



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-090

For business meeting on May 21, 2021

Title

Rules and Forms: Technical Change to Gun Violence Emergency Protective Order

Agenda Item Type

Action Required

Effective Date

September 1, 2021

Rules, Forms, Standards, or Statutes Affected

Revise form EPO-002

Date of Report

March 23, 2021

Recommended by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Contact

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Executive Summary

Senate Bill 2617 (Stats. 2020; ch.286) amends the Penal Code to, among other things, further refine the time frame in which a law enforcement officer who requests a temporary emergency gun violence restraining order must file that order with the court. This proposal is to conform the language on the gun violence emergency protective order form with the amended language in the statute.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective September 1, 2021, revise *Gun Violence Emergency Protective Order* (form EPO-002) to add the language from Senate Bill 2617 to the form.

The revised form is attached at pages 3–4.

Relevant Previous Council Action

The Judicial Council in 2020 sponsored legislation to amend Penal Code section 18140 to amend the time frame in which a law enforcement officer must file with the court a copy of a temporary

emergency gun violence restraining order, amending it from “as soon as practicable” to “as soon as practicable but not later than three court days after issuance.” The proposed legislation was enacted in Senate Bill 2617.

Analysis/Rationale

Currently, the *Gun Violence Emergency Protective Order* (form EPO-002) contains an instruction to law enforcement, that include the statement that a copy of the form must be filed with the court “as soon as practicable after issuance” so a hearing can be set if one was not already scheduled.” The statement in the revised form conforms to the statute, by changing this to the phrase “as soon as practicable but not later than three court days after issuance.” The revised instruction conforms to the mandate in Penal Code section 18140.

Policy implications

There are no policy implications to this proposal. It is required in order for the form to comply with the new statutory provision.

Comments

This proposal was not circulated for public comment because the change is minor and noncontroversial, and is therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of the form, and for law enforcement agencies that produce hard copies. Because the proposed revision is to conform to law, it is a necessary change.

Attachments and Links

1. Form EPO-002 at pages 3–4.
2. Link A: Senate Bill 2617 (Stats. 2020; ch. 286,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2617

EPO-002
GUN VIOLENCE EMERGENCY PROTECTIVE ORDER

LAW ENFORCEMENT CASE NUMBER:

1. **RESTRAINED PERSON** (insert name): _____
Address: _____

Sex: ☐ M ☐ F Ht.: _____ Wt.: _____ Hair color: _____
Eye color: _____ Race: _____ Age: _____ Date of birth: _____

2. **TO THE RESTRAINED PERSON**

(Also see important Warnings and Information on page 2):

You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

If you have any firearms, ammunition, and magazines, you MUST IMMEDIATELY SURRENDER THEM if asked by a police officer. If a police officer does not ask you to surrender any of the above, within 24 hours of getting this order, you must take them to a police station or a licensed gun dealer to sell or store them and must file a receipt with the court proving that this has been done. You have 48 hours to file a receipt with the court shown to the right. **If you do not file a receipt within 48 hours you have violated this order and can go to jail.**

3. **This order will last until:** _____ **Time** _____

INSERT DATE OF 21st CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)

4. **Court Hearing** ☐ A court hearing will be set within 21 days.

☐ A court hearing will take place at the court above on: Date: _____ Time/Dept: _____

You must go to the court hearing if you do not want this restraining order against you. At the hearing, the judge can make this order last for up to five years.

5. Reasonable grounds for the issuance of this order exist, and a Gun Violence Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, or magazines; **and** (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

6. Judicial officer (name): _____ granted this order on (date): _____ at (time): _____

APPLICATION

7. Officer has a reasonable cause to believe that the grounds set forth in item 5, above, exist (state supporting facts and dates; specify weapons—number, type and location):

8. ☐ Firearms were ☐ observed ☐ reported ☐ searched for ☐ seized.

