



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

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Title	Agenda Item Type
Criminal Procedure: Firearms Relinquishment	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve form CR-210	January 1, 2018
Recommended by	Date of Report
Criminal Law Advisory Committee	August 30, 2017
Hon. Tricia A. Bigelow, Chair	Contact
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### Executive Summary

The Criminal Law Advisory Committee recommends that the Judicial Council approve optional form CR-210, *Prohibited Persons Relinquishment Form Findings*. Form CR-210 is a form that courts may use to make appropriate findings concerning firearms relinquishment in criminal cases under Penal Code section 29810, which was amended by Proposition 63.

### Recommendation

The committee recommends that the Judicial Council, effective January 1, 2018, approve optional form CR-210. The new form is attached at page 5.

### Previous Council Action

The Judicial Council has taken no previous action.

## **Rationale for Recommendation**

On November 8, 2016, the people of California voted to enact “The Safety for All Act of 2016” (“Proposition 63”). Effective January 1, 2018, courts are required to provide defendants subject to firearms and ammunition prohibitions upon conviction with a new Prohibited Persons Relinquishment Form (PPRF). Penal Code section 29810, subdivision (a)(2) directs the California Department of Justice to develop the form, and subdivisions (c)(1) and (c)(2) direct county probation departments to (1) investigate through credible information whether the defendant owns any firearms, (2) receive the PPRF from the defendant, and (3) report the defendant’s compliance with relinquishment procedures to the court. Defendants subject to the requirements must relinquish their firearms, through named designees, within five days of conviction if they are not in custody and within 14 days of conviction if they are in custody. Courts may either shorten or lengthen those time periods for good cause and allow an alternative method of relinquishment.

Prior to the final disposition or sentencing in the case, the court is required to make specific findings as to (1) whether the probation officer’s report indicates that the defendant has relinquished all of his or her firearms, and (2) whether the court has received a completed PPRF along with itemized receipts detailing who took possession of the relinquished firearms. Further, if the court finds probable cause to believe that the defendant has failed to comply with the relinquishment requirements, the court must order the search for and removal of the firearms at any location the judge has probable cause to believe the defendant’s firearms are located.

The number of potential cases subject to the procedures under Penal Code section 29810 is significant, considering that it is applicable to all felonies and over 40 misdemeanors. The requirements of section 29810 will impose significant workload burdens on the courts. The optional form is intended to mitigate this burden by providing courts with a form to streamline the process.

## **Comments, Alternatives Considered, and Policy Implications**

This proposal circulated for public comment from April 21 to May 31, during the spring 2017 invitation-to-comment cycle. Five comments were submitted in response to the invitation to comment; one agreed with the proposal and four agreed with the proposal if modified. The committee revised the proposed form in response to the comments. The committee’s specific responses to each comment are available in the attached comment chart at pages 6–42. The main substantive comments and the committee’s response are discussed below.

### ***Search for and removal of defendant’s firearms***

The proposed form that circulated for public comment incorporated a space for judicial findings related to Penal Code section 29810(c)(4), which states:

“If the court finds probable cause that the defendant has failed to relinquish any firearms as required, the court shall order the search for and removal of any firearms at any

location where the judge has probable cause to believe the defendant's firearms are located. The court shall state with specificity the reasons for and scope of the search and seizure authorized by the order.”

Accordingly, the proposed form listed the following:

4. The court finds probable cause that the defendant has failed to relinquish all firearms ☐ Yes ☐ No
- a. Probable cause obtained from:
- ☐ Probation Officer's report ☐ Statements made in open court
- ☐ Other:
5. The court finds probable cause for the search for and removal of defendant's firearms.
- a. Type of firearm, if known:
- b. Location and scope:
- c. Probable cause obtained from:
- ☐ Probation Officer's report ☐ Statements made in open court
- ☐ Other:
6. Search required, pursuant to a term or condition of probation ☐ Yes ☐ No
7. Search warrant required; matter referred to the prosecuting agency of the county for appropriate action ☐ Yes ☐ No

Two commenters suggested that the proposed form was unclear and confusing as to the processes related to the search for and removal of defendant's non-relinquished firearms. One commenter thought the proposed form created unnecessary procedures, while the other thought the form needed additional information to be consistent with constitutional requirements for searches and seizures.

In response, the committee recommends revising the proposed form to take out items 4 through 6, but to keep item 7 (“Search warrant required; matter referred to the prosecuting agency of the county for appropriate action.”) because it reflects the proper procedures for the application of a search warrant. These revisions are reflected in proposed form CR-210 on page 5.

## **Implementation Requirements, Costs, and Operational Impacts**

The proposed form is optional, so expected costs are limited to the production of new forms. Regardless of whether the form is used, implementing Proposition 63 may require additional judicial training and education, and case management system updates.

## **Attachments and Links**

1. Form CR-210, at page 5
2. Chart of comments, at pages 6–42

3. Penal Code section 29810, effective January 1, 2018,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=29810.&lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=29810.&lawCode=PEN)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY  DRAFT  NOT APPROVED BY JUDICIAL COUNCIL
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
<b>PROHIBITED PERSONS RELINQUISHMENT FORM FINDINGS</b> (Pen. Code, § 29810(c))	CASE NUMBER:
	FOR COURT USE ONLY  Date: Time: Department:

The defendant is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall relinquish all firearms pursuant to Penal Code section 29810.

**The court finds as follows:**

**Compliance:**

1. ☐ Defendant has completed a Prohibited Persons Relinquishment Form; and
2. ☐ Defendant relinquished all firearms per the probation officer's report and provided relinquishment receipts; or
3. ☐ Defendant was allowed an alternative method of relinquishment under Penal Code section 29810(f) and relinquished all firearms under an alternative method; or
4. ☐ Defendant has no reportable firearms per the probation officer's report.

**Non - Compliance:**

5. ☐ Defendant has not completed a Prohibited Persons Relinquishment Form.
6. ☐ Defendant has not complied with the relinquishment requirements of Penal Code section 29810.
7. ☐ Search warrant required; matter referred to the prosecuting agency of the county for appropriate action.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE OF JUDICIAL OFFICER)

