

MONROE COUNTY SHERIFF'S OFFICE

General Order

CHAPTER: 029		TITLE: Risk Protection Orders
EFFECTIVE DATE: February 24, 2021	NO. PAGES: 7	REVIEWED/REVISED:
 Sheriff of Monroe County		

I. **PURPOSE:** The purpose of this policy is to enhance public safety by temporarily preventing individuals who are at high risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement officers to obtain a court order when there is demonstrated evidence that a person poses a significant danger to him/herself or others, including significant danger as a result of a mental health crisis or violent behavior. The intent 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 officers to obtain a court order temporarily restricting a person's access to firearms and ammunition.

II. **DISCUSSION:** This order shall apply to all sworn MCSO members. A petition for a Risk Protection Order (RPO) or Temporary Risk Protection Order (TRPO) must be accompanied by one or more affidavits, stating the specific statements, actions or facts that give rise to a reasonable fear of significant dangerous acts by the respondent. It must also detail the quantities, types and locations of all firearms and ammunition, if known, believed to be in the respondent's current ownership, possession, custody or control.

Once an RPO or TRPO is issued and served upon a respondent, the respondent is prohibited by law from having firearms or any ammunition in his/her custody or control or to purchase, possess or receive a firearm or any ammunition. A violation of the RPO or TRPO after knowledge that the respondent is the subject of an RPO or TRPO is a third degree felony and violation of Section 790.401(11)(b), Florida Statutes.

III. **POLICY:** It is the policy of the Monroe County Sheriff's Office (MCSO) to seek an RPO against an individual only in situations in which the person poses a significant danger of harming him/herself or others by possessing a firearm or ammunition. This policy shall comply with all applicable laws when petitioning and serving RPOs while respecting the individual's constitutional rights and due process of law.

IV. **PROCEDURE:**

A. **Process:**

1. A TRPO is issued pending the hearing for the RPO. Issuance of a TRPO requires personal knowledge from the affiant that the person poses a significant danger of causing personal injury to self or others in the near future. A Petition for TRPO is filed at the same time as the petition for final RPO and requires surrender of firearms and ammunition until the court makes a ruling on the final RPO (within 14 days of filing the petition).
2. An RPO provides a means to obtain a court order that prohibits, for up to one year in most cases, a person's access to and possession of firearms and ammunition when that person poses a significant danger of harming him/herself or others by possessing a firearm or ammunition.

B. Legal Standards for Obtaining a TRPO and/or RPO:

1. The legal standard required for a TRPO is whether there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to him/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.
2. The legal standard required for a final RPO is whether, by clear and convincing evidence, the respondent poses a significant danger of causing personal injury to him/herself or others by having in his/her custody or control or by purchasing, possessing or receiving a firearm or any ammunition, personal injury to him/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.

C. Criteria to be Considered: In determining whether grounds for a TRPO/RPO exist, the court may consider any relevant evidence, including, but not limited to:

1. A recent act or threat of violence by the respondent against him/herself or others, whether or not such violence or threat of violence involves a firearm
2. An act or threat of violence by the respondent within the past 12 months including, but not limited to, acts or threats of violence by the respondent against him/herself or others
3. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.
4. A violation by the respondent of an RPO or a no-contact order issued under Florida Statutes § 741.30 (domestic violence injunction), § 784.046 (injunction for protection against repeat violence/dating violence/sexual violence) or § 784.0485 (injunction for protection against stalking)
5. A previous or existing RPO issued against the respondent
6. A violation of a previous or existing RPO issued against the respondent
7. Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on or pled nolo contendere to a crime that constitutes domestic violence as defined in § 741.28, Florida Statutes.
8. Whether the respondent has used, or has threatened to use, any weapons against him/herself or others
9. The unlawful or reckless use, display or brandishing of a firearm by the respondent
10. The recurring use of, or threat to use, physical force by the respondent against another person
11. The stalking of another person by the respondent
12. 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
13. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent
14. Evidence of recent acquisition of firearms or ammunition by the respondent
15. Any relevant information from family and household members concerning the respondent
16. Witness testimony, taken while the witness is under oath, relating to the matter before the court

D. Procedure for Obtaining a Temporary Risk Protection Order:

1. Notice/Initial Processing: When law enforcement has contact with a person who may meet the criteria for a TRPO, he/she shall immediately notify his/her chain of command. At the very minimum, this policy requires that the lieutenant on duty be briefed regarding the facts and circumstances surrounding the incident. The duty lieutenant shall be responsible for ensuring MCSO Legal Counsel is apprised of the same. The lieutenant and legal counsel shall confer and determine if the criteria for seeking a RPO exist.
2. Forms: Upon supervisor approval, the referring law enforcement must:
 - a. Request a separate offense number from Communications so efforts for obtaining the TRPO can/will be documented.
 - b. Complete the affidavit for TRPO/RPO. The affidavit shall include any research conducted on the respondent and state the specific statements, actions or facts that give rise to a reasonable fear of significant dangerous acts by the respondent. The affidavit must outline, in detail:
 - 1) Facts suggesting the respondent poses a significant danger of causing personal injury to him/herself or others by having a firearm or any ammunition in his or her custody or control by purchasing, possessing or receiving a firearm or any ammunition.
 - 2) Specific statements, actions or facts that give rise to a reasonable fear of significant dangerous acts by respondent and list all evidence collected.

Note: Have all relevant witnesses who have first-hand knowledge that sets the basis for the TRPO or RPO fill out affidavits and include such affidavits in the investigation.
 - 3) The quantities, types and locations of all firearms and ammunition the officer/detective believes to be in the respondent's current ownership, possession, custody or control.
 - 4) Whether there is a known existing protection order governing the respondent pursuant to Florida Statutes § 741.30, § 784.046 or § 784.0485 or under any other applicable statute.
 - 5) A statement attesting that the department/petitioner has provided notice or will be providing notice to members of the respondent's household/family and to any known third party who may be at risk of violence indicating that the department intends to seek or has already sought a risk protection order and have provided the individuals with referrals to appropriate resources, including mental health, domestic violence and counseling.

Note: It is the responsibility of the individual processing the paperwork to provide the notice to the appropriate family/household members and others who may be at risk of violence.
 - 6) The address of record on the petition as being the jurisdiction of MCSO.
3. Processing of Forms: Once completed, a copy of the Affidavit for Risk Protection Order completed by the deputy and other witnesses, if any, must be provided to the MCSO General Counsel.
 - a. The referring deputy shall call the presiding judge to advise that the RPO is pending and to schedule the ex parte hearing. If a TRPO is granted, the judge will include a date and time for a compliance hearing within 3 business days after issuance of the order. The judge will also include a date and time for a final hearing within 14 days after the date of the

TRPO. The referring deputy shall promptly initiate execution of service of the petition and companion documents.

- b. As soon as possible, the referring deputy shall contact an attorney from the general counsel's office to discuss calendar availability for the ex parte hearing on the TRPO. Reminder: Florida Law mandates the RPO hearing be held 14 days after the service of the Ex-Parte Order. The RPO process contains strict deadlines. Time is of the essence.

E. UPON ISSUANCE OF A TRPO or RPO:

1. The referring deputy shall immediately provide a copy of the TRPO or RPO to the Civil Unit or, in instances where the Civil Unit is closed or unavailable, provide a copy of the RPO or TRPO to Dispatch.
2. The Civil Unit or Dispatch shall immediately enter the RPO or TRPO into FCIC/NCIC upon receipt.

F. SERVING A TRPO:

1. Once the court issues a TRPO, no fewer than two deputies shall serve the TRPO and shall:
 - a. Demand the subject immediately surrender:
 - 1) all firearms and ammunition owned by and in his/her custody, control or possession;
 - 2) any license to carry a concealed weapon or firearm issued in Section 790.06, Florida Statutes
 - b. Inform the respondent of the court date on the TRPO for the RPO
 - c. Issue to household members, family members and third party victims the RPO Notification Letter that the respondent has been served with an RPO or TRPO. The deputy shall obtain and document a mailing address for anyone who has been served an RPO Notification Letter.
2. Service of TRPO shall take precedence over the service of other documents unless the other documents are of a similar emergency nature.
3. The units and resources used to serve the TRPO will be based on the known factors and threats. At a minimum, for officer safety reasons, two deputies are required when serving a TRPO.

Note: TRPO, on its own, does not authorize law enforcement to force entry into any structure or conveyance, nor does it authorize law enforcement to search, absent consent or any other exception to the search warrant requirement.

4. All efforts of a deputy serving a TRPO shall be documented by filing a supplemental report. In accordance with existing MCSO General Orders, deputies are reminded it is absolutely critical to have an agency-issued body-worn camera (BWC) recording for the entirety of the incident.

G. SERVING AN RPO:

1. If the respondent is present at the final RPO hearing, the Clerk of the Court will serve the respondent in the courtroom.
2. If the respondent is absent and the final order is granted in his/her absence, service shall follow all steps as outlined above for service of the TRPO.

H. SURRENDER OF FIREARMS, AMMUNITION AND LICENSES:

1. At the time of surrender, a deputy taking possession of the respondent's firearms, ammunition or a license to carry a concealed weapon or firearm shall:
 - a. Complete a property receipt identifying all firearms and the quantity and type of ammunition that have been surrendered and any license surrendered
 - b. Provide a copy of the property receipt to the respondent
 - c. Within 72 hours after service of the order, file the original property receipt with the court and ensure that the agency retains a copy
2. If the deputy has probable cause to believe that there are firearms or ammunition owned by the respondent or in his/her custody, control or possession which have not been surrendered or the respondent is willfully refusing to surrender firearms or ammunition, the deputy may:
 - a. Contact the detective unit to assist in securing a criminal search warrant to conduct a search for firearms or ammunition owned by the respondent who is willfully refusing to surrender firearms or ammunition.
 - b. Seek a civil search warrant to conduct a search for firearms or ammunition owned by the respondent, who does not have the present ability to surrender the firearms or ammunition.

0 While deputies may conduct any search permitted by law for firearms and/or ammunition, a TRPO or RPO is not a search or arrest warrant and does not authorize any entry, search or detention standing alone. Deputies are encouraged to gain consent to search if it is believed the respondent has additional firearms or ammunition not yet surrendered.
3. If a person other than the respondent claims title to any firearms or ammunition surrendered, the alleged owner may petition the court for the return of the firearm(s) and/or ammunition.
4. The respondent will not be permitted to give the firearms or ammunition to any third party on scene.
5. If the respondent wishes a third party to take possession of respondent's firearms or ammunition, the third party may come to the Sheriff's Office and request return of the firearm(s) or ammunition from the Property and Evidence Unit.
6. Deputies shall utilize caution when serving a TRPO or RPO and attempt to achieve voluntary cooperation and surrender of firearms/ammunition. If a respondent is uncooperative, the deputy shall notify their lieutenant to coordinate the seizure of the firearms or ammunition, in consideration of officer safety and the civil rights of the respondent.
7. Once a respondent is made aware that he/she is the subject of the TRPO or RPO, it is a third-degree felony to possess firearms and/or ammunition. Accordingly, if a respondent is not cooperative after being advised that he/she is the subject of a TRPO or RPO, deputies should determine whether they have probable cause to believe the person is in possession of firearms or ammunition. If so, the subject may be taken into custody based upon probable cause for violation of Section 790.401(11)(b), Florida Statutes.
8. If probable cause exists that there are firearms or ammunition in a residence, structure or conveyance that the respondent exited, inhabits or controls and the respondent refuses to surrender the firearms or ammunition as directed by the TRPO or RPO, a search warrant may be obtained. The residence, structure or conveyance shall be secured and an application for search warrant should be filed.
9. All efforts of a deputy shall be documented in the associated offense report.

I. RETURNING FIREARMS, AMMUNITION AND LICENSES:

1. Return to respondent: The Property and Evidence Unit will ensure a respondent requesting return of any firearm(s), ammunition or concealed weapons permit satisfies the following:
 - a. Confirm through the court that any RPO has either been vacated or ended without extension,
 - b. Conduct a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law, and
 - c. Prior to releasing the firearms or ammunition, the notice will be provided to any family or household members of the respondent.
2. Return to a Lawful Owner: The Property and Evidence Unit will ensure that any lawful owner claiming title to a seized firearms or ammunition satisfies the following:
 - a. Conduct a thorough background investigation to determine if the owner is permitted to possess the firearms or ammunition, and
 - b. Require the owner to sign a Risk Protection Acknowledgement and Release.
3. Return to a third Party: The Property and Evidence Unit will ensure that any transfer of seized firearms or ammunition to a third party satisfies the following:
 - a. Written consent by the respondent that the Sheriff's Office is authorized to release the firearms and ammunition to the third party,
 - b. Conduct a background check of the third party to ensure he/she is eligible to own or possess a firearm and ammunition under federal and state law, and
 - c. Require the third party to sign a Risk Protection Acknowledgement and Release.
4. Unclaimed Firearms and Ammunition: Any firearm and ammunition surrendered by a respondent which remains unclaimed for one year by the lawful owner after an order to vacate the RPO shall be disposed of in accordance with MCSO policies and procedures.
5. Firearms, ammunition and concealed weapons permits surrendered to MCSO will be handled and stored in accordance with Property and Evidence general order.