☐ Ammunition (including magazines) was ☐ observed ☐ reported ☐ searched for ☐ seized.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: _____
(PRINT NAME OF LAW ENFORCEMENT OFFICER)

(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No: _____ Badge No: _____

Address: _____

PROOF OF SERVICE

9. I personally delivered copies of this Order to the restrained person name in item 1.

Date of service: _____ Time of service: _____ Address: _____

10. At the time of service, I was at least 18 years of age.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____
(TYPE OR PRINT NAME OF SERVER/LAW ENFORCEMENT OFFICER) (SIGNATURE OF SERVER)

Clerk stamps date here when form is filed.

DRAFT
Not approved by the
Judicial Council
03/08/2021

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

GUN VIOLENCE EMERGENCY PROTECTIVE ORDER WARNINGS AND INFORMATION

EPO-002

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm, ammunition, or a magazine. (Pen. Code, § 18125 et seq.) A violation of this order is a misdemeanor punishable by a \$1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.)

Within 24 hours of receipt of this order, you must turn in all firearms, ammunition, and magazines to a law enforcement agency or sell them to or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48-hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use Form GV-800, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored*.

This Gun Violence Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front. The court will hold a hearing within 21 days to determine if a longer-term order should be issued. If the date and time are not stated in item 4 on the front, you will get a notice with the date and time of the hearing in the mail at the residential address listed on page 1 of this form. If you would like to respond to this order in writing you must use Form GV-020, *Response to Gun Violence Emergency Protective Order*. A family member, employer, coworker, teacher, or school administrator may also seek a more permanent restraining order from the court.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for an additional five-year period, to begin on the expiration of the more permanent gun violence restraining order. (Pen. Code, § 18205.)

This protective order must be enforced by all law enforcement officers in the state of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

A LA PERSONA RESTRINGIDA: Tiene prohibido ser dueño de un arma de fuego, municiones o cargadores, o poseer, comprar, recibir, o tratar de comprar o recibir un arma de fuego, municiones o cargadores. (Código Penal, §§ 18125 y siguientes). Una violación de esta orden está sujeta a una multa de \$1000 o encarcelamiento de seis meses o ambos. (Código Penal, §§ 19 y 18205.)

Dentro de las 24 horas de recibir esta orden, tiene que entregar sus armas de fuego, municiones y cargadores a una agencia del orden público o venderlos a un comerciante de armas autorizado, o almacenarlos con el mismo hasta el vencimiento de esta orden. (Código Penal, §§ 18125 y siguientes). Se tiene que presentar a la corte una prueba de haberlos entregado, vendido, o almacenado dentro de las 48 horas de recibir esta orden. Se puede usar el formulario GV-800, *Prueba de entrega, venta o almacenamiento de armas de fuego, municiones y cargadores*, por este propósito.

Esta orden de protección de emergencia de armas de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 de la primera página. Se realizará una audiencia dentro de 21 días para determinar si es necesario emitir una orden que dure por más tiempo. Si la fecha y la hora no se indican en el punto 4 de la primera página, recibirá un aviso con la fecha y la hora de la audiencia por correo a la dirección residencial indicada en la primera página. Si desea responder a esta orden por escrito, tiene que usar el formulario GV-020, *Respuesta a la orden de protección de emergencia de armas de fuego*. Un miembro de su familia, su empleador, un colega del trabajo, un maestro o profesor, o administrador educativo también puede solicitar al tribunal una orden de restricción más permanente.

Si contraviene esta orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o tratar de comprar o recibir un arma de fuego, municiones o cargadores por otro periodo de cinco años más, comenzando a partir del vencimiento de la orden de restricción de armas de fuego más permanente. (Código Penal, § 18205.)

Todo agente del orden público del estado de California que tenga conocimiento de la orden o a quien se le muestre una copia de la misma deberá hacer cumplir esta orden de protección. Los términos y condiciones de esta orden se podrán hacer cumplir independientemente de las acciones de las partes; solo la corte podrá cambiar esta orden.

To law enforcement: The Gun Violence Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. Ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control. A copy must be filed with the court as soon as practicable, **but not later than three court days after issuance**, so a hearing can be set, if one was not already scheduled. If the court did not give you a hearing date when issuing the order (to put in item 4 on the front), the court will set a hearing within 21 days and will provide you with notice of the hearing. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

The provisions in this temporary Gun Violence Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.