



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 14, 2019

Title

Judicial Council–Sponsored Legislation:
Temporary Emergency Gun Violence
Restraining Order

Rules, Forms, Standards, or Statutes Affected
Amend Pen. Code, § 18140

Recommended by

Policy Coordination and Liaison Committee
Hon. Marla O. Anderson, Chair
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type

Action Required

Effective Date

November 14, 2019

Date of Report

October 22, 2019

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Executive Summary

The Policy Coordination and Liaison Committee and Civil and Small Claims Advisory Committee, at the suggestion of several courts, recommend that the Judicial Council sponsor legislation amending Penal Code section 18140 to add a time frame of as soon as practicable but not later than three court days after issuance for a law enforcement officer to file a copy of a temporary emergency gun violence restraining order with the court. This change will ensure that the court receives the emergency order with sufficient time to set and notice a hearing within 21 days, as required by newly enacted Penal Code section 18148.

Recommendation

The Policy Coordination and Liaison Committee and Civil and Small Claims Advisory Committee recommend that the council sponsor legislation to amend Penal Code section 18140, effective January 1, 2021, to add a time frame of as soon as practicable but not later than three

court days after issuance for a law enforcement officer to file a copy of a temporary emergency gun violence restraining order with the court.

The text of the proposed amendment to the statute is attached at page 6.

Relevant Previous Council Action

Gun violence restraining orders (GVROs) were created by statute in California in 2014,¹ effective January 2016. The Judicial Council has previously sponsored legislation to amend the procedure for obtaining emergency GVROs by replacing the requirement for compliance with procedures for the issuance of search warrants under Penal Code section 1526, when these orders are “obtained orally,” with the requirement that the law enforcement officer memorialize and sign an affidavit under oath reciting the oral statements provided to the judicial officer. This law, Assembly Bill 2526 (Stats. 2018, ch. 873), went into effect January 1, 2019.

The council has not taken any previous legislative action regarding this specific Penal Code section. The council has adopted and amended several Judicial Council forms to implement the gun violence prevention emergency protective order hearing requirement mandated by Senate Bill 1200 (Stats. 2018, ch. 898), which amended this Penal Code section effective January 1, 2019. Effective January 1, 2019, the council revised forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, and GV-800-INFO. These revisions were made to (1) correct the forms to refer to these protective orders as gun violence restraining orders; (2) include in the definition of ammunition, a magazine; (3) change the forms to include information about no filing fee for GVRO forms and documents; (4) include instructions to law enforcement officers to make a specific request when serving a GVRO; (5) include that parties do not need to pay the sheriff for service of a GVRO; and (6) implement the bill requirement that the court hold a hearing within 21 days of issuing an emergency protective order to determine if a restraining order after notice and hearing should be issued.

Analysis/Rationale

SB 1200 adds section 18148 to the Penal Code, which mandates that following the issuance of an emergency GVRO, the court is required to hold a hearing within 21 days to determine if a year-long emergency GVRO should be issued. Generally, emergency GVROs are issued orally by a judicial officer, upon telephonic application of a law enforcement officer who completes the *Gun*

¹ Assem. Bill 1014 (Stats. 2014, ch. 872).

Violence Emergency Protective Order (form EPO-002) in the field.² These orders last for 21 days and, until the enactment of SB 1200 (see Link A), did not trigger a hearing of any kind.³

Current law requires that the emergency GVRO be filed with the court “as soon as practicable after issuance” of the order, with no set time frame included in the statute.⁴ That provision was not amended when SB 1200 added the new post-emergency GVRO hearing requirement. To implement the new hearing requirement, several new and revised Judicial Council forms have been developed. When these forms were circulated for public comment, several commenters, including the Superior Courts of Orange and Los Angeles Counties and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, suggested that a legislative amendment was needed to establish a more workable process for triggering the time frame for the new hearing. The commenters proposed establishing a set deadline by which the law enforcement officer issuing the GVRO must file the order with the court. The commenters noted that, because the issuance (not the filing) of the emergency GVRO triggers the 21-day period in which the new post-emergency GVRO hearing must be held, the period could run without the court having adequate time to set and provide timely notice of a hearing to the restrained party. The advisory committees agreed with the commenters and propose that the council sponsor such legislation.

Policy implications

This legislative proposal would require law enforcement to file the emergency GVRO (form EPO-002) with the court not later than three court days after issuance. Doing so would ensure that the court has notice of the emergency GVRO with sufficient time to schedule a hearing within the statutory 21-day time frame, provide notice of the hearing to the restrained party and to law enforcement, and receive and review any opposition from the restrained party, should the party wish to file it. Although some courts have processes in place that allow the judicial officer issuing the emergency GVRO to provide a hearing date—which can be included on form EPO-002—at the time of issuance, many courts do not; they set the hearing date and mail out notice only after the form has been filed with the court. This proposal is needed to ensure uniformity within different law enforcement jurisdictions and that all law enforcement agencies timely file the emergency GVRO.