J. JUDICIAL HEARINGS:

1. Compliance Hearing (72-hour hearing):
 - a. MCSO General Counsel will be responsible for attending and representing the Sheriff's Office at the Compliance Hearing
 - b. Any deputy who participated in the TRPO may be called to attend the Compliance Hearing
2. Final Hearing (14-day hearing):
 - a. MCSO General Counsel will be responsible for attending and representing the Sheriff's Office at the Final Hearing
 - b. Any deputy who participated in the TRPO or RPO may be called to attend the Final Hearing

- K. TERMINATION AND EXTENSION OF RPO:** If the court vacates an RPO, MCSO may file a motion to request an extension of an RPO at any time within 30 days before the end of the RPO.

- L. TRAINING:** All members of MCSO will be required to have initial and periodic refresher training on the RPO process.
- M. GENERAL COUNSEL NOTIFICATION:** MCSO General Counsel will be notified immediately upon seeking a TRPO or RPO.

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT,
IN AND FOR MONROE COUNTY, FLORIDA**

Monroe County Sheriff's Office/ Detective _____,
Petitioner

Case No.: _____

v.

Division: MH

_____,
Respondent

PETITION FOR RISK PROTECTION ORDER

(With or Without Request for Temporary Ex Parte Risk Protection Order)

This petition **DOES** or **DOES NOT** request a Temporary Ex Parte Risk Protection Order.

SECTION I. PETITIONER

Petitioner must be a law enforcement officer or a law enforcement agency.

1. Petitioner's full legal name or name of petitioning agency: _____
2. Petitioner's office/agency is located at *{street address, city, state, and zip code}*:

3. Petitioner's telephone number for 24 hour accessibility: _____

SECTION II. RESPONDENT *{Petitioner is to fill out as much information as possible.}*

1. Respondent's full legal name: _____
2. Respondent's address: *{street address, city, state, and zip code}*

3. Identifying information of Respondent:
Race: _____ Gender Expression: Male ___ Female ___ Other _____
Date of Birth: _____
Height: _____ Weight: _____ Eye Color: _____ Hair Color: _____
4. Distinguishing marks or scars: _____
5. Vehicle: *{make/model}* _____ Color: _____ Tag #: _____
6. Other names Respondent goes by: *{aliases or nicknames}* _____

7. Respondent's email address: _____
8. Respondent's telephone number: _____
9. Respondent's Driver's License number: _____
10. Respondent's attorney's name, address, and telephone number: _____
11. Is Respondent in jail? Yes _____ No _____
 If yes, date of arrest _____ Jail #: _____ Cell #: _____
12. Is Respondent a juvenile? Yes _____ No _____

SECTION III. BASIS FOR PETITION

In support of this petition, the undersigned Law Enforcement Officer/Agency alleges:

1. 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.
 _____ **Respondent poses a significant danger of causing personal injury to themselves or others in the near future.** [Required for a Temporary Ex Parte Risk Protection Order.]
2. An affidavit (or affidavits) alleging specific facts that give rise to a reasonable fear of significant dangerous acts by the Respondent is attached to this petition as Exhibit A and is incorporated by reference. {If a temporary risk protection order is requested, facts supporting the allegation that Respondent poses a significant danger of causing personal injury to themselves or others **IN THE NEAR FUTURE** must be provided from someone with **PERSONAL KNOWLEDGE** of those facts. }
3. The quantities, types, and locations of all firearms and ammunition the Petitioner believes to be in the Respondent's ownership, possession, custody, or control are listed below and/or on the attached Exhibit B.

Quantity: _____ Type: _____ Location: _____

Quantity: _____ Type: _____ Location: _____

Quantity: _____ Type: _____ Location: _____

Respondent _____ was issued _____ was not issued a concealed weapon/firearms license.