**SPR17-03****Criminal Procedure: Firearms Relinquishment**

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Hon. Jeff Finigan Judge Superior Court of California, County of San Mateo	AM	Paragraphs 6 and 7 are unclear. What do those paragraphs mean and under what circumstances would they be utilized? There is no language in the statute regarding a search pursuant to a probationary condition. Likewise, there is no language in the statute requiring inclusion of a prosecuting agency or going through the search warrant process. These paragraphs, especially #7, will potentially create confusion and build in unnecessary procedures.	The committee agrees in part and has revised proposed form CR-210 to take out #4 - #6 regarding probable cause findings and a search pursuant to a term or condition of probation. The committee declines to take out #7, "Search warrant required; matter referred to the prosecuting agency of the county for appropriate action," because it reflects the proper procedures for the application of a search warrant.
2.	National Rifle Association and California Rifle & Pistol Association By: Joseph A. Silvoso, III Attorney, Michel & Associates, P.C.	AM	The process of fine-tuning this form is important for the courts and the California public. Pivotal to this process is the recognition of the common goal to clarify the firearm relinquishment process for courts and defendants convicted of a firearm-prohibiting offense. Significantly, many Californians unwittingly get in trouble for possessing firearms simply because they do not know that the law forbids such possession or that avenues exist for them to lawfully surrender the firearms at issue. The confusion caused by California's firearms law is well established, and it is not surprising that the average citizen often cannot determine how to comply with the law. Former Attorney General Dan Lungren compared the complexity of California's firearm laws to the state's convoluted tax laws and bemoaned how "civilian gun owners do not have corporate compliance counsel standing by to advise them on how to comply with California gun laws[.]" and former Governor Arnold Schwarzenegger also acknowledged the general confusion surrounding California's "lengthy and complex area of firearm laws." <sup>1</sup>	No response required.

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### Criminal Procedure: Firearms Relinquishment

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			<p><sup>1</sup> Letter from Arnold Schwarzenegger, Governor of California, to the Members of the California State Senate (Sept. 20, 2004), <i>available at</i> <a href="ftp://leginfo.public.ca.gov/pub/03-04/billlsen/sbl_101-1150/sb_i140_vt_20040920.html">ftp://leginfo.public.ca.gov/pub/03-04/billlsen/sbl_101-1150/sb_i140_vt_20040920.html</a></p> <p>As a result, Californians depend even more on the court to obtain notice of their firearm rights and accompanying legal obligations. Quite often, these obligations are unknown or misunderstood by trial counsel. So the court is obligated to inform the defendants why they are prohibited from possessing firearms and what they must do to relinquish their firearms. On top of that, the California Department of Justice's ("DOJ") "Armed and Prohibited Persons Section" is actively seeking those who have prohibiting convictions and still have firearms registered in their name.<sup>2</sup> Many times, the trial court's advisement is all that stands between these defendants and an inadvertent violation of the statutes barring the possession of firearms and ammunition by prohibited persons. Thus, it is crucial that Proposed Form CR-210 adequately delineates, for both the trial court and the prohibited person, how firearm relinquishment operates under the new version of Penal Code section 29810 implemented by Proposition 63.</p> <p><sup>2</sup> A description of what the Armed and Prohibited Person Section does may be found in DOJ's yearly report to the</p>	<p>The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.</p>

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### Criminal Procedure: Firearms Relinquishment

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			<p>legislature, <i>available at</i> <a href="https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/armed-prohib-person-system-2016.pdf">https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/armed-prohib-person-system-2016.pdf</a></p> <p><b>I. LEGAL BACKGROUND</b></p> <p>Californians voted to pass Proposition 63 (the Safety for All Act) on November 8, 2016. Under Proposition 63, any person who has been convicted of an offense listed in Penal Code section 29800 or 29805 must use a Prohibited Person Relinquishment form (“PRRF”) to identify a designee<sup>3</sup> to dispose of his or her firearms<sup>4</sup> in one of the following three ways:</p> <p>(1) Surrender the firearms to the control of a local law enforcement agency,<sup>5</sup></p> <p>(2) Sell the firearms to a licensed firearms dealer, or</p> <p>(3) Transfer the firearm to a licensed firearms dealer for storage for the pendency of the prohibition.<sup>6</sup></p> <p><sup>3</sup> “The designee shall be either a local law enforcement agency or a consenting third party who is not prohibited from possessing firearms under state or federal law.” Pen. Code, § 29810(a)(3) (effective Jan. 1, 2018).</p> <p><sup>4</sup> “Any firearms that would otherwise be</p>	No response required.



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	Commenter	Position	Comment	Committee Response
			<p>subject to relinquishment by a defendant under this section, but which are lawfully owned by a cohabitant of the defendant, shall be exempt from relinquishment, provided the defendant is notified that the cohabitant must store the firearm in accordance with [Penal Code] Section 25135.” Pen. Code, § 29810(h) (effective Jan. 1, 2018).</p> <p><sup>5</sup> Beginning January 1, 2018, law enforcement can destroy, sell, retain, or transfer any firearm that was thusly relinquished to the agency thirty-days after the person relinquished the firearm. Pen. Code, § 29810 (i) (effective Jan. 1, 2018). However, the firearm cannot be destroyed, sold, retained, or transferred if:</p> <ul style="list-style-type: none"> <li>(1) The judge of record or district attorney of the county certifies that the retention of the firearm is necessary or proper to the ends of justice; or</li> <li>(2) The defendant provides written notice of an intent to appeal his or her conviction for an offense listed in Penal Code section 29800 or 29805; or</li> <li>(3) If the AFS indicates that the firearm was reported lost or stolen by the lawful owner.</li> </ul>	

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Commenter	Position	Comment	Committee Response
		<p><i>Id.</i></p> <p><sup>6</sup> Pen. Code, § 29810(a)(1), (a)(3)(effective Jan. 1, 2018). CALIFORNIA ATTORNEY GENERAL, FULL TEXT OF PROPOSITION 63, <i>available at</i> <a href="http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf">http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf</a> (last visited May 19, 2017).</p> <p>However, “[f]or good cause, the court may . . . allow an alternative method of relinquishment.”<sup>7</sup> For example, the court has discretion to allow the defendant to transfer his or her firearms to a family member instead of a licensed firearms dealer if good cause is shown for doing so.</p> <p><sup>7</sup> Pen. Code, § 29810(f) (effective Jan. 1, 2018) (emphasis added).</p> <p>Regardless of which method of relinquishment is chosen, the designee must accomplish the necessary relinquishment within five days following the defendant’s conviction if the defendant is out of custody, and the designee must obtain the resulting receipt from the local law enforcement agency or firearms dealer that documents the relinquishment and describes the firearms relinquished.<sup>8</sup> This five-day window is extended to fourteen days if the defendant is in custody at any point within the five days following the conviction.<sup>9</sup> Further, “[f]or good cause, the court may shorten or enlarge the [5-day or 14-day]time periods specified [above].”<sup>10</sup></p>	

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			<p><sup>8</sup> Pen. Code, § 29810(d) (effective Jan. 1, 2018).</p> <p><sup>9</sup> Pen. Code, § 29810(e) (effective Jan. 1, 2018). However, “[i]f the defendant is released from custody during the 14 days following conviction and a designee has not yet taken temporary possession of each firearm to be relinquished as described above, the defendant shall, within five days following his or her release, relinquish each firearm required to be relinquished[.]” Pen. Code, § 29810(e)4) (effective Jan. 1, 2018).</p> <p><sup>10</sup> Pen. Code, § 29810(f) (effective Jan. 1, 2018) (emphasis added).</p> <p>Upon the defendant's conviction, the court must also “<i>immediately</i> assign the matter to a probation officer who will investigate whether the Automated Firearm System [AFS] or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under his or her custody or control any firearms.”<sup>11</sup> Also, the court must properly educate the defendant on the requirement to surrender his or her firearms:</p> <p>“The court <i>shall</i>, upon conviction of a defendant for an offense [listed in Penal Code section 29800 or section</p>	

