



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 25-142

For business meeting on October 24, 2025

Title

Criminal Law: Findings and Orders
Regarding Prohibited Items While on
Diversion

Report Type

Action Required

Effective Date

January 1, 2026

Rules, Forms, Standards, or Statutes Affected

Approve form CR-163

Date of Report

October 6, 2025

Recommended by

Criminal Law Advisory Committee
Hon. Lisa Rodriguez, Chair

Contact

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Executive Summary

Recent legislation prohibits the possession of firearms, other deadly weapons, and ammunition by a defendant participating in mental health or military diversion, based on specified findings by the court. The prohibition remains in effect until the defendant has either successfully completed diversion or has their firearms rights restored. The Criminal Law Advisory Committee recommends a new optional form to assist courts with making the appropriate findings and orders prohibiting a defendant from owning or possessing firearms, other deadly weapons, and ammunition while on mental health or military diversion.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2026, approve *Findings and Orders Regarding Prohibited Items While on Diversion* (form CR-163).

The proposed new form is attached at page 8.

Relevant Previous Council Action

Because this form is based on new laws, there is no relevant previous council action.

Analysis/Rationale

Assembly Bill 455 (Stats. 2023, ch. 236) amended Penal Code section 1001.36 to allow the prosecution, beginning on July 1, 2024, to request a court order prohibiting a defendant on mental health diversion from owning or possessing a firearm because they are a danger to themselves or others. For the court to order the prohibition, the prosecution must prove by clear and convincing evidence that (1) the defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) the prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.¹ If the court orders the prohibition, the court “shall inform the person that they are prohibited ... from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.”²

The order remains in effect until the defendant successfully completes diversion or has firearm rights restored under Welfare and Institutions Code section 8103(g)(4).³ The bill also amended section 8103 to add reporting requirements from the court to the Department of Justice when an order prohibiting firearms while on mental health diversion is issued.⁴

Effective January 1, 2025, Senate Bill 1002 (Stats. 2024, ch. 526) amended Welfare and Institutions Code section 8103 to add other deadly weapons and ammunition to existing firearm prohibitions when specified mental health–related findings have been made.⁵ Although this statute was amended to include, alongside firearms, other deadly weapons and ammunition as prohibited items, Penal Code section 1001.36(m) was not similarly amended and, as a result, only lists firearms as prohibited items.

Also effective January 1, 2025, Senate Bill 1025 (Stats. 2024, ch. 924) amended Penal Code section 1001.80 on military diversion, including adding subdivision (p) to allow, upon a prosecutor’s request, a court to prohibit firearms. This new subdivision outlines a procedure substantially similar to mental health diversion under Penal Code section 1001.36(m). Welfare and Institutions Code section 8103(i) was also amended to refer to orders issued under Penal Code section 1001.80(p), alongside orders issued under Penal Code section 1001.36(m).

¹ Pen. Code, § 1001.36(m)(2)(A), (B).

² Pen. Code, § 1001.36(m)(3)(B).

³ Pen. Code, § 1001.36(m)(4); Welf. & Inst. Code, § 8103(i)(1).

⁴ Welf. & Inst. Code, § 8103(i)(2).

⁵ Prior to SB 1002, Welfare and Institutions Code section 8103(i)(1) stated that a person prohibited from owning or controlling a firearm when they have been found to be a danger to themselves or others and are on mental health diversion under Penal Code section 1001.36(m) must not own or control a firearm until diversion is completed successfully or firearm rights are restored under Welfare and Institutions Code section 8103(g)(4).

Recommended optional form CR-163

To assist courts with making findings and orders on prohibited items under Penal Code section 1001.36(m) for mental health diversion or 1001.80(p) for military diversion, *Findings and Orders Regarding Prohibited Items While on Diversion* (form CR-163) includes:

- The prohibited person's name and identifying information.
- Information about the hearing.
- An item in which the court should insert the date, select the type of diversion granted, and select whether misdemeanor or felony charges are pending.
- A section stating that the order remains in effect until the defendant successfully completes either mental health diversion or military diversion, or their firearms rights are restored under Welfare and Institutions Code section 8103(g)(4).
- A section on court findings, stating that the court finds by clear and convincing evidence that both of the following are true:
 - The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.⁶
 - The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.⁷
- A section outlining prohibited items⁸ and a modified court advisement that the defendant is prohibited from owning or possessing the prohibited items because they are a danger to themselves or others.⁹
- A prohibition against the possession of body armor, under Penal Code section 31360, which prohibits the possession of body armor by any person prohibited from possessing a firearm under state law.
- An item allowing the court to make further orders regarding relinquishment.
- A notice that courts must report the order to the Department of Justice as statutorily required through prescribed methods.

