



# Judicial Council of California

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## REPORT TO THE JUDICIAL COUNCIL

*Item No.: 25-076*

For business meeting on April 25, 2025

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**Title**

Criminal Law: New Postconviction Retail  
Crime Restraining Order

**Report Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

Adopt form CR-164

**Effective Date**

July 1, 2025

**Recommended by**

Criminal Law Advisory Committee  
Hon. Lisa Rodriguez, Chair

**Date of Report**

April 10, 2025

**Contact**

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### Executive Summary

Penal Code section 490.8, effective January 1, 2025, allows a court to prohibit a defendant convicted of specified offenses from entering the premises of a protected retail establishment for up to two years. To implement this new statute, the Criminal Law Advisory Committee recommends a new retail crime restraining order for court use.

### Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2025, adopt *Retail Crime Restraining Order—Criminal* (form CR-164).

The proposed form is attached at pages 4–6.

### Relevant Previous Council Action

Because this form implements new law, there is no relevant previous council action.

## **Analysis/Rationale**

Penal Code section 490.8<sup>1</sup> authorizes courts to order defendants convicted of specified offenses<sup>2</sup> or persons arrested for specified offenses<sup>3</sup> to stay away from a protected retail establishment for up to two years. (Pen. Code, § 490.8.) Additionally, if the retail establishment is part of a chain or franchise, the court may include other retail establishments in that chain or franchise within a specified geographic range in the order. (Pen. Code, § 490.8(c)(2).)

The orders must be entered into the California Law Enforcement Telecommunications System (CLETS) and included in the California Restraining and Protective Order System, similar to other protective orders. (Fam. Code, § 6380(b).) The Judicial Council may prescribe the form of the petitions and orders and any other documents, and may promulgate any rules of court necessary for implementation. (Pen. Code, § 490.8(j).) Since the retail crime restraining order must be entered into CLETS, the committee determined that the statutory requirements would be best implemented through a protective order form.

*Retail Crime Restraining Order—Criminal* (form CR-164) identifies the restrained person, the name and address of the protected retail establishment and any additional protected establishments within California in the same chain or franchise, the order's expiration date, information about the hearing, and whether the restrained person attended the hearing; if the restrained person did not attend the hearing, the form states that the person must be personally served. It also directs the restrained person not to enter any named retail establishment, be present on the grounds of any named retail establishment, or be present in any parking lot next to and used for any named retail establishment. It includes an advisement that not obeying the order may result in arrest, charges, and imprisonment for up to six months. Finally, similar to other protective orders, the order provides instructions for law enforcement about enforcing the order, and the footer includes the three-digit CLETS order type.<sup>4</sup>

## **Policy implications**

The form implements legislative changes. Accordingly, the key policy implications are ensuring that council rules and forms correctly reflect the law. These revisions are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

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<sup>1</sup> Added by Assembly Bill 3209 (Stats. 2024, ch. 169).

<sup>2</sup> These offenses are shoplifting (Pen. Code, § 459.5); any theft, including a violation of Penal Code section 487 or 488, from a retail establishment; organized retail theft (Pen. Code, § 490.4); vandalism of a retail establishment (Pen. Code, § 594); or any assault or battery of a retail establishment employee, including a violation of Penal Code section 240, 242, or 245.

<sup>3</sup> The Judicial Council's Civil and Small Claims Advisory Committee is recommending new forms to implement procedures for arrest-based retail crime restraining orders under Penal Code section 490.8(e).

<sup>4</sup> The CLETS order type is a three-digit identifier that is provided by the Department of Justice for every protective order type issued in California.

## Comments

The proposal circulated for comment from December 6, 2024, to January 6, 2025. Four comments were received. Two commenters—the Superior Court of Los Angeles County and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee—agreed with the proposal. Two other commenters—the Superior Court of Orange County and the Orange County Bar Association (OCBA)—agreed if it were modified. The committee agreed with the proposed modification suggested by OCBA to add an option that the defendant stay away from all stores within the county (item 3). The committee declined to implement a change requested by the Superior Court of Orange County to add a description about whether the retail establishment is located within a mall or shopping plaza. The committee appreciates the time taken to respond to this proposal. All comments received, and the committees’ responses, are provided in the attached chart of comments at pages 7–11.

## Alternatives considered

The committee considered whether to add the retail crime restraining order provisions to the existing *Criminal Protective Order—Other Than Domestic Violence* (form CR-161) but determined that many of the items on that order, such as firearm prohibitions and items intended for protecting people, would not apply to persons subject to a retail crime restraining order and that the inclusion of the retail crime restraining order provisions would likely be confusing.