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			<p>29805], <i>instruct</i> the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines[.]”<sup>12</sup></p> <p><sup>11</sup> Pen. Code, § 29810(c)(1) (effective Jan. 1, 2018) (emphasis added).</p> <p><sup>12</sup> Pen. Code, § 29810(a)(2) (effective Jan. 1, 2018) (emphasis added).</p> <p>And the court must provide the defendant with the PRRF (to be developed by DOJ) and inform the defendant that his or her designee must submit the PRRF to the assigned probation officer, along with the necessary receipt(s), within the five- or fourteen-day window described above.<sup>13</sup></p> <p><sup>13</sup> Pen. Code, § 29810(a)(2), (b)(7) (effective Jan. 1, 2018).</p> <p>These deadlines apply even if the defendant does not have any firearms or ammunition to relinquish; the defendant must still submit the PRRF to the probation officer under these deadlines and shall include a statement on the PRRF affirming that he or she has no firearms to be relinquished.<sup>14</sup> Failing to timely file the completed PRRF with the probation officer is an infraction, punishable by a fine not exceed one hundred dollars.<sup>15</sup></p>	

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			<p><sup>14</sup> Pen. Code, § 29810(d)(3), (e)(3) (effective Jan. 1, 2018).</p> <p><sup>15</sup> Pen. Code, § 29810(c)(5) (effective Jan. 1, 2018).</p> <p>Once the probation officer receives the PRRF from the defendant, or from the defendant's designee, the probation officer must review it, investigate whether the defendant still possesses any firearms, and update the AFS once the firearms have been relinquished.<sup>16</sup> This probation officer must then,</p> <p>[p]rior to final disposition or sentencing in the case, ... report to the court whether the defendant has properly [met the deadline to submit the PRRF and] . . . relinquish[ed] all firearms identified by the probation officer's investigation or declared by the defendant on the [PRRF][.]<sup>17</sup></p> <p><sup>16</sup> See Pen. Code, § 29810(c)(1) (effective Jan. 1, 2018).</p> <p><sup>17</sup> Pen. Code, § 29810(c)(2) (effective Jan. 1, 2018).</p> <p>Next, the court must make a finding prior to the final disposition or sentencing of the case as to (1) whether the probation officer's report indicates that the firearms were properly relinquished, "and [(2)] whether the court has received a completed Prohibited Persons Relinquishment Form, along with the (corresponding) receipts [.]"<sup>18</sup> "The court shall ensure that these findings are included in the</p>	

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### Criminal Procedure: Firearms Relinquishment

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	Commenter	Position	Comment	Committee Response
			<p>abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within 14 days of sentencing.”<sup>19</sup> <i>But, “[f]or good cause, the court may shorten or enlarge the time perio[d]”</i> for making this finding.<sup>20</sup></p> <p><sup>18</sup> Pen. Code, § 29810(c)(3) (effective Jan. 1, 2018). “The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within 14 days of sentencing.” <i>Id.</i></p> <p><sup>19</sup> Pen. Code, § 29810(c)(3) (effective Jan. 1, 2018).</p> <p><sup>20</sup> Pen. Code, § 29810(t) (effective Jan. 1, 2018) (emphasis added).</p> <p>In the event that the court finds <i>probable cause</i> that the defendant has failed to relinquish any firearms as required, the court shall <i>order the search for and removal of any firearms</i> at any location where the judge has probable cause to believe the defendant's firearms are located. The court <i>shall state with specificity the reasons for and scope of the search and seizure</i> authorized by the order.<sup>21</sup></p> <p><sup>21</sup> Pen. Code, § 29810(c)(4) (effective Jan. 1, 2018) (emphasis added).</p> <p>On the other hand, if the court finds that “the firearms are relinquished as required[,]” the</p>	

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### Criminal Procedure: Firearms Relinquishment

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	Commenter	Position	Comment	Committee Response
			<p>defendant shall be afforded immunity: he or she “shall not be subject to prosecution for unlawful possession of any firearms declared on the [PRRF]” (e.g., an unregistered “assault weapon”).<sup>22</sup></p> <p><sup>22</sup> Pen. Code, § 29810(0) (effective Jan. 1, 2018).</p> <p>In light of all these new provisions of Penal Code section 29810 taking effect on January 1, 2018, the Judicial Council's Criminal Law Advisory Committee proposed the optional CR-210 Form “for courts to use to make appropriate findings concerning firearms relinquishment in criminal cases under Penal Code section 29810.”<sup>23</sup> This is done [t]o implement relevant parts of Proposition 63.”<sup>24</sup> As part of the implementation process, the Judicial Council solicited public comment concerning the Proposed Form CR-210. Specifically, the Judicial Council requests the public's comments “on the proposal as a whole” and on the issue of whether “the proposal appropriately addresses the stated purpose [.]”<sup>25</sup> We answer this call to comment by addressing whether Proposed Form CR-210 adequately reflects the requirements of Penal Code section 29810 that take effect in 2018.</p> <p><sup>23</sup>Judicial Council of California, <i>Invitation to Comment, SP17-03</i>, page 1 (2017). <sup>24</sup>Judicial Council of California, <i>Invitation to Comment, SP17-03</i>, page 1 (2017).</p>	

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			<p><sup>25</sup>Judicial Council of California, <i>Invitation to Comment</i>, SP17-03, page 3 (2017).</p> <p><b>II. COMMENTARY IN RESPONSE TO PROPOSED FORM CR-210</b></p> <p>The apparent purpose of Proposed Form CR-210 is to help trial courts “to make appropriate findings concerning firearms relinquishment in criminal cases <i>under Penal Code section 29810</i>. ”<sup>26</sup> But the current draft of the CR-210 form appears to limit itself to a few select provisions of Penal Code section 29810 and not the entirety of the section's requirements. As set forth below, our hope is that the form will be used to provide the court and the defendant a script and checklist to follow to make sure all of the requirements of section 29810 are followed, thus preventing unnecessary future prosecutions for offenses listed under Penal Code sections 29800 and 29805 (prohibited person in possession of a firearm).</p> <p><sup>26</sup> Judicial Council of California, <i>Invitation to Comment</i>, SP17-03, page 1 (2017) (emphasis added).</p> <p>Including the directives of Penal Code section 29810 on Proposed Form CR-210 would not only help ensure that courts satisfy their statutory duties, but it would also prevent defendants from inadvertently violating Penal Code section 29810 (and potentially sections 29800 or 29805) out of simple ignorance. It bears repeating that, due to the widespread confusion caused by California’s</p>	<p>The committee declines to extend the scope of the proposed form to provide the court and defendant with a script and checklist outlining all requirements under Penal Code section 29810. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.</p>