⁶ Pen. Code, §§ 1001.36(m)(2)(A), 1001.80(p)(2)(A).

⁷ Pen. Code, §§ 1001.36(m)(2)(B), 1001.80(p)(2)(B).

⁸ Although Penal Code sections 1001.36(m) and 1001.80(p) only prohibit owning or possessing firearms, Welfare and Institutions Code section 8103(i)(1) also prohibits other deadly weapons and ammunition. The form includes all of these as prohibited items, as well as firearm parts under Penal Code section 16520(b)(26) (definition of firearm includes firearm parts per Welfare and Institutions Code sections 8100–8108).

⁹ Pen. Code, §§ 1001.36(m)(3)(B), 1001.80(p)(3)(B).

Policy implications

The proposal is based on legislative changes adding a new court procedure in diversion cases. Accordingly, the key policy implications are to support courts in adjudicating these requests in a timely and transparent manner. 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).

Comments

The proposal circulated for comment from April 14 to May 23, 2025. The committee received six comments. Three commenters agreed with the proposal (Superior Court of Los Angeles County, Orange County Bar Association, and Giffords¹⁰). One commenter agreed but requested modifications (Superior Court of Orange County), and two did not indicate a position (California Department of Justice (DOJ) and Judge J. Richard Couzens (Ret.)). The substantive comments and the committee's responses are summarized below. All comments received and the committee's responses are provided in the attached chart of comments at pages 9–25.

Additional identifying information about the defendant

The DOJ requests additional identifying items about the defendant to bolster its ability to accurately identify the defendant as a prohibited person during a firearms eligibility check, including separate fields for the defendant's first, middle, and last name, and requiring the defendant's driver's license or identification number and criminal identification and information (CII) number. The committee recommends revising the name item and including the defendant's driver's license or identification number and CII number as optional and not required, because this information is not always readily available to courts.

Reporting the order to the DOJ

Courts are statutorily required to report the prohibitions to the DOJ, and they currently do so through the Mental Health Reporting System (MHRS) for orders issued under Penal Code section 1001.36 or a Bureau of Firearms form for orders issued under Penal Code section 1001.80. Because form CR-163 supplements court reporting to the DOJ, but does not replace it, the DOJ requests language on the form to remind courts that the form does not replace current court reporting methods. In response, the committee recommends adding language to the form reminding courts to notify the DOJ of the order through the department's prescribed methods.

Basis for military diversion

The DOJ requests that the form state the qualifying reason for the grant of military diversion. The committee declined to add the qualifying reasons for military diversion because the form is not intended to reflect diversion qualification findings.

Termination of order

To estimate when the prohibition may be lifted, the DOJ requests the form include an expected date for diversion termination or, in the alternative, whether the case involves a felony or

¹⁰ Giffords is a gun violence prevention advocacy organization.

misdemeanor. The committee recommends adding, in item 2, a checkbox to indicate whether the pending charges are misdemeanor and/or felony level.

Supplemental advisement

The DOJ and Judge Couzens recommend a supplemental advisement noting that termination of the diversion prohibition order may not restore firearm rights under federal prohibitions on firearms (see 18 U.S.C. § 922(g)(4)) or based on other statutes or court orders. The committee recommends not adding a supplemental advisement to the form, finding it would be better to advise a defendant of these issues at the time the order terminates.

Firearm relinquishment

Penal Code sections 1001.36(m) and 1001.80(p) do not address how firearms and other prohibited items in the defendant's possession should be relinquished. In his comment, Judge Couzens notes that relinquishment is "presumably left to the discretion of the court" and should include elements of relinquishment procedures set forth in other statutes, such as Code of Civil Procedure section 527.9. Because the statutes do not address relinquishment, Judge Couzens suggests, at the very least, adding a provision in the form that permits the judge to write in relinquishment requirements. The committee agrees and recommends adding new item 6 for this purpose, which provides a space for courts to write in other orders regarding relinquishment.

