



Judicial Council of California

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Subject Details (With Text)

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Title

Judicial Council-Sponsored Legislation: Temporary Emergency Gun Violence Restraining Orders (Action Required)

Summary

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to amend the statutes setting forth the procedure for issuing a temporary emergency gun violence restraining order, specifically Penal Code sections 18140 and 18145. The amendments would replace the procedural requirement for obtaining an order orally with requirements set forth directly within the gun violence prevention statutes, which would parallel the requirements for emergency orders obtained in domestic violence cases and clarify the procedures for law enforcement officers and the court to follow. This change, which was initiated as the result of concerns expressed by a judicial officer as to whether the current procedure complied with the statute, would not in any way change the factual assertions required of the officer or the findings required of the judicial officer for the order to issue.

Recommendation

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to:

1. Amend subdivision (a) of Penal Code section 18145 by switching the order of current paragraphs (1) and (2) to place *oral* issuance of emergency orders in the primary position with a written process authorized if time and circumstances permit.
2. Further amend subdivision (a) of Penal Code section 18145 to provide that a judicial officer may orally issue an emergency order based on the statements of a law enforcement officer in accordance with the amended subdivision (a) of Penal Code section 18140.
3. Amend subdivision (a) of Penal Code section 18140 to require that, if the emergency order is obtained orally, the law enforcement officer “sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer” on the Judicial Council form, as well as memorialize the order, as already required.