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### Criminal Procedure: Firearms Relinquishment

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			<p>firearms law and lack of guidance, it is essential for trial courts to provide defendants with the necessary instruction regarding firearms relinquishment when the evidence shows that the defendant has a conviction listed under sections 29800 or 29805.</p> <p><b>A. Proposed Form CR-210 Does Not Currently Address the Requirements of Penal Code Section 29810 Mandating the Court to Instruct the Defendant on the Firearm Surrender Process</b></p> <p>Proposition 63 requires courts to “instruct the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines[.]”<sup>27</sup></p> <p><sup>27</sup> Pen. Code, § 29810(a)(2) (effective Jan. 1, 2018) (emphasis added).</p> <p>Thus, Proposed Form CR-210 should facilitate the courts’ mandatory efforts to instruct the defendant, walking him or her through all the requirements of firearms relinquishment under Proposition 63. This is what the law requires. We recommend that Proposed Form CR-210 should include language from Penal Code section 29810 outlining the obligations of the defendant and the probation department:</p> <p>The court shall advise the defendant follows:</p> <p><i>YOU ARE CONVICTED OF AN OFFENSE THAT PROHIBITS YOU FROM OWNING,</i></p>	<p>The committee declines to extend the scope of the proposed form to include a further advisement on the firearm relinquishment process. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.</p>

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	Commenter	Position	Comment	Committee Response
			<p><i>PURCHASING, RECIEIVING, POSSESSING, OR HAVING UNDER YOUR CONTOL, ANY FIEARMS, AMMUNITON, AND AMMUNITION FEEDING DEVICES, INCLUDING BUT NOT LIMITED TO MAGAZINES.</i></p> <p><i>I HAVE INSTRUCTED MY CLERK TO PROVIDE YOU WITH THE PROHIBITED PERSONS RELINQUISHMENT FORM.</i></p> <p><i>YOU ARE HEREBY ORDERED TO RELINQUISH FIREARMS AND AMMUNITION BY EITHER SURRENDERING THEM TO A LOCAL LAW ENFORCEMENT AGENCY, SELLING THE FIREARMS TO A LICENSED FIREARM DEALER, OR STORING THEM WITH A LICENSED FIREARM DEALER.</i></p> <p><i>[THE COURT MAY, IF GOOD CAUSE EXISTS, ALLOW THE DEFENDANT IMPLEMENT AN ALTERNATE METHOD OF RELINQUISHMENT. THIS CAN INCLUDE, BUT IS NOT LIMITED TO, SELLING THE FIREARMS ON CONSIGNMENT, TRANSFERRING THE FIREARMS BY LAWFUL MEANS TO A FRIEND OR FAMILY MEMBER, ETC.]</i></p> <p><i>I FURTHER REFER THIS MATTER TO THE PROBATION DEPARTMENT AND ORDER THE PROBATION DEPARTMENT TO ASSIGN AN OFFICER TO OVERSEE THIS MATTER.</i></p>	

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#### Criminal Procedure: Firearms Relinquishment

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	Commenter	Position	Comment	Committee Response
			<p><i>USING THE PROHIBITED PERSONS RELINQUISHMENT FORM YOU SHALL GRANT A NON-PROHIBITED PERSON OR MEMBER OF LAW ENFORCEMENT THE POWER OF ATTORNEY TO DISPOSE OF YOUR FIREARMS AND AMMUNITION IN ONE OF THE WAYS I HAVE MENTIONED BEFORE.</i></p> <p><i>THE PERSON YOU DESIGNATE TO DO THIS SHALL OBTAIN RECEIPTS OR OTHER PROOFS OF COMPLIANCE FOR YOUR FIREARMS' RELINQUISHMENT AND PROVIDE THAT INFORMATION TO THE PROBATION DEPARTMENT, <u>OR</u></i></p> <p><i>IF YOU DO NOT HAVE FIREARMS OR AMMUNITION TO RELINQUISH YOU SHALL PROVIDE THE SIGNED PROHIBITED PERSONS RELINQUISHMENT FORM TO THE PROBATION DEPARTMENT, MAKING SURE TO INCLUDE A STATEMENT AFFIRMING THAT YOU HAVE NO FIREARMS TO BE RELINQUISHED.</i></p> <p><i>IF YOU PROPERLY RELINQUISH ALL OF THE FIREARMS YOU REPORTED ON YOUR PROHIBITED PERSONS RELINQUISHMENT FORM CALIFORNIA LAW PROVIDES IMMUNITY FROM PROSECUTION FOR ILLEGALLY POSSESSING ANY OF THESE FIREARMS. HOWEVER, IF YOU HAVE ANY QUESTIONS CONCERNING YOUR IMMUNITY, YOU ARE STRONGLY ADVISED TO TALK TO YOUR COUNSEL.</i></p> <p><i>YOU AND YOUR DESIGNEE ARE REQUIRED TO</i></p>	

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	Commenter	Position	Comment	Committee Response
			<p><i>COMPLETE THIS PROCESS NO LATER THAN [(5-DAYS IF DEFENDANT IS OUT OF CUSTODY; 14-DAYS IF DEFENDANT IS IN CUSTODY CURRENTLY OR WILL BE WITHIN THE NEXT 5 DAYS. THE COURT MAY, WITH GOOD CAUSE, ENLARGE/SHORTEN THESE DEADLINES. IF GOOD CAUSE IS SHOWN, STATE THE GOOD CAUSE WITH THE DEADLINE OUTSIDE THE STATUTORY REQUIREMENTS)]</i></p> <p><i>FAILURE TO COMPLY WITH THE DEADLINE CAN RESULT IN A VIOLATION OF CALIFORNIA LAW FOR AN INFRACTION PUNISHABLE BY A FINE NOT TO EXCEED \$100.</i></p> <p>It is important for Proposed Form CR-210 to lay out in as much detail as possible what the courts and defendants must do to comply with Penal Code section 29810, particularly the 5-day or 14-day deadlines involved. This will serve to provide defendants with notice of their rights and what they must do so that effective compliance with Penal Code section 29810 may be ensured.</p> <p>Along these lines, it would be beneficial for Proposed Form CR-210 to also list out the circumstances under which the Section 29810 firearms relinquishment is required. Penal Code section 29810 states that such relinquishment is required “[upon conviction of any offense that renders a person subject to Section 29800 or Section 29805,<sup>28</sup> but few judges have memorized the long list of offenses encapsulated by those two sections. Therefore, Proposed form CR-210 should list out</p>	<p>The committee declines to extend the scope of the proposed form to include all offenses under Section 29800 or Section 29805. The form is intended to address the findings required by the court under Penal Code section 29810(c). The committee may consider developing resources for judicial education regarding relevant offenses.</p>