Requiring the defendant to be present

Prior to circulation for public comment, the committee extensively discussed whether the form should require the personal presence of the defendant, either physically or remotely, at the time the findings and order are made. The statute does not squarely address this issue but does require the court to inform the defendant of the prohibition. The committee discussed the importance of proper service and notice of the prohibition to the defendant, especially since the prohibition may outlast the period of diversion if diversion is unsuccessfully terminated.¹¹

The committee considered several alternatives to accommodate situations in which defense counsel is appearing for a defendant under Penal Code section 977, such as allowing counsel to notify the defendant and calendaring a follow-up date to require the defendant's presence or the filing of an acknowledgment of receipt. Because of the nature and durability of the finding, and the significant consequences it holds, the committee believed at the time the proposal circulated for comment that the defendant's presence at the time the findings and order were made was crucial, and included the following sentence in item 4b:

b. The court finds that the defendant was personally present when this order issued.

The committee sought specific comments on possible alternatives to this requirement.

Judge Couzens and the Superior Court of Los Angeles County agreed with the personal presence requirement for reasons similar to those offered by the committee in the invitation to comment.

¹¹ Pen. Code, §§ 1001.36(m)(4), 1001.80(p)(4); Welf. & Inst. Code, § 8103(i)(1).

The Orange County Bar Association and the Superior Court of Orange County offered alternatives, such as requiring defense counsel to provide the form to the defendant to sign or acknowledge receipt.

In consideration of these comments, the committee recommends removing item 4b. While the statutes require the court to inform the defendant of the prohibition, they do not address the defendant's presence, and Penal Code section 977 allows for appearances by counsel in a misdemeanor case¹² and with leave of court and defense counsel's approval in a felony case.¹³ In recommending the removal of item 4b, the committee notes that the form includes the statutorily required orders. The court minutes would reflect whether the defendant was physically or remotely present and, if not, how the defendant was properly informed of the prohibition. While the committee's consensus was that most courts would require a defendant to be present at the time the order issued, this approach would allow for a measure of flexibility as permitted under law.

Alternatives considered

The committee initially considered the alternative of not developing a new form because members did not anticipate that courts would need to issue a large number of these orders. However, because the orders are similar to temporary restraining orders, the committee decided that a statewide form would be helpful for courts to make the appropriate findings and orders and to assist courts to comply with reporting requirements to the DOJ.

The committee discussed whether to create two separate forms, one for mental health diversion and one for military diversion. While there are some minor differences between Penal Code sections 1001.36(m) and 1001.80(p), given that the court findings and orders are largely identical, the committee decided to propose one form applicable to both types of diversion.

Although Penal Code sections 1001.36(m) and 1001.80(p) only prohibit the possession of firearms while on diversion when specific findings are made, Welfare and Institutions Code section 8103(i), which is cross-referenced in both statutes,¹⁴ was amended under SB 1002 to reference other deadly weapons or ammunition as additional prohibited items. The committee questioned whether to prohibit other deadly weapons or ammunition when there is no corresponding prohibition in Penal Code sections 1001.36(m) and 1001.80(p). Because the statutes reference Welfare and Institutions Code section 8103(i), which includes other deadly weapons or ammunition as additional prohibited items, the committee recommends including other deadly weapons or ammunition across the board as prohibited items.

¹² Pen. Code, § 977(a)(1).

¹³ Pen. Code, § 977(b)(1).

¹⁴ See Pen. Code, §§ 1001.36(m)(1), 1001.80(p)(1) (the prosecution may request an order from the court that the defendant be prohibited from controlling, owning, purchasing, possessing, or receiving a firearm until they successfully complete diversion because they are a danger to themselves or others under Welfare and Institutions Code section 8103(i)).

When ordering the prohibition, the court “shall inform the person that they are prohibited ... from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.”¹⁵ The committee discussed including a verbatim version of this statutory advisement but was concerned that it is not complete, given that the defendant is also prohibited from owning or controlling other deadly weapons or ammunition and that the second pathway for ending the prohibition is restoration of firearm rights under Welfare and Institutions Code section 8103(g)(4). The committee therefore recommends supplementing the advisement with references to this additional information (see item 5b).

Fiscal and Operational Impacts

Expected costs include staff and judicial officer training, case management system updates, and time on reviewing and processing the form.