The committee also considered developing a restraining order with the Civil and Small Claims Advisory Committee that could be used in either a criminal or civil case, because the orders are generally the same in either type of case. However, the committees concluded that separate orders would be clearer and more useful and that a joint order could present challenges for entering information into CLETS.

## Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are largely attributable to legislation. Expected costs include staff training, case management system updates, and the production of new forms. Additionally, courts that enter their own CLETS data may have an additional increase in workload.

## Attachments and Links

1. Form CR-164, at pages 4–6
2. Chart of comments, at pages 7–11
3. Link A: Pen. Code, § 490.8,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=490.8.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=490.8.&lawCode=PEN)
4. Link B: Assem. Bill 3209 (Stats. 2024, ch. 169),  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB3209](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB3209)

Clerk stamps date here when form is filed.

04/7/2025  
DRAFT  
Not approved by  
the Judicial Council

Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:****1 Criminal Restraining Order** This is a postconviction criminal restraining order issued under Penal Code section 490.8(a).**2 Restrained Person***(Information that has a star (\*) next to it is required to add this order into the California Restraining and Protective Order System. Please provide all known information.)*

\*Name: \_\_\_\_\_

\*Gender:  M  F  Nonbinary \*Race: \_\_\_\_\_

\*Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Height: \_\_\_\_\_ Weight: \_\_\_\_\_

Hair Color: \_\_\_\_\_ Eye Color: \_\_\_\_\_

**3 Protected Retail Establishment**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

 Additional addresses: The court finds that the retail establishment is part of a chain or franchise and includes the following additional establishments in the state of California and (*choose one*):  within the County of \_\_\_\_\_ or  within \_\_\_\_\_ miles of the address above (*list additional establishments and addresses*):**4 Expiration Date**This order expires on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  a.m.  p.m.  midnight

If no expiration date is written here, this Order expires two years from the date of issuance.

**5 Hearing**This proceeding was heard on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_in Dept.: \_\_\_\_\_ by (*judicial officer*): \_\_\_\_\_**6 Service**

- The restrained person personally attended the hearing. No other proof of service is needed.
- The restrained person did not attend the hearing. Law enforcement or someone who is at least 18 years old and not a party to the action must personally serve a copy of this Order on the restrained person.

**This is a Court Order.**

**7 Stay-Away Order**

The restrained person must not:

- Enter any retail establishment named in ③.
- Be present on the grounds of any retail establishment named in ③.
- Be present on any parking lot next to and used for any retail establishment named in ③.

Not obeying this order can result in being arrested and charged with a crime and can include up to six months in jail.

**8** Number of pages attached to this Order, if any: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
*Judicial Officer*

**This is a Court Order.**



**Instructions for Law Enforcement**

**Enforcing the Restraining Order**

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing (see 6), the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

**Start Date and End Date of Orders**

This Order starts on the date next to the judge’s signature on page 2 and ends on the expiration date in 4 on page 1.

**Notice/Proof of Service**

The law enforcement officer must first determine if the restrained person had notice of the order. If notice cannot be verified, the officer must advise the restrained person of the terms of the order and then enforce it. (Fam. Code, § 6383(e).)

Consider the restrained person served (given notice) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was at the hearing or was informed of the order by an officer. An officer can obtain information about the contents of the order and proof of service in CARPOS.

**Conflicting Orders—Priorities for Enforcement**

**If more than one restraining order has been issued protecting the protected party from the restrained person, the orders must be enforced in the following priority** (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *Emergency Protective Order (EPO)*: If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must also be enforced.
2. *No-Contact Order*: If a restraining/protective order includes a no-contact order, the no-contact order must be enforced.
3. *Criminal Protective Order (CPO)*: If none of the orders includes an EPO or a no-contact order, the most recent CPO must be enforced. (Fam. Code, §§ 6383(h)(2), 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code section 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Pen. Code, § 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must also be enforced.
4. *Civil Restraining Orders*: If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment, retail crime), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must also be enforced.