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			<p>the specific offenses at issue.</p> <p><sup>28</sup> Pen. Code, § 29810(a)(1) (effective Jan. 1, 2018.)</p> <p>And, to effectively dispel potential confusion as to whether a certain offense requires the firearm relinquishment at issue, Proposed Form CR-210 should cross-reference the comprehensive sentencing guidelines entitled <i>California Judges' Benchguide 74: Sentencing Guidelines for Common Misdemeanors and Infractions</i><sup>29</sup> and any other information source published by the Judicial Council.</p> <p><sup>29</sup> Judicial Council of California, Operations and Programs Division, <i>California Judges' Benchguide 74: Sentencing Guidelines for Common Misdemeanors and Infractions</i> (2017), available at <a href="http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/bg074_2017pt.pdf">http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/bg074_2017pt.pdf</a>.</p> <p><b>B. Proposed Form CR-210 Can More Appropriately Address the Stated Purpose If It Addresses the Court's Statutory Duty Under Penal Code Section 29810, Subdivision (c)(2) to Assign the Matter to a Probation Officer</b></p> <p>As it did with subdivision (a), Proposed Form CR-210 does not address the court's requirement located in subdivision (c) (2) of Penal Code section 29810: to "<i>immediately</i> assign the matter to a probation</p>	<p>The committee declines to extend the scope of the proposed form to include cross-references to <i>California Judges' Benchguide 74: Sentencing Guidelines for Common Misdemeanors and Infractions</i> and other Judicial Council references. The committee may consider developing resources for judicial education that refer to relevant references.</p> <p>The committee declines to extend the scope of this proposal to develop a supplementary form or other form for a court to assign a case to probation and make other related</p>

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			<p>officer [.]”<sup>30</sup> This assignment is a conspicuous prerequisite to all the other provisions currently stated on Proposed Form CR-210, and its omission may harm all parties involved. Hence, it is important that Penal Code section 29820, subdivision (c) (2) also be reflected on Proposed form CR-210.</p> <p><sup>30</sup> Pen. Code, § 29810(c)(1) (effective Jan. 1, 2018) (emphasis added).</p> <p>Correspondingly, Proposed Form CR-210 should address <i>how</i> a judge is to assign the matter to a probation officer in a way that furthers the purpose of Penal Code section 29810. It seems like the most obvious solution is for the Judicial Council to develop a supplementary form that not only indicates the assignment, but also indicates what the court wants the probation officer to do as is required of him or her by Penal Code section 29810. Without such a supplementary form, or other form of clear instruction from the court, there would be no coordination between the court and the probation department. The purpose of Penal Code section 29810 would therefore be foiled. Thus, we recommend that Proposed Form CR-210 should include an order for the probation department along the lines of:</p> <p><i>The department of probation upon receipt of the Prohibited Person Relinquishment form (“PRRF”) from the defendant due on or before [(DATE)] is ORDERED to prepare a report due [(DATE)] detailing and/or including the following:</i></p>	<p>orders. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.</p>

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	Commenter	Position	Comment	Committee Response
			<ol style="list-style-type: none"><li>1. <i>Confirmation that the defendant complied with the requirements for firearm disposal detailed in Penal Code section 29810(a)(2) or via “an alternative method of relinquishment” as specified by this court;</i><sup>31</sup></li><li>2. <i>The results of its investigation into the California Automated Firearm System, or of other credible information (e.g., a police report), regarding whether the defendant owns, possesses, or has under his or her custody or control any firearms;</i><sup>32</sup></li><li>3. <i>The department's findings as to whether it received the PRRF within the timeframe specified above and whether the defendant relinquished all firearms and ammunition he or she owns, possesses, or has under his or her custody (or whether the defendant simply has no firearms or ammunition to relinquish);</i></li><li>4. <i>(In the event that the department determines that the PRRF was not received within the specified timeframe) The department may issue a <u>citation</u>, alleging the defendant violated the requirements described in Penal Code section 29810, subdivision (c)(5), and requiring the defendant to attend court for the determination of the fine corresponding to the infraction.</i></li></ol>	

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			<p>5. <i>(In the event that the department determines the information provided by the defendant to be faulty or incomplete) A <b>sworn affidavit</b> detailing the reasons why the department believes that relinquishment is faulty or incomplete, the location(s) where the department believes firearms or ammunition will be located, the items to be seized, and all the evidence supporting these findings; and</i></p> <p>6. <i>The department's report shall also include the PRRF, receipt(s), and/or other documentation reflecting proper surrender of the firearms and/or ammunition (if applicable).</i></p> <p><sup>31</sup> Pen. Code, § 29810(f) (effective Jan. 1, 2018) (emphasis added). <sup>32</sup> Pen. Code, § 29810(c)(1) (effective Jan. 1, 2018) (emphasis added).</p> <p>Without such a supplementary form, the probation officer might not furnish the court with sufficient information to help the court “to make appropriate findings concerning firearms relinquishment in criminal cases under Penal Code section 29810[,]” especially when it comes to the probable cause finding.<sup>33</sup> Or, due to a lack of communication, the probation officer might delay in submitting the necessary information and, in turn, cause the court to improperly delay in making its findings. Thus, to guarantee that the requirements of Penal Code</p>	



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			<p>section 29810 are followed, Proposed Form CR-210 should make reference to the probation department's report and include all of the information outlined above.</p> <p><sup>33</sup>Judicial Council of California, <i>Invitation to Comment</i>, SP17-03, page 1 (2017).</p> <p><b>C. Proposed Form CR-210 Can Better Address the Stated Purpose If It Addresses the Court's Statutory Duty Under Penal Code Section 29810, Subdivision (c)(3) to Make Its Findings and Enter Them in the Abstract of Judgment</b></p> <p>If the Probation Department and the court determine that the defendant complied with the requirements of section 29810, as mentioned on the Proposed Form CR-210, the court is required to make sure those findings are recorded in the abstract of judgment. That order is lacking from the current version of Proposed Form CR-210. To better assist the court in meeting its statutory requirements, proposed Form CR-210 should have an order for the judge to check stating the following:</p> <ul style="list-style-type: none"><li>○ <i>Based on the information provided by the Probation Department, the court finds that the defendant appears to have met the relevant statutory requirements pursuant to Penal Code section 29810. The clerk is ordered to record this finding in the abstract of judgment.</i></li></ul> <p><b>D. Proposed Form CR-210 Can More</b></p>	<p>The committee declines the suggestion to revise the form to include language ordering the clerk to record findings in the abstract of judgment. It is unclear whether the legislation is referring specifically to prison abstracts of judgment, which would only apply in certain relevant cases, or using 'abstract of judgment' to refer to minute orders, which are generally used in all relevant cases.</p>