Attachments and Links

1. Form CR-163, at page 8
2. Chart of comments, at pages 9–25
3. Link A: Assem. Bill 455,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB455
4. Link B: Sen. Bill 1002,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1002
5. Link C: Sen. Bill 1025,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1025

¹⁵ Pen. Code, §§ 1001.36(m)(3)(B), 1001.80(p)(3)(B).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY 10/2/2025 DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
FINDINGS AND ORDERS REGARDING PROHIBITED ITEMS WHILE ON DIVERSION (Pen. Code, §§ 1001.36(m), 1001.80(p); Welf. & Inst. Code, § 8103(i))	CASE NUMBER:
*First Name: _____ Middle Name: _____ *Last Name: _____ *Gender: ☐ M ☐ F ☐ Nonbinary *Race: _____ *Date of birth: _____ Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Driver's license/ID no.: _____ CII no.: _____ Information that has a star (*) is required.	

1. This proceeding was heard on *(date)*: _____ at *(time)*: _____ in Dept.: _____
 Room: _____ by judicial officer *(name)*: _____
2. On *(date)*: _____ the count granted *(check one)*: ☐ mental health diversion (Pen. Code, § 1001.36)
☐ military diversion (Pen. Code, § 1001.80)
 This case involves pending *(choose all that apply)*: ☐ misdemeanor charges ☐ felony charges
3. **Term of order**
 This order remains in effect until the defendant has successfully completed either mental health diversion or military diversion, or their firearms rights are restored under Welfare and Institutions Code section 8103(g)(4).
4. **Court findings**
 The court finds by clear and convincing evidence that both of the following are true:
 - a. The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.
 - b. The prohibition is necessary to prevent personal injury to the defendant or another person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.
5. **No firearms (guns), firearm parts, other deadly weapons, ammunition, or body armor**
 The court orders that:
 - a. The defendant must not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearms (guns), firearm parts (meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame; see Penal Code section 16531), other deadly weapon, or ammunition until they successfully complete diversion or their firearms rights are restored under Welfare and Institutions Code section 8103(g)(4). Possession of prohibited items while this order is in effect may subject the defendant to prosecution and may include a fine and jail or prison time.
 - b. The defendant is prohibited from owning, controlling, purchasing, possessing, or receiving the prohibited items because the defendant is a danger to themselves or others.
 - c. The defendant must not own, possess, or buy any body armor (defined in Penal Code section 16288). Defendant must relinquish any body armor in their possession.
6. **Other orders regarding relinquishment of firearms and other prohibited items:**

Date: _____

JUDICIAL OFFICER

Note: Courts must notify the Department of Justice of this order through the department's prescribed methods as soon as possible, but not later than one court day after issuing the order. (Welf. & Inst. Code, § 8103(i)(2).)

SPR25-14**Criminal Law: Findings and Orders Regarding Prohibited Items While on Diversion** (approve form CR-163)

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

	Commenter	Position	Comment	Committee Response
1.	California Department of Justice by Charlie Sarosy, Deputy Attorney General	NI	The California Department of Justice (Department) respectfully submits this public comment regarding the proposed new CR-163 form. The Invitation to Comment (Invitation) noted that the initial request for this form came from the Bureau of Firearms within the Department's Division of Law Enforcement, and specifically requested comments on whether "the proposal appropriately address[es] the stated purpose." The Department accordingly submits this public comment. The Department's Bureau of Firearms (BOF) serves the people of California through education, regulation, and enforcement actions regarding the manufacture, sales, ownership, safety training, and transfer of firearms. As part of this mission, BOF conducts firearms eligibility checks for, among other things, firearm purchases and transfers (Pen. Code, § 28220) and carry concealed weapons licenses (Pen. Code, § 26185). For these two types of specific firearms eligibility checks, among others, BOF must determine whether a person is prohibited from possessing or owning firearms under both California and federal law. (Pen. Code, §§ 26185, subd. (a)(2), 28220, subds. (a), (b).) California law prohibitions are outlined in various statutes in the Penal Code and Welfare and Institutions Code. (See, e.g., Pen. Code, §§ 29800-29830; Welf. & Inst. Code, §§ 8100-8108.) Federal law prohibitions are outlined in United States Code, title 18, section 922.	The committee appreciates the comment.