*Clerk’s Certificate*  
[seal]

*(Clerk will fill out this part.)*

**—Clerk’s Certificate—**

I certify that this *Retail Crime Restraining Order—Criminal* is a true and correct copy of the original on file in the court.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**This is a Court Order.**



**W25-05****Criminal Law: New Postconviction Retail Crime Restraining Order (Adopt form CR-164)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Orange County Bar Association by Mei Tsang, President	AM	<p><i>Does the proposal appropriately address the stated purpose:</i></p> <p>Yes. However, under #3 please consider if there should be an option to restrain by County rather than by number of miles from a particular address. By county would give clearer direction to the restrained person.</p>	The committee agrees and will modify item 3 to add an option to order the defendant to stay away from all stores in the county.
2.	Superior Court of Los Angeles County by Robert Oftring, Chief Communications and External Affairs Officer	A	<p>The following comments are representative of the Superior Court of California, County of Los Angeles, and do not represent or promote the viewpoint of any particular officer or employee.</p> <p>In response to the Judicial Council of California’s “ITC W25-05: Criminal Law: New Postconviction Retail Crime Restraining Order,” the Superior Court of California, County of Los Angeles (Court), agrees with proposal.</p> <p>The Court believes the proposal appropriately addresses the stated purpose and provides a solution to the Postconviction Restraining Order.</p> <p>The Court does not believe the proposal will provide cost savings. On the contrary, this will require additional work which will translate to additional money being spent.</p> <p>To implement the proposal, the Court would need to dedicate resources to modify its case management system. Additionally, that will</p>	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**W25-05**

**Criminal Law: New Postconviction Retail Crime Restraining Order (Adopt form CR-164)**

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	Commenter	Position	Comment	Committee Response
			<p>necessitate training staff on the new changes. Two months from Judicial Council approval of the proposal should be sufficient time to implement given the Court is already anticipating these changes.</p>	
3.	<p>Superior Court of Orange County by Elizabeth Flores, Operations Analyst-Criminal Operations</p>	AM	<p><i>1. Does the proposal appropriately address the stated purpose?</i></p> <p>Yes. It would be beneficial to receive clarification when the retail establishment is in a mall or plaza.</p> <p><i>2. Would the proposal provide cost savings? If so, please quantify.</i></p> <p>No, this will require ordering of additional protective order forms for all criminal courtrooms.</p> <p><i>3. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p>	<p>The committee appreciates the comments.</p> <p>The committee declines the suggestion to add whether the retail establishment is in a mall or plaza. The committee thought it would be confusing to reference some, but not all, types of retail spaces, and that the information may not be helpful since the statute does not require the restrained person to stay away from a mall or plaza in which a protected retail establishment is located.</p> <p>No further response required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



**W25-05**

**Criminal Law: New Postconviction Retail Crime Restraining Order (Adopt form CR-164)**

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	Commenter	Position	Comment	Committee Response
			<p>Docket codes and procedures have been created to support this process using a workaround (use of form CR-161 per JCC)</p> <p>Staff procedures would need to be updated to reflect the new form. Stakeholders would need to be advised of the change to ensure they use the proper form. A 1-hour training for Clerk’s Office and Courtroom Clerk staff may be necessary.</p> <p><i>4. Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes.</p> <p><i>5. How well would this proposal work in courts of different sizes?</i></p> <p>N/A</p>	<p>No further response required.</p>
4.	<p>Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)</p>	A	<p>The JRS notes that the proposal clearly communicates information to the restrained person as well as law enforcement for the purposes of facilitating enforcement of AB 3209.</p> <p>The JRS also notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Results in additional training, which requires the commitment of staff time and court resources.</li> </ul>	<p>The committee appreciates the comments.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**W25-05**

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li>○ The only training appears to be to inform court staff about the existence of Form CR-164.</li> <li>● Increases staff workload.               <ul style="list-style-type: none"> <li>○ There is some workload increase associated with scanning and attaching forms to the court’s case management system. Jurisdictions that experience higher levels of retail crime could experience varying degrees of workload increase to perform these tasks. Workload increase would also depend on whether the court enters its own CLETS data or has that work performed by a CLETS administrator (e.g., the County Sheriff). In this instance, courts will need to transmit a copy of form CR-164 to the CLETS administrator and/or make that form available through a data exchange or agency portal.</li> </ul> </li> <li>● Impact on local or statewide justice partners.               <ul style="list-style-type: none"> <li>○ To the extent that another law enforcement agency enters CLETS data for the court, that agency could experience some workload increases entering data from the CR-164 form.</li> </ul> </li> </ul>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			Law enforcement agencies will also need to be informed about the use of the new form along with the service requirements. While there could be some workload increases owing to administration of this new form, there could be some workload decreases if the protective order results in fewer calls out to a retail establishment if the protective order is a deterrent to the restrained person to visit the retail establishment.	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated