



Judicial Council of California

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courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 26-019

For business meeting on February 20, 2026

Title

Criminal Law: Miscellaneous Technical Changes

Report Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise forms CR-104 and CR-164

Effective Date

March 1, 2026

Recommended by

Judicial Council staff
Francine Byrne, Director
Criminal Justice Services

Date of Report

January 21, 2026

Contact

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Executive Summary

Judicial Council staff recommend revising *Findings and Orders for Pretrial Release or Detention* (form CR-104) and *Retail Crime Restraining Order—Criminal* (form CR-164) to make technical revisions. The revisions are necessary to avoid causing confusion for courts.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective March 1, 2026:

1. Revise *Findings and Orders for Pretrial Release or Detention* (form CR-104) to correct the form title in the footer; and
2. Revise *Retail Crime Restraining Order—Criminal* (form CR-164) to include checkboxes for the item on personal service of the order.

The proposed revised forms are attached at pages 3–9.

Relevant Previous Council Action

The council approved form CR-104 effective January 1, 2026. The council adopted form CR-164 effective July 1, 2025.

Analysis/Rationale

Form CR-104 is an optional form to assist courts with making the appropriate findings and orders for pretrial release or detention as articulated in case law and in line with statutory and constitutional requirements. The recommended revision would correct the form title in the footer and implement formatting changes to reflect current form drafting practices.

Form CR-164 is a mandatory form for a court to use to restrain a criminal defendant from entering specified retail establishments. The recommended revision would add checkboxes to item 6. Items 6a and 6b specify different service requirements for different situations. In particular, item 6a applies when the restrained person personally attended the hearing, in which case no further proof of service of the order is needed. Item 6b applies when the restrained person was not present at the hearing; in that case, personal service of the order is required. Adding checkboxes to item 6 will ensure that the order clearly indicates whether personal service of the order is required.

The changes to these forms are technical in nature.

Policy implications

There are no policy implications to this proposal.

Comments

This proposal was not circulated for public comment because the change involves technical corrections and is therefore within the council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

Judicial Council staff considered not updating the forms until other substantive revisions were necessary but rejected the approach as the errors are likely confusing to courts and court users.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions should not have fiscal or operational costs other than the costs of replacing outdated forms.

Attachments and Links

1. Forms CR-104 and CR-164, at pages 3–9

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council 12/02/2025
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
FINDINGS AND ORDERS FOR PRETRIAL RELEASE OR DETENTION	<i>FOR COURT USE ONLY</i> Date: Time: Department:

The court must make oral findings and include them in the court minutes. (*In re Humphrey* (2021) 11 Cal.5th 135.)

1. Procedural Posture

The court is addressing pretrial release at

- a. arraignment on a misdemeanor and/or felony offense.
- b. bail review per Penal Code section 1270.2. No changed circumstances required.
- c. bail review per Penal Code section 1277. No changed circumstances required.
- d. another hearing based on good cause due to change in circumstances per Penal Code section 1289.

2. The court has reviewed and considered the following items:

- a. The complaint and/or information in this case.
- b. The pretrial services report/risk assessment.
- c. The People's argument and
 - (1) attachments/exhibits:
 - (2) amount of bail the defendant can afford:
 - (3) statements/proffer of witnesses or evidence:
- d. The defense argument and
 - (1) attachments/exhibits:
 - (2) amount of bail the defendant can afford:
 - (3) statements/proffer of witnesses or evidence:
- e. Criminal history.
- f. History of appearance.
- g. Police report/probable cause declaration.
- h. Proposed conditions of release:
- i. Other:

3. Risk of Nonappearance or to Public/Victim Safety

- a. The court finds the following factors regarding flight risk:
 - (1) Does or does not have a prior history of failures to appear.
 - (a) Has always made prior court appearances.
 - (b) Has a minimal history of failing to appear.
 - (c) Has a significant history of (*number*): _____ failures to appear.



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- (d) Previously absconded from the court process for:
- (e) Previously cut off GPS device.
- (f) Previously attempted to avoid court process by:
- (g) Has demonstrated an intention to subvert the criminal process by:
- (2) Has been released since (*date*): _____ and is here in court today.
- (a) Has posted a bond and returned to court.
- (b) Has posted bail with the court and returned to court.
- (3) Has minimal significant ties to the community including:
- (4) Has stated a willingness to follow any conditions deemed reasonable by the court.
- (5) Previously failed to comply with court orders including:
- (6) Has (*enter number*): _____ outstanding felony/misdemeanor warrant(s).
- (7) Was on probation/parole/postrelease community supervision/mandatory supervision at the time of the offense.
- (8) Faces a potential penalty for the charged offense that is great.
- (9) Has a history of untreated mental health or substance abuse issues.
- (10) Other:

b. The court finds the following factors regarding danger to the safety of the public or the victim:

- (1) The alleged crime does does not involve a victim.
- (a) The victim sustained injuries. The injuries are serious:
- (b) Defendant threatened witness(es) or victim(s) by:
- (2) The alleged crime is is not a crime of violence including:
- (a) A firearm was used in the commission of the crime.
- (b) A deadly weapon (*describe*): _____ was used in the commission of the crime.
- (3) Defendant does does not present a danger to public safety because:
- (4) Defendant does does not have a history of violence.
- (5) Defendant's criminal record demonstrates a history of violence.
- (6) Defendant is alleged to have violated a restraining order.
- (7) Defendant has a history of violating restraining orders.
- (8) Defendant has a history of untreated mental health or substance abuse issues.
- (9) The crime involved a large quantity of a controlled substance (*describe*): _____
- (10) Mitigating factors were present:
- (11) Other:

4. Finding for Release or Detention

Based on the factors in item 3, the court

- a. finds that defendant does not pose a flight risk or a public safety risk, and will release the defendant on their own recognizance. (See item 7.)
- b. finds that the defendant is charged with a misdemeanor offense and the presumption for own recognizance release has been overcome.
- c. finds defendant presents a flight risk and/or a public safety risk, but that risk can be mitigated by nonfinancial conditions. (See item 5.)



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- d. finds defendant has previously bailed out or was released on their own recognizance but still presents a flight risk and/or a public safety risk, but that risk can be mitigated by nonfinancial conditions. (See item 5.)
- e. finds defendant presents a flight risk and/or a public safety risk, and finds by clear and convincing evidence that nonfinancial conditions are not sufficient to ensure a return to court or protect the public or victims, and will impose a **financial condition** of *(amount)*: _____, **which the defendant has the ability to pay**, coupled with the following least restrictive nonfinancial conditions. (See items 5 and 6.)
- f. finds the defendant presents a flight risk and/or public safety risk by clear and convincing evidence and finds by clear and convincing evidence there are no less restrictive nonfinancial conditions or financial conditions that will ensure a return to court or protect the public or victim(s). (See item 8.)
- g. finds defendant presents a flight risk and/or public safety risk but that the parties wish to present additional evidence regarding
- (1) evidence to support a denial of bail or preventively high bail.
- (2) evidence of alternative available conditions.
- (3) evidence regarding ability to pay.
- and sets **provisional** bail in the amount of:
- and a bail review hearing on *(date)*:

5. Imposition of the Least Restrictive Conditions

- a. In addition to the mandatory conditions in item 7, the defendant is subject to monitoring by Pretrial Services, and must obey the following orders that the court finds are the least restrictive conditions necessary to ensure a return to court and to protect the safety of the public or victim because *(explain)*:
- b. The court finds that nonfinancial conditions are insufficient to protect the government's interests. (See items 6 and 8.)

6. Imposition of Financial Condition of Release

- Setting financial condition alone or coupled with nonfinancial conditions:** The court has considered nonfinancial conditions and finds that without a financial condition, they would be insufficient to ensure a return to court and/or protect the public:
- a. Nonfinancial conditions considered by the court (if not imposed in item 5):
- b. Reasons the court finds they are insufficient to protect the government's interests:
- c. The court will set economic bail in the amount of:
- d. The court finds that the defendant has the ability to pay this amount based on counsel's statements or the evidence presented.

7. Mandatory Conditions for Pretrial Release

The defendant must comply with the terms and conditions of Penal Code section 1318. The defendant is ordered to appear at all times and places by this court and as ordered by any court in which the charge is pending, obey all laws, immediately notify the court of any change of physical or mailing address, not depart the state without leave of the court, and waive extradition if the defendant fails to appear and is apprehended outside the state of California.

8. Preventive Detention

- a. The court finds that there is **clear and convincing** evidence that the defendant presents a flight risk and/or a danger to the safety of the public or any victim.
- b. The court **has considered** the following less restrictive nonfinancial and financial conditions and finds by **clear and convincing evidence** that they are insufficient to ensure a return to court and/or protect the public:
- (1) Conditions considered by the court:



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(2) Evidence supporting the court’s findings, in addition to those listed in item 3:

c. Defendant is to be held without bail pursuant to article I, section 12 of the California Constitution because the court finds the facts are evident or the presumption is great that the defendant committed an offense that is a

(1) capital crime.

(2) felony involving an act of violence on another or felony sexual assault offense on another and the court finds by clear and convincing evidence there is substantial likelihood release will result in great bodily harm to others.

(3) felony and the court finds by clear and convincing evidence that the person has threatened another with great bodily harm and there is a substantial likelihood that the person will carry out the threat if released.

d. Other, with legal authority:

Date:



JUDICIAL OFFICER

Clerk stamps date here when form is filed.

12/2/2025
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

a. The restrained person personally attended the hearing. No other proof of service is needed.

b. 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.