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

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Criminal Law: Findings and Orders Regarding Prohibited Items While on Diversion (approve form CR-163)

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			Determining whether these prohibitions apply often requires access to records and information from California courts. Accordingly, the Department has an overarching comment about the CR-163, as well as comments on specific portions of the form. Under Welfare and Institutions Code section 8103, subdivision (i)(2), a court that finds a defendant is prohibited from possessing firearms pursuant to Penal Code section 1001.36, subdivision (m) or section 1001.80, subdivision (p) “shall notify the Department of Justice . . . as soon as possible, but not later than one court day after issuing the order.” Additionally, a court “shall also notify the Department of Justice that the person has successfully completed diversion as soon as possible, but not later than one court day after completion.” (Welf. & Inst. Code, § 8103, subd. (i)(2).) Courts currently comply with these mandatory reporting requirements through the Mental Health Reporting System (MHRS) (for findings under Penal Code section 1001.36, subdivision (m)) and the BOF 4076 form (for findings under Penal Code section 1001.80, subdivision (p), until these findings can also be reported through MHRS). The Invitation notes that the proposed CR-163 “could assist courts to comply with reporting requirements to the Department of	

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			Justice.” However, the Invitation also notes that the CR-163 would be optional. Additionally, the defendant’s identifying information required in the CR-163 is less detailed than the identifying information required through MHRS and the BOF 4076. And, there are no instructions in the CR-163 on how a court can transmit the form to the Department of Justice. Accordingly, while the CR-163 would certainly be a helpful aid for the reasons described in the Invitation (and because the CR-163 memorializes the findings that a court must make to impose the firearm prohibition), it would be helpful to communicate to courts that the CR-163 should not replace the current methods (i.e., MHRS and the BOF 4076) that courts use to comply with their reporting requirements under Welfare and Institutions Code section 8103, subdivision (i). The Department additionally proposes the following revisions to the CR-163 to help the form accomplish the stated goal of “making the appropriate findings and orders prohibiting a defendant from owning or possessing firearms, other deadly weapons, and ammunition while on mental health or military diversion,” as well as to enhance the usefulness of the form for firearms eligibility checks: • In the box that requests the defendant’s identifying information, add separate lines for the first, middle (optional), and last names of the defendant to ensure	The committee agrees to recommend adding language to the form reminding courts to notify the Department of Justice of the order through the department’s prescribed methods. The committee agrees to recommend adding separate fields for the defendant’s first, middle, and last name.

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		that a complete name is given. Additionally, add fields to request the defendant's driver's license or identification number, and to request the defendant's Criminal Identification and Information (CII) number; the fields should be indicated as required with a star, likewise, if the defendant's identifying information is available to the court. These changes would help to ensure that the correct person is connected to the CR-163 during a firearms eligibility check. • In item #2, or elsewhere in the CR-163, specify that "mental health diversion" arises from Penal Code section 1001.36, subdivision (m) and "military diversion" arises from Penal Code section 1001.80, subdivision (p). While these Penal Code sections are identified in the title of the form, the sections are not connected with the applicable type of diversion anywhere on the form. • In the box next to "military diversion" in item #2, add the qualifying reason for placing the defendant on that diversion under Penal Code section 1001.80, as specified in subdivision (b)(2)(A) (i.e., Sexual Trauma, Traumatic Brain Injury, Post-Traumatic Stress Disorder, Substance Abuse, or Mental Health Problem). Unlike mental health diversion under Penal Code section	The committee agrees to recommend adding additional fields for the defendant's driver's license or identification number and CII number. The committee recommends including them as optional because the information is not always available to courts. The committee agrees to recommend specifying that mental health diversion is under Penal Code section 1001.36 and military diversion is under Penal Code section 1001.80. The committee declines to add the qualifying reasons for military diversion on the form because the form is not intended to reflect diversion eligibility findings.

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			1001.36, there are limited bases to be placed on diversion under Penal Code section 1001.80, and it would be helpful to specify that basis in the CR-163. • In item #3, or elsewhere on the CR-163, add the date that diversion is expected to be successfully completed or otherwise expire. Additionally, or in the alternative, specify whether the diversion is for an alleged felony offense or an alleged misdemeanor offense. This would help the defendant, the court, and others subsequently reviewing the form get an estimate as to how long the California law firearm prohibition will be in effect. It would also help to remind the court of its obligation to “notify the Department of Justice that the person has successfully completed diversion as soon as possible, but not later than one court day after completion.” (Welf. & Inst. Code, § 8103, subd. (i)(2).) • Items #3 and #5.a suggest that a defendant can possess a firearm after they “successfully complete diversion or their firearms rights are restored under Welfare and Institutions Code section 8103(g)(4).” However, these advisements speak to only firearm prohibitions under California law, and do not address whether the defendant is prohibited under federal law;	The committee agrees to recommend adding an item for the court to indicate whether the pending charges in the case are for misdemeanors or felonies.

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			specifically under 18 U.S.C. § 922(g)(4). (See also 28 C.F.R. 478.11 (defining the phrases used in 18 U.S.C. § 922(g)(4)). A person is prohibited from possessing firearms under 18 U.S.C. § 922(g)(4) if a court finds that they are “a danger to himself or to others” “as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease.” (28 C.F.R. 478.11.) Accordingly, to help reduce a defendant’s confusion as to their firearm eligibility status, the advisements at items #3 and #5.a could specify that they are specific to only California law. Alternatively, there could be a separate advisement in the CR-163, perhaps in item #3, that states: “The completion of diversion or the restoration of rights under Welfare and Institutions Code section 8103(g)(4) does not affect the applicability of firearm prohibitions under federal law (18 U.S.C. § 922(g)(4)).”	The committee declines to include a supplemental advisement, finding that it would be more appropriate at the time the order terminates.
2.	Hon. J. Richard Couzens (Ret.), Superior Court of California, County of Placer	NI	Thank you for this opportunity to comment on the proposed form for use in imposing firearms restrictions on persons being granted diversion. The form is excellent and will well serve the bench and the litigants. In filling out the form the court will be provided with a checklist of the holdings that are necessary for entry of the	The committee appreciates the comment.

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			order. A reminder of the elements for relief is always helpful. I do have specific comments on three areas: (1) advising the defendant of the potential of other firearms restrictions even though the court enters its order of restoration of firearms rights; (2) providing instruction on surrendering of firearms; and (3) advisement of surrender of body armor. (1) CONFLICT WITH OTHER FIREARMS RESTRICTIONS Sections 1001.36(m) and 1001.80(p) state that the defendant may recover their firearms rights either by completion of diversion or requesting special relief from the court under Welfare and Institutions Code, section 8103(g)(4). Because of federal law and other provisions allowing the court to order firearms restrictions, the statement without qualification is at the very least misleading and could set up the defendant for a potential violation of the law. Conflict with federal statute The provisions of sections 1001.36 and 1001.80 permitting the return of a defendant's firearms rights upon successful completion of diversion or petition under Welfare and Institutions Code, section 8103, subdivision (g)(4), appear to conflict with federal firearms restrictions. The problem is in the application of 18 U.S.C. § 922, subdivision (g)(4): "It shall be unlawful for any person . . . who has been adjudicated as a mental	

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			defective or who has been committed to a mental institution . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” “Adjudicated as a mental defective” means “[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or to others.” (27 C.F.R. § 478.11, subd. (a).) “The term shall include (1) [a] finding of insanity by a court in a criminal case; and (2) [t]hose persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.” (27 C.F.R. § 478.11, subd. (b).) Briefly stated, the federal lifetime ban on the possession of firearms applies to any person adjudged to be a danger to themselves or others – equivalent to the basis for requesting the prohibition under sections 1001.36 and 1001.80 that the “defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code.” (§§ 1001.36, subd. (m)(1), and 1001.80, subd. (p)(1).) Additionally, subdivision (3)(B)	

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			specifically requires the court to advise the defendant that the restrictions are being imposed because “they are a danger to themselves or others.” Conflict with other statutes or court orders A defendant who successfully completes diversion may have firearms restrictions because of other statutes or orders entered by the court. A person having a prior felony conviction or an active civil restraining order against them, for example, is subject to a firearms restriction regardless of the circumstances occurring with the application of sections 1001.36 or 1001.80. Firearms restrictions may have been imposed because of other proceedings such as for a Criminal Protective Order or Domestic Violence Restraining Order. The procedures authorized by sections 1001.36, subdivision (m), and 1001.80, subdivision (p), will have no effect on these other orders. However, in considering issuing a prohibition in diversion cases, the court may find it relevant to consider whether the other prohibitions may end before diversion ends or will continue after diversion is completed. Supplemental advisement of the defendant In view of the potential conflict with federal firearms law and other statutes or orders prohibiting the possession of firearms, it seems inappropriate to indicate to the defendant without qualification that they will recover their firearms rights if they successfully complete	