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			<p><b>Appropriately Address the Stated Purpose If It Addresses the Constitutional Requirements Governing the Court's Probable Cause Findings and Orders for Searches</b></p> <p>Inherent in Penal Code section 29810, subdivision (c)(4) is the requirement that the court abide by all constitutional procedures and protections in making its probable cause findings and orders for searches against a defendant. At all times, the court must keep in mind that “[i]n general a home may not be searched without a warrant notwithstanding probable cause.”<sup>34</sup> And when it comes to search warrants,</p> <p>[t]he Fourth Amendment to the United States Constitution provides simply that “... no Warrants shall issue, but upon probable cause, <i>supported by Oath or affirmation</i>, and particularly describing the place to be searched, and the persons or things to be seized.” Article I, section 1[3], of the California Constitution contains substantially identical language.”<sup>35</sup></p> <p>...</p> <p>Penal Code section 1525 restates the substance of the constitutional requirement: “A search warrant cannot be issued but upon probable cause, <i>supported by affidavit</i>.” Originally, the written affidavit was a mandatory requirement, but in 1970 the Legislature enacted Penal Code section 1526, subdivision (b), and provision is now made for</p>	

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			<p>the alternative by a sworn oral statement.<sup>36</sup></p> <p><sup>34</sup> <i>People v. Ramey</i>, 16 Cal.3d 263, 273 (1976) (internal citations and quotation marks omitted).</p> <p><sup>35</sup> <i>People v. Meza</i>, 162 Cal.App.3d 25, 34-35 (1984) (emphasis added) (internal citations and quotation marks omitted).</p> <p><sup>36</sup> <i>People v. Meza</i>, 162 Cal.App.3d 25, 35 (1984) (emphasis added) (internal citations and quotation marks omitted).</p> <p>Yet, despite these requirements, Proposed Form CR-210 currently allows the court to make its probable cause findings based simply on the “Probation Officer’s report” or “Statements made in open court.” Unless the Judicial Council requires the Probation Officer’s Report to include an affidavit, as discussed in Section II.B, <i>supra</i>, no affidavit exists for the court to base its probable cause findings. And Proposed Form CR-210 currently guides judges into thinking that they can base their probable cause findings on any statements made in open court, as opposed to a sworn oral statement made during court. All of this can be easily remedied, though.</p> <p>Moreover, Proposed Form CR-210 should probably remind judges that due process requires them to certify the transcription of the sworn oral statements if they are to base their probable cause findings on such statements:</p> <p>Regarding the constitutional due process</p>	<p>The committee agrees in part and has revised proposed form CR-210 to take out #4 - #6 regarding probable cause findings and a search pursuant to a term or condition of probation. The committee declines to take out #7, “Search warrant required; matter referred to the prosecuting agency of the county for appropriate action,” because it reflects the proper procedures for the application of a search warrant.</p> <p>The committee declines to extend the scope of the proposed form to include an advisement to judges to certify the transcription of sworn oral statements. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial</p>

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Commenter	Position	Comment	Committee Response
		<p>rights of defendant, the certification requirement has a two-fold purpose: to provide (1) defendant with an accurate transcription of the oral statement so appropriate challenges to its legal sufficiency might be made and (2) the reviewing court with an accurate record of the factual information considered by the magistrate in making the probable cause determination, without which meaningful review would be foreclosed. (See <i>Dunn v. Municipal Court, supra</i>, 220 Cal.App.2d 858, 873, 34 Cal Rptr. 251; compare <i>Kaylor v. Superior Court</i> (1980) 108 Cal.App.3d 451, 457, 166 Cal.Rptr. 598 [where the magistrate admitted he did not examine the entire affidavit which included a 155-page addendum, the appellate court could not conduct a meaningful review because of the uncertainty as to what the magistrate relied on in making the probable cause determination].)<sup>37</sup></p> <p><sup>37</sup> <i>People v. Meza</i>, 162 Cal.App.3d 25, 35 (1984).</p> <p>Therefore, we respectfully urge the Judicial Council to amend Proposed Form CR-210 so that it reflects the existence of the affidavit, sworn oral statement, and/or certified transcription that are constitutionally required for a probable cause finding.</p> <p>In addition, it is currently unclear what Proposed</p>	<p>education regarding other subdivisions of section 29810.</p> <p>The committee agrees in part and has revised proposed form CR-210 to take out #4 - #6 regarding probable cause findings and a search pursuant to a term or condition of probation. The committee declines to take out #7, "Search warrant required; matter referred to the prosecuting agency of the county for appropriate action," because it</p>

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			<p>Form CR-210 means by the statement “Search warrant required; matter referred to the prosecuting agency of the county for appropriate action.” Does this mean that the court has already issued the search warrant and is referring the matter to the prosecuting agency for the execution of the search warrant? Or does it mean that the court has not issued the search warrant yet and is referring the matter to the prosecuting agency so that the prosecuting agency can apply for the warrant and then have a law enforcement agency execute it? And why is the court referring the matter to “the prosecuting agency” (presumably the District Attorney’s Office), as opposed to local law enforcement, when a search warrant is “directed to a peace officer”<sup>38</sup> rather than to the prosecutor? We ask the Judicial Council to clarify these questions on Proposed Form CR-210.</p> <p><sup>38</sup> Pen. Code, §§ 1523, 1528(a).</p> <p>In doing so, the Judicial Council should also keep in mind who the <i>applicant</i> of the search warrant is and ensure that the court is not violating the separation of powers by acting as both the applicant and the adjudicator for the search warrant’s issuance. Both the law and common sense require that the magistrate issuing the search warrant be a neutral, independent entity that is separate from the applicant seeking the search warrant’s issuance.<sup>39</sup> The applicant arguing that probable cause exists must necessarily be distinguished from the adjudicator who will ultimately decide whether probable cause exists.</p>	<p>reflects the proper procedures for the application of a search warrant.</p> <p>The committee has revised proposed form</p>

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			<p>Therefore, the court cannot unilaterally issue a search warrant in the absence of another entity's application for a search warrant. Proposed form CR-210 should either state that the court is referring the matter to the county's law enforcement agency for it to apply for a search warrant, or that the court is construing the probation officer as the applicant of the search warrant and is directing a law enforcement agency to serve and execute the warrant.</p> <p><sup>39</sup> See Pen. Code, §§ 1525 (showing that an "application" need to be made in order for the search warrant to issue"), 1526 (stating that the magistrate "may examine on oath the person seeking the warrant," thereby implying that the magistrate and the warrant's applicant cannot be the same person).</p> <p>Lastly, Proposed Form CR-210 should remind the court to instruct the defendant about his or her rights to a hearing on the propriety of the search and seizure. "Due process of law entitles the claimant of seized property to an early court hearing to determine whether the articles were subject to seizure."<sup>40</sup> "[E]ven where summary action is justified, due process still requires a reasonably prompt hearing to test the probable merit of the government's case."<sup>41</sup> Ideally, for the sake of efficiency, this hearing should be scheduled before the court makes its finding of probable cause. That way, the court can take into consideration the defendant's explanations as to the whereabouts of</p>	<p>CR-210 to take out #4 - #6 regarding probable cause findings and a search pursuant to a term or condition of probation. The committee declines to take out #7, "Search warrant required; matter referred to the prosecuting agency of the county for appropriate action," because it reflects the proper procedures for the application of a search warrant.</p> <p>The committee declines to extend the scope of the proposed form to provide the court with an instruction to defendant about rights to a hearing on the propriety of a search and seizure. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.</p>

