officer or a law enforcement agency that petitions a court for a risk protection order under FS 790.401.
- B. *RESPONDENT*: "Respondent" means the individual who is identified as the respondent in a petition filed under FS 790.401.
- C. *RISK PROTECTION ORDER*: "Risk protection order" means a temporary ex parte order or a final order granted under FS 790.401.

APPROVED



**Charles E. Bird  
CHIEF OF POLICE**