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		diversion or successfully petition the court for reinstatement under Welfare and Institutions Code, section 8103, subdivision (g)(4). At the very least, the court's order should reflect the following additional advisement: <i>"Successful completion of diversion or relief granted under Welfare and Institutions Code, section 8103, subdivision (g)(4), will not remove a firearms restriction imposed by another state or federal law or court order."</i> (2) RELINQUISHMENT PROCEDURE Sections 1001.36(m) and 1001.80(p) are wholly silent on the process of relinquishment: When are the firearms to be surrendered? To whom? Is there to be verification of the relinquishment? The failure of the court to address these kinds of questions will lead to confusion and delay, and increase the likelihood that the firearms will be available to the defendant for a longer period than desirable. Nothing in sections 1001.36 or 1001.80 specifies a relinquishment process. Presumably left to the discretion of the court will be the specification of the time and manner by which the firearms are to be relinquished. From a safety perspective, the earlier the relinquishment the more likely the order will protect against gun violence. The court should also consider the mechanism for verifying that all firearms have	The committee declines to include a supplemental advisement, finding that it would be more appropriate at the time the order terminates.

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			been relinquished consistent with the court's order. The key elements for relinquishment include providing information to the prohibited person about the prohibition and when and how to comply, requiring proof of compliance such as a receipt from a dealer or law enforcement, reviewing the file or setting the matter for review to determine whether compliance has occurred, and addressing non-compliance to reduce risk and effectuate the order. The Automated Firearms System (AFS) information indicating whether the person has firearms they previously acquired legally may be provided by the prosecutor as part of CLETS report. The best practice would be for the prosecution to present this information as part of the request by the prohibition so that the court may be informed as to whether the person currently owns firearms. Once the individual becomes prohibited, if the firearms are not relinquished, they will be in the Armed Prohibited Persons System (APPS), which can result in additional follow up by the Department of Justice or local law enforcement officials. While the court will have full discretion in determining the mechanics of relinquishment, at least some basic instruction to the defendant would avoid confusion and potential violations of the order. The court may wish to utilize the procedures for relinquishment specified in Code	

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			of Civil Procedure, section 527.9. Although the procedures outlined in section 527.9 are mandated in specific situations not involving either section 1001.36 or 1001.80, nothing prevents a court from incorporating the requirements by reference as a matter of judicial discretion. Section 527.9 provides a comprehensive and standardized mechanism for relinquishment of firearms including time of relinquishment, verification of surrender, and storage. While the Judicial Council may not wish to dive into the specifics of relinquishment that are not outlined in the statute, at the very least there should be a provision in the form that permits the addition of relinquishment requirements: <i>Other orders regarding surrender of firearms: _____.</i> (3) RELINQUISHMENT OF BODY ARMOR The proposed admonishment of the defendant includes no reference to surrender of body armor; such an advisement is required by current law. Penal Code, section 31360, subdivision (b)(1), provides that a person “who is prohibited from possessing a firearm under the laws of this state, . . . who purchases, owns, or possesses body armor, as defined in Section 16288, . . . is guilty of a misdemeanor.” Subdivision (b)(2) provides that “[u]pon advising a person of their firearm prohibition, a	The committee agrees to recommend adding an additional item on other orders regarding relinquishment of firearms (see new item 6). Item 5c of the proposed form states that the defendant must relinquish any body armor in their possession, as required under Penal Code section 31360.

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			court shall also advise them of their body armor prohibition pursuant to this section. A person shall relinquish any body armor in their possession.” It is suggested the court advise the defendant in the following general form: <i>“Because the defendant has been found to be a danger to self or others, the defendant is prohibited from controlling, owning, purchasing, possessing, or receiving a firearm, other deadly weapon, or ammunition, until the defendant successfully completes diversion or has their firearms rights restored under Welfare and Institutions Code, section 8103, subdivision (g)(4). The defendant must sell or store with law enforcement or a licensed gun dealer any firearms currently owned or possessed by the defendant. The defendant also is not to purchase, own, or possess body armor, as defined in Section 16288, and must relinquish any body armor in their possession.”</i> (4) PRESENCE OF THE DEFENDANT I concur with the requirement that the defendant be personally advised of the firearms restrictions. The restrictions are very serious and the consequences of not following the court's directions in that regard can be catastrophic. The restrictions likely will arise when the court is setting up other conditions of diversion. Very likely the defendant will be in court for that purpose - there is little inconvenience to the	The committee recommends removing item 4b. While the statutes require the court to order and inform the defendant of the prohibitions, they do not address the defendant’s presence, and Penal Code section 977 allows for appearances by counsel. The committee notes that the form includes the statutorily required orders and the court minutes would reflect whether the