____ See attached Exhibit B for firearms and/or ammunition.

4. Petitioner ____ is aware ____ is not aware of an existing protection order governing the Respondent under s. 741.30, s. 784.046, or s. 784.0485, Florida Statutes, or under any other applicable statute. If aware, list the existing protection order case number(s) and attach a copy, if available. _____.
5. Relevant evidence for the Court's consideration is detailed in the attached affidavit(s) that demonstrates the Respondent:

_____ was involved in a recent act or threat of violence against themselves or others;
_____ engaged in an act or threat of violence, including but not limited to acts or threats of violence against themselves, within the past 12 months;
_____ may be seriously mentally ill or may have recurring mental health issues;
_____ has violated a risk protection order or no contact order issued under section(s) 741.30, 784.046, or 784.0485, Florida Statutes;
_____ is the subject of a previous or existing risk protection order;
_____ has violated a previous or existing risk protection order;
_____ 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 s. 741.28, Florida Statutes;
_____ has used, or threatened to use, against themselves or others, any weapons;
_____ has unlawfully or recklessly used, displayed, or brandished a firearm;
_____ has used, or threatened to use on a recurring basis, physical force against another person or has stalked another person;
_____ 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;
_____ has abused or is abusing controlled substances or alcohol;
_____ has recently acquired firearms or ammunition;
_____ is required to possess firearm(s) and/or ammunition in the scope and duties of their occupation;
_____ has been the subject of proceedings under the Baker Act or Marchman Act;
_____ other (Additional relevant information may be included as attached exhibits. This may include reports or conclusions from a threat assessment team.).

SECTION IV. NOTICE

_____ Petitioner has made 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 in compliance with s. 790.401(2)(f), Florida Statutes; or

_____ Petitioner will take the following steps to provide notice as required by s. 790.401(2)(f), Florida Statutes.

SECTION V. [TEMPORARY] RISK PROTECTION ORDERS

For the foregoing reasons, Petitioner requests the Court to:

- _____ enter a Temporary Risk Protection Order.
- _____ schedule a hearing to be held within 14 days of the date of the order to determine if a Final Risk Protection Order should be entered.

Respectfully submitted this _____ day of _____, 20_____.

Signature of Petitioner

Name of person filing petition

Law Enforcement Agency

Service address

Email address

Telephone Number

Case No: _____ Division: MH

_____,
Respondent,

EXHIBIT A
SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF PETITION FOR
TEMPORARY RISK PROTECTION ORDER AND/OR FINAL RISK
PROTECTION ORDER

STATE OF FLORIDA
COUNTY OF MONROE

I, _____, in my position as _____ with the
Monroe County Sheriff's Office, swear and affirm that the following facts are true and correct:

(Insert factual basis here)

**AFFIANT HEREBY CERTIFIES UNDER PENALTY OF PERJURY THAT THE
STATEMENTS AND FACTS IN THIS AFFIDAVIT AND IN ANY ATTACHMENTS
ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.**

Dated: _____

Signature of Affiant: _____

Sworn to or affirmed and signed before me on _____ by _____
who _____ is personally known to me or _____ presented _____, as
identification.

Notary Public, State of Florida
My commission expires: _____

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT,
IN AND FOR MONROE COUNTY, FLORIDA**

Detective _____/MONROE COUNTY SHERIFF'S OFFICE
Petitioner,

v.

Case No.: _____-MH-_____-_____

_____,
Respondent

COMPLIANCE AFFIDAVIT

STATE OF FLORIDA

COUNTY OF MONROE

I, Detective _____ in my position as a Detective with the Monroe County Sheriff's Office, swear and affirm that the following facts are true and correct:

On _____, a Temporary Risk Protection Order (TRPO)/ Risk Protection Order (RPO) was granted, pursuant to Florida Statute §790.041.

On _____ the Respondent was served with the TRPO and advised of the requirements of same, including the requirement to surrender all firearms, ammunition and any concealed weapons permit.

(Briefly describe interaction with Respondent)

At this time, I have no information indicating Respondent has additional firearms and ammunition in his/her custody, control, or possession in the State of Florida. Known family members have also been advised of the Risk Protection Order.

(If you have PC to believe Respondent still has firearms in his possession, see Fla. Stat. §790.401(11)(b) for arrest and/or consider obtaining a search warrant.)

AFFIANT HEREBY CERTIFIES UNDER PENALTY OF PERJURY THAT THE STATEMENTS AND FACTS IN THIS AFFIDAVIT AND IN ANY ATTACHMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Dated: _____ Signature of Affiant: _____

Sworn to or affirmed and signed before me on _____ by _____ who _____ is personally known to me or _____ presented _____, as identification.

Notary Public, State of Florida
My commission expires: _____