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		<p>the firearms. If that scheduling cannot be feasibly accomplished, then the hearing needs to be held as soon as possible after the court makes its probable cause finding.</p> <p><sup>40</sup> <i>Williams v. Justice Court, Oroville Judicial Dist., Butte County</i> (1964) 230 Cal.App.2d 87, 98.</p> <p><sup>41</sup> <i>O'Connell v. City of Stockton</i> (2005) 128 Cal.App.4th 831, <i>as modified on denial of reh'g</i> (May 23, 2005), <i>review granted and opinion superseded</i> (Cal. 2005) 34 Cal.Rptr.3d 190, <i>and aff'd</i> (2007) 41 Cal.4th 1061.</p> <p><b>E. Proposed Form CR-210 Can Better Address the Stated Purpose if It References the Infraction and Fine Stated in Penal Code Section 29810, Subdivision (c)(5)</b></p> <p>If the defendant fails to submit his or her PRRF in a timely manner to the assigned probation officer, Penal Code section 29810, subdivision (c)(5) requires the government to penalize such delay by (1) charging the defendant with an infraction and (2) requesting the defendant to pay a fine not exceeding \$100. As can be seen, Proposition 63 carved a specific and important role for subdivision (c)(5) in effectuating the firearms relinquishment under Penal Code section 29810. Subdivision (c)(5) cannot be ignored. And it requires findings that only the court can make, namely the specific amount of the fine. Resultantly, it is necessary for Proposed form CR-</p>	<p>The committee declines the suggestion because the infraction would be subject to a separate adjudication. Further, the form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.</p>

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			<p>210 to acknowledge subdivision (c)(5). In addition, because the separation of powers prevents the court from filing criminal charges against the defendant, Proposed Form CR-210 must also include a provision stating that the probation department is making the citation for the infraction (see corresponding proposal in Section 11.B, <i>supra</i>, regarding the citation for the probation department to make) or that the court is referring the matter to the county's prosecuting agency for it to file the criminal charge pertinent to the infraction stated in subdivision (c)(5). As a result, we propose that Form CR-2 10 should include a section stating something like:</p> <p><i>The court finds as follows:</i></p> <ul style="list-style-type: none"><li>○ <i>The defendant has timely filed the completed Prohibited Persons Relinquishment Form with the assigned probation officer</i><ul style="list-style-type: none"><li>○ <i>Yes</i></li><li>○ <i>No. Accordingly:</i></li></ul></li><li><i>i. [The probation department has cited defendant with an infraction pursuant to Penal Code § 29210(c)(5) and required the defendant to attend court for the imposition of the corresponding fine] OR [the court refers the matter to the prosecuting agency of the county for the filing of a criminal charge pursuant to Penal Code § 29810(c)(5)]</i></li><li><i>ii. (if proceeding via the citation from the probation department) The court has</i></li></ul>	



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			<p><i>considered the aforesaid citation from the probation department and finds the defendant guilty of an infraction pursuant to Penal Code §29810(c)(5).</i></p> <p><i>iii. (if proceeding via the citation from the probation department) The defendant shall be punished by a fine in the amount of _____ (not exceeding \$100)</i></p> <p><b>F. Proposed Form CR-210 Does Not Appropriately Address the Stated Purpose Because It Does Not Address the Court's Discretion Under Penal Code Section 29810, Subdivision (f) to Allow an Alternative Method of Relinquishment</b></p> <p>Subdivision (f) allows the court to set an alternative method of firearm disposition if the defendant shows that good cause exists to allow for the alternative method that is not currently named in Penal Code section 29810.</p> <p>There is no reason why Proposed Form CR-210 should not include the court's finding of good cause pursuant to Penal Code section 29810, subdivision (f). Such findings can dramatically change the process of the firearm relinquishment under Proposition 63, so it is important that they be documented. Documentation would also ensure that the defendant receive proper notice of the pivotal changes and that the court is aware of its actions and discretion.</p>	<p>The committee accepts the suggestion and will include a checkbox in the form.</p>

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			<p><b>III. ADDITIONAL ISSUES TO BRING TO THE JUDICIAL COUNCIL'S AWARENESS</b></p> <p><b>A. There May Be Fifth Amendment Concerns if the Defendant Is Compelled to Provide Information About Firearms</b></p> <p>The Judicial Council may want to consider advising judges to tread softly or hold additional hearings when it comes to requiring the defendants to divulge information about the whereabouts and history of their firearms. Otherwise, courts may violate the defendants' Fifth Amendment rights.</p> <p>"The Fifth Amendment states that '[n]o person ... shall be compelled in any criminal case to be a witness against himself. To qualify for the Fifth Amendment privilege, a communication must be testimonial, incriminating, and compelled.'"<sup>42</sup></p> <p><sup>42</sup> <i>People v. Kurtenbach</i>, 204 Cal.App.4th 1264, 1283-84 (2012) (internal citation and quotation marks omitted).</p> <p>There are many instances during a firearms relinquishment process where Fifth Amendment rights may be implicated. For example, if a judge requires a defendant to give specific details as to whom he transferred his firearms to and why he did not have a licensed firearms dealer ("FFL") conduct the transfer according to California law, then the judge would be forcing the defendant to admit that he had not complied with the applicable provisions</p>	<p>The committee declines this comment because it is outside the scope of this proposal.</p>

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			<p>of the Penal Code requiring an FFL for private party transfers. Because this non-compliance is a crime, this means that the court would be compelling the defendant to be a witness against himself, contrary to the provision of the Fifth Amendment.<sup>43</sup></p> <p>Importantly, Section 29810 provides immunity for possession only. The section provides no immunity from prosecution if the firearms that the defendant declares are illegally stolen, have obliterated serial numbers, or were used in a crime. Hence, defendants have a right to remain silent so as not to be forced to testify and subject themselves to prosecution pursuant to those circumstances.</p> <p><sup>43</sup> See U.S.C.A. Const. Amend. 5; <i>see, e.g., Russell v. United States</i>, 306 F.2d 402 (9th Cir. 1962).</p> <p>What this means is that judges should, at the very least, be advised that a defendant may assert his or her Fifth Amendment right to <i>refuse</i></p> <p>to declare any firearms that he or she owned, possessed, or had under his or her custody or control at the time of his or her conviction ... to describe the firearms and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement officials to locate the firearms.<sup>44</sup></p> <p><sup>44</sup> Pen. Code, § 29810(b)(3) (effective Jan. 1, 2018).</p>	<p>The committee declines this comment because it is outside the scope of this proposal.</p>