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			defendant but great potential benefit to the community by requiring the defendant to be personally present.	defendant was physically or remotely present, and if not, how the defendant was properly informed of the prohibitions. While the committee's consensus was that most courts would require defendants to be present at the time the order issued, this approach allows for appropriate flexibility as permitted under law.
3.	Giffords by Ethan Murray, State Policy Attorney	A	Giffords agrees with the form proposed in SPR-25-14 to support implementation of the prohibition in mental health and military diversion cases.	The committee appreciates the comment and acknowledges the commenter's agreement with the proposal.
4.	Orange County Bar Association by Mei Tsang, President	A	1) The proposal appropriately addresses the stated purpose. 2) A possible alternative to personal presence of the defendant could be to order the defense attorney to provide a form to the defendant and order the defendant to either sign the form acknowledging receipt, to be filed with the court at the next court date, or be personally present at the next court date to be served.	The committee appreciates the comment and acknowledges the commenter's agreement with the proposal. The committee recommends removing item 4b. While the statutes require the court to order and inform the defendant of the prohibitions, they do not address the defendant's presence, and Penal Code section 977 allows for appearances by counsel. The committee notes that the form includes the statutorily required orders and the court minutes would reflect whether the defendant was physically or remotely present, and if not, how the defendant was properly informed of the prohibitions. While the committee's consensus was that most courts would require defendants to be present at the time the order issued, this approach allows for appropriate flexibility as permitted under law.

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5.	Superior Court of California, County of Los Angeles by Stephanie Kuo	A	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. In response to the Judicial Council of California's "ITC SPR25-14 Criminal Law: Findings and Orders Regarding Prohibited Items While on Diversion," the Superior Court of California, County of Los Angeles (Court), agrees with the proposed changes. Requiring the personal presence of the defendant at the time the findings and order are made is essential. This is particularly important as the defendant must be advised of the terms and conditions of mental health diversion or military diversion. These diversions often include the prohibition of possessing firearms or other deadly weapons as a condition. The Order form should be provided to the defendant at the same time they are granted diversion, ensuring they are fully informed of the conditions imposed. It is unclear to determine if the proposal will provide cost savings. To implement the proposal, there would be an	The committee appreciates the comment and acknowledges the commenter's agreement with the proposal. The committee recommends removing item 4b. While the statutes require the court to order and inform the defendant of the prohibitions, they do not address the defendant's presence, and Penal Code section 977 allows for appearances by counsel. The committee notes that the form includes the statutorily required orders and the court minutes would reflect whether the defendant was physically or remotely present, and if not, how the defendant was properly informed of the prohibitions. While the committee's consensus was that most courts would require defendants to be present at the time the order issued, this approach allows for appropriate flexibility as permitted under law. No further response is required. No further response is required.

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			additional Order that would be included in mental health or military diversion. Adding that should require nominal work. Two months from Judicial Council approval of the proposal should be sufficient for implementation. The Court also believes the proposal will work well in courts of different sizes.	No further response is required.
6.	Superior Court of California, County of Orange by Thomas Anthony Williams, Operations Analyst II	AM	• <i>Does the proposal appropriately address the stated purpose?</i> The proposal appropriately addresses the purpose as indicated. • <i>Are there alternatives to requiring the personal presence of the defendant at the time the findings and order are made?</i> Potential alternative would be to order defendant to be present through counsel to a continued date, or if the form had a designated signature line for defendant to sign, submission of a notarized form upon entry would suffice.	The committee appreciates the comment and acknowledges the commenter's support of the proposal. The committee recommends removing item 4b. While the statutes require the court to order and inform the defendant of the prohibitions, they do not address the defendant's presence, and Penal Code section 977 allows for appearances by counsel. The committee notes that the form includes the statutorily required orders and the court minutes would reflect whether the defendant was physically or remotely present, and if not, how the defendant was properly informed of the prohibitions. While the committee's consensus was that most courts would require defendants to be present at the time the order issued, this approach allows for appropriate flexibility as permitted under law.

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			• <i>Would the proposal provide cost savings? If so, please quantify.</i> The proposal would not provide cost savings. • <i>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> Upon implementation, we would be required to provide staff and judicial officers with training as to roles and responsibilities, reviewing/processing of the form, update of our case management system, docket codes, and procedure related material. Time estimate for training would be approximately four hours. • <i>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Two months would be sufficient time for implementation. • <i>How well would this proposal work in courts of different sizes?</i> N/A	No further response required. No further response required. No further response required. No further response required.

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