Comments

The proposal circulated for public comment from April 11 to June 7, 2019. The Civil and Small Claims Advisory Committee received comments from four entities, including three courts: the Superior Courts of Los Angeles, Orange, and San Diego Counties. Comments were also received from the Orange County Bar Association. The comments are set out in full on the attached

² Pen. Code, §§ 18140, 18145.

³ Previously, a hearing for determining whether a year-long protective order should be issued was held only after a separate petition was filed and notice served on the restrained party. (See Pen. Code, § 18170 et seq.)

⁴ Pen. Code, § 18140(c).

comments chart at pages 7–10, along with responses from the Civil and Small Claims Advisory Committee.

The original language that was circulated for comment was “within three court days.” The Superior Court of San Diego County proposed the following underlined change so Penal Code section 18140(c) would read: “File a copy of the order with the court as soon as practicable after issuance, but within not later than three court days.” The committee approved this suggestion because it provides precise language and embodies the intent of the committee. This change did not require the proposal be circulated again because the change is not substantive and does not change the intent of the legislation.

Several commenters addressed whether there should be a consequence for untimely filing or missing the filing completely. The Superior Court of Los Angeles County asked, “What happens if the law enforcement officer misses the three-day deadline?” And the Superior Court of Orange County requested clarification on how the courts should proceed when form EPO-002 is not submitted timely, or not submitted at all. The committee considered the comment but decided that since the original statute did not include any penalty for not filing the order in a timely manner, the committee should not propose adding one in this proposed amendment. Though there is no penalty or other enforcement mechanism, the committee believes the existence of a deadline will lead to better compliance.

Alternatives considered

The Civil and Small Claims Advisory Committee considered maintaining the status quo but concluded—particularly in light of information that some law enforcement agencies file emergency GVROs in batches and may take as long as a week before filing the forms with the courts—that the deadline in the proposed legislation would assist courts in timely considering these orders.

The committee also considered alternative time frames, either to require that form EPO-002 be filed within one court day of issuance, or to require that the form be filed at the same time that the law enforcement agency enters proof of service of the order into the California Restraining and Protective Order System (CARPOS).⁵ The committee thought that one court day might not be enough time to transmit the order to the courts. It also noted that different jurisdictions handle entry into CARPOS and transmission to the courts in different ways, so tying the two processes together would not necessarily make sense. Ultimately, the committee decided to circulate the three-day time frame for public comment to receive input on whether this proposed time frame best meets the needs of law enforcement, the courts, and the public.

⁵ Penal Code section 18115 requires that proof of service of all gun violence restraining orders be transmitted to CARPOS within one business day of service. CARPOS is a database of restraining orders in the California Law Enforcement Telecommunications System.

Fiscal and Operational Impacts

The largest impact of this proposal will fall on law enforcement, which, to comply with the time frame, may need to change practices and procedures, reassign job duties, and engage in training of relevant staff. The major fiscal and operational impacts to the courts result from new Penal Code section 18148, which requires the courts to hold and provide notice for a hearing within 21 days of the issuance of an emergency GVRO. The intent of this proposal is to lessen this burden somewhat by ensuring that courts have as much time as possible to comply with this new statutory requirement.

Attachments and Links

1. Pen. Code, § 18140, at page 6
2. Chart of comments, at pages 7–10
3. Link A: Sen. Bill 1200 (Stats. 2018, ch. 898)
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1200

Penal Code section 18140 would be amended, effective January 1, 2021, to read:

1 **§ 18140**

2
3 A law enforcement officer who requests a temporary emergency gun violence restraining order
4 shall do all of the following:

5
6 (a) If the request is made orally, sign a declaration under penalty of perjury reciting the oral
7 statements provided to the judicial officer and memorialize the order of the court on the form
8 approved by the Judicial Council.

9
10 (b) Serve the order on the restrained person, if the restrained person can reasonably be located.

11
12 (c) File a copy of the order with the court as soon as practicable after issuance, but not later than
13 three court days.

14
15 (d) Have the order entered into the computer database system for protective and restraining
16 orders maintained by the Department of Justice.