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			<p>And judges should take care not to infringe upon those rights during the process of firearms surrender under Proposition 63.</p> <p><b>B. The Judicial Council May Not Want to Wait Passively for the California Department of Justice to Develop the PRRF</b></p> <p>DOJ's current budget and staffing concerns seem rather crippling. For instance, DOJ has ignored its statutory duties since September 18, 2014 to adopt the regulations needed to implement Assembly Bill ("AB") 2220 (allowing for the acquisition and possession of firearms by "private patrol operators").<sup>45</sup> DOJ has delayed in promulgating the "assault weapon" registration regulations required by AB 1135 and Senate Bill ("SB") 880 that should have been implemented early this year (and absolutely need to be implemented by January 1, 2018). Moreover, DOJ has failed to develop the ammunition vendor regulations required by Proposition 63 and AB 1235 that need to be in place by July 1, 2017.</p> <p><sup>45</sup> DOJ has yet to provide the critical information or regulations needed for the full implementation of AB 2220 (Chapter 423, Statutes of 2014). Among other things, AB 2220 added section 28012 to the Penal Code, thereby allowing private patrol operators (i.e., security guard</p>	<p>No response required.</p>

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			<p>companies) to register firearms with DOJ and to assign the firearms to their security guard employees.</p> <p>There is no guarantee that DOJ will prioritize its duty to develop the PRRF ahead of all of these other duties. There is also no indication that DOJ will acquire additional staff and resources in order to increase its work output. Therefore, California may encounter a substantial delay when waiting for DOJ to finally publish an approved PRRF. In turn, this would prevent the courts from implementing the firearm relinquishment process that needs to be in place by January 1, 2018. This is a highly undesirable result for everyone involved.</p> <p>As a result, perhaps the Judicial Council might want to consider contacting DOJ (if it hasn't already) to prompt DOJ to develop the PRRF. We feel that such prodding by the Judicial Council will carry more weight than if it came from anyone else, as few organizations and entities have the Judicial Council's reputation and stature. It would be a shame for all of the Judicial Council's careful and timely work to go to waste simply because DOJ has persisted in its pattern of delay.</p>	
3.	Superior Court of California, County of Los Angeles	AM	<p>Add New Item 6 "The defendant has <b>NOT</b> complied with the relinquishment requirements of PC 29810."</p> <p>New Items 7 and 8 would be the same as old items 4</p>	The committee accepts the suggestion in part and will include a 'compliance' section and a 'non-compliance' section.

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			<p>and 5 except for the checkbox before each. Items 6 and 7 would become 9 and 10.</p> <p><b>Example</b>  <b>The court finds as follows:</b>            1. Defendant has completed a Prohibited Persons Relinquishment Form <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. The defendant has reportable firearms per the Probation Officer's report <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Compliance</b>            3. <input type="checkbox"/> The defendant has relinquished all firearms and provided relinquishment receipts per Probation Officer's report.</p> <p>4. <input type="checkbox"/> The defendant has no reportable firearms per the Probation Officer's report.</p> <p>5. <input type="checkbox"/> The defendant has complied with the relinquishment requirements per PC 29810.</p> <p><b>Non-Compliance</b>            6. <input type="checkbox"/> The defendant has <b>NOT</b> complied with the relinquishment requirements of PC 29810.</p> <p>7. <input type="checkbox"/> The court finds probable cause that the defendant has failed to relinquish all firearms.            a. Probable cause obtained from:  <input type="checkbox"/> Probation Officer's report <input type="checkbox"/> Statements made in open court  <input type="checkbox"/> Other:</p> <p>8. <input type="checkbox"/> The court finds probable cause for the search</p>	

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	Commenter	Position	Comment	Committee Response
			<p>for and removal of defendant's firearms.</p> <p>a. Type of firearm, if known:</p> <p>b. Location and scope:</p> <p>c. Probable cause obtained from:</p> <p><input type="checkbox"/> Probation Officer's report <input type="checkbox"/> Statements made in open court <input type="checkbox"/> Other:</p> <p>9. Search required, pursuant to a term or condition of probation. <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>10. Search warrant required; matter referred to the prosecuting agency of the county for appropriate action. <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Does the proposal appropriately address the stated purpose?</b></p> <p>Yes. Please see the suggested modifications above.</p> <p><b>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. Judicial and staff training.</b></p> <p>Implementation would require new CMS codes to track events.</p> <p><b>Would three months from Judicial Council approval of this proposal until its effective date</b></p>	<p>No response required.</p> <p>No response required.</p>

**SPR17-03****Criminal Procedure: Firearms Relinquishment**

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	Commenter	Position	Comment	Committee Response
			<p><b>provide sufficient time for implementation?</b></p> <p>Yes.</p> <p><b>How well would this proposal work in courts of different sizes?</b></p> <p>This proposal works well in courts of different sizes.</p>	<p>No response required.</p> <p>No response required.</p>
4.	<p>Superior Court of California, County of Orange</p> <p>By: Lupe Chaidez</p> <p>Operations Analyst</p>	A	<p><b>Does the proposal appropriately address the stated purpose?</b></p> <p>Unknown</p> <p><b>Would the proposal provide cost savings?</b></p> <p>No</p> <p><b>What would the implementation requirements be for the courts?</b></p> <p>Training for judicial officers and staff, costs related to copying and stocking the form; docket code creation/implementation; imaging costs; modification of procedures; other unanticipated issues.</p> <p><b>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></p> <p>Yes</p> <p><b>How well would this proposal work in courts of</b></p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>



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	Commenter	Position	Comment	Committee Response
			<p><b>different sizes?</b></p> <p>Unknown; however for large courts the completion and filing of an optional form for cases including a firearms prohibition would increase our workload tremendously.</p>	No response required.
5.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	AM	<p><b>Does the proposal appropriately address the stated purpose?</b></p> <p>Yes</p> <p><b>Would the proposal provide cost savings? If so, please quantify.</b></p> <p>No</p> <p><b>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.</b></p> <p>CRC's would need to be trained to include as an attachment to the minutes.</p> <p><b>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></p> <p>Yes</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

### SPR17-03

#### Criminal Procedure: Firearms Relinquishment

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	Commenter	Position	Comment	Committee Response
			<b>How well would this proposal work in courts of different sizes?</b>  Fine. Larger courts may choose to include necessary findings language on minute orders so as to not process additional papers, including stamping the judge's line stamp and making copies. Form may need to be in triplicate NCR to give parties a copy.	The committee declines the suggestion to provide the forms in triplicate because parties may be given a copy, if requested, through other means.