LEG19-03

Judicial Council–Sponsored Legislation: Temporary Emergency Gun Violence Restraining Order (Amend Penal Code section 18140)

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

	Commenter	Position	Comment	Committee Responses
1.	Orange County Bar Association By Deirdre Kelly, President	A	The Orange County Bar Association agrees with the proposals indicated above.	The committee appreciates the OBCA’s review and approval of the proposed legislation.
2.	Superior Court of California, County of Los Angeles	AM	<p>Proposed Modifications: This would facilitate preparation by the court for the mandatory hearing 21 days after issuance, but the proposal should address what happens if the Law Enforcement Officer misses the three-day deadline.</p> <p>We suggest tying the 21-day hearing to the date of physical filing of the Emergency Gun Violence Restraining Order by the law enforcement officer.</p> <p>Request for Specific Comments: Does the proposal appropriately address the stated purpose? The advisory committee also seeks comments from courts on the following cost and implementation matters: ·Would the proposal provide cost savings? If so, please quantify.</p> <p>Yes, this proposal addresses the stated purpose.</p>	<p>The committee considered the comment, but decided that since the original statute did not include any penalty for not filing the order in a timely manner, the committee should not propose adding one in this proposed amendment. Though there is no penalty or other enforcement mechanism, the committee believes the existence of a deadline will lead to better compliance.</p> <p>The committee considered this option and determined that there needs to be control over when the filing occurs because it must be within a short timeframe to meet the 21-day statutory hearing requirement.</p> <p>No response required.</p>
3.	Superior Court of California, County of Orange Training & Analyst Group (TAG) By Sean E. Lillywhite	NI	While we would generally agree that we need to provide some time for officers to file documents, the overall 21-day time frame makes it difficult in practice. Due to realities like weekend EPO	The committee appreciates the feedback on the implementation challenges of the underlying statute.

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

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	Administrative Analyst/Officer		<p>issuances and holidays, in worst case scenarios clerks may be unable to schedule a hearing until almost a week later. Department calendar availabilities can be challenging on short notice and we still need to account for the time to notice the hearing to relevant parties via US Postal Service. For some of our justice agencies who chose to be represented in these cases, that gives them almost no time to prepare for the hearing. While we do feel that it is overly burdensome, realities make a shorter 1-day timeframe almost necessary in our opinion.</p> <p>Finally, clarification is needed on how the courts should proceed when form EPO-002 is not submitted timely or not at all.</p> <hr/> <p>Thank you for the opportunity to augment our comments. After consulting with the leadership team, our response is the following: We are not in favor of extending the protective order for failure to file form EPO-002 timely without additional safe guards in place. In general, we feel like there should be more clarity as to what circumstances GVROs should be extended or expired. For example, automatic denial of a year-long GVRO, if EPO-002 is not submitted timely. We do feel law enforcement has other options if they do not submit timely, like filing the traditional GV-100 petition.</p> <p>While slightly out of scope of this invitation, if the petitioning party asks for a continuance at the 21-</p>	<p>The committee considered the suggestion of changing the proposed legislation from 3 court days to 1 day for law enforcement to transmit the order to the court. The committee feels that 1 day is too short of a time frame for some law enforcement agencies and would be unduly burdensome. The committee hopes that by placing a time frame on the notice to the court that is reasonable, that law enforcement agencies will comply quickly. Those that can provide notice immediately will do so.</p> <p>See answer above to the Los Angeles Superior Court.</p> <p>This comment is outside of the scope of this proposal, but this comment will be moved to</p>

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	Commenter	Position	Comment	Committee Responses
			day hearing, under what circumstances should courts grant them. Should they have to convince the court again that there is an immediate danger that requires extending the EPO past the 21 days? What if there were issues with service of either the EPO or the hearing? Our judicial officer for these hearings has special concerns because the protective orders deny a constitutionally protected right and feels the bar for denying those rights further should be high.	proposal SPR19-37 and discussed by the committee within the scope of that proposal.
4.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer Central Courthouse	AM	<p>1. Does the proposal appropriately address the stated purpose? Yes.</p> <p>2. Would the proposal provide cost savings? If so, please quantify. No.</p> <p>3. What would the implementation requirements for the revised forms 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? Implementation would require minor updates to internal procedures.</p> <p>4. How well would this proposal work in courts of different sizes? It appears that the proposal would work for courts of all sizes.</p>	<p>The committee thanks the Superior Court of San Diego County for its comments.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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

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			<p>GENERAL COMMENTS:</p> <p>Propose that Penal Code §18140(c) read as follows: File a copy of the order with the court as soon as practicable after issuance, but not later than three court days.</p> <p>*Note the original comment was to amend the language to “no later than three court days,” but San Diego later amended their suggested language to be, “not later than three court days.”</p>	<p>Thank you for your thoughtful comments. The current proposed language is: File a copy of the order with the court as soon as practicable after issuance, <u>but within three court days</u>. The committee has discussed your suggested language and will adopt this suggestion.</p>

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