



# Training Bulletin

SANTA BARBARA POLICE DEPARTMENT



Lori Luhnnow, Chief of Police

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## Firearms Emergency Protective Order

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### ISSUE:

On January 1<sup>st</sup>, 2016, the provisions of Assembly Bill 1014, pertaining to gun violence restraining orders took effect. This bill authorizes a court to issue a temporary emergency gun violence restraining order if a law enforcement officer asserts and a judicial officer finds that there is reasonable cause to believe that the subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent personal injury to himself, herself, or another, as specified.

### DISTRICT ATTORNEY RECOMMENDATION:

Based upon this new legislation, Officers wishing to seek a gun violence restraining order should do the following:

-Contact a judicial officer to determine if reasonable grounds for the issuance of the order exist. This can be done using the "on call" judge, in the same fashion as a traditional EPO.

If the order is granted, Officers must:

- (a) Memorialize the order of the court on the form approved by the Judicial Council (EPO-002 Form). The EPO-002 form can be found in the report form cabinet, located in the report writing room.
- (b) Serve the order on the restrained person, if the restrained person can reasonably be located.
- (c) File a copy of the order with the court as soon as practicable after issuance.
- (d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (Via Records).

**Officers should be mindful that absent consent or another lawful exception, a warrant will still be required to search a residence or other designated location for items to be seized per the EPO.**

Penal Code section 1524(a), pertaining to warrants, has recently been amended to include section (14):

*(14) The property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.*

**Assembly Bill #1014  
(Select Sections Summarized)**

**I. DIVISION 3.2. Gun Violence Restraining Orders**

**CHAPTER 1. General**

**18100.**

A gun violence restraining order is an order, in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. This division establishes a civil restraining order process to accomplish that purpose.

**CHAPTER 2. Temporary Emergency Gun Violence Restraining Order**

**18125.**

(a) A temporary emergency gun violence restraining order may be issued on an ex parte basis only if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following:

(1) The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm.

(2) A temporary emergency gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition.

(b) A temporary emergency gun violence restraining order issued pursuant to this chapter shall prohibit the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and shall expire 21 days from the date the order is issued.

**18130.**

A temporary emergency gun violence restraining order is valid only if it is issued by a judicial officer after making the findings required by Section 18125 and pursuant to a specific request by a law enforcement officer.

**CHAPTER 3. Ex Parte Gun Violence Restraining Order**

**18150.**

(a) (1) An immediate family member of a person or a law enforcement officer may file a petition requesting that the court issue an ex parte gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

(2) For purposes of this subdivision, "immediate family member" has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(b) A court may issue an ex parte gun violence restraining order if the petition, supported by an affidavit made in writing and signed by the petitioner under oath, or an oral statement taken pursuant to paragraph (2) of subdivision (a) of Section 18155, and any additional information provided to the court shows that there is a substantial likelihood that both of the following are true:

- (1) The subject of the petition poses a significant danger, in the near future, of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Section 18155.
- (2) An ex parte gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.
- (c) An affidavit supporting a petition for the issuance of an ex parte gun violence restraining order shall set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist.
- (d) An ex parte order under this chapter shall be issued or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

### Form (EPO-002)

**EPO-002**  
**FIREARMS EMERGENCY PROTECTIVE ORDER**

1. **RESTRAINED PERSON** (insert name of subject): \_\_\_\_\_  
 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 MUST NOT** own, possess, purchase, receive, or attempt to purchase or receive any firearm or ammunition. If you have any firearms or ammunition, you **MUST IMMEDIATELY SURRENDER THEM IN A SAFE MANNER TO LAW ENFORCEMENT ON REQUEST**. If no request has been made, you must surrender all firearms and ammunition in a safe manner to your local law enforcement agency or sell them to or store them with a licensed gun dealer within 24 hours of being served with this order. You must then file a receipt proving surrender, sale, or storage with the Court listed below within 48 hours, or if the court is closed, then on the next business day after the firearms are surrendered or sold. **FAILURE TO TIMELY FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**  
 (Name and address of court): \_\_\_\_\_

3. **THIS ORDER WILL EXPIRE ON:** \_\_\_\_\_ **TIME:** \_\_\_\_\_  
INSERT DATE OF 24th CALENDAR DAY  
 DO NOT COUNT DAY THE ORDER IS GRANTED

4. Reasonable grounds for the issuance of this Order exist, and a Firearms 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 a firearm; and (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

5. To the Restrained Person: This order will last until the expiration date and time noted above. You are required to surrender all firearms and ammunition 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, a firearm or ammunition while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek 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.

Judicial officer (name): \_\_\_\_\_ granted this Order on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

**APPLICATION**

6. Officer has a reasonable cause to believe that the grounds set forth in item 4, above, exist (state supporting facts and dates; specify weapons—number, type and location):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

7.  Firearms were  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.: \_\_\_\_\_

**PROOF OF SERVICE**

8. Person served (name): \_\_\_\_\_  
 9. I personally delivered copies of this Order to the person served as follows: Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Address: \_\_\_\_\_

10. At the time of service, I was at least 18 years of age.  I am a California law enforcement officer.  
 11. My name, address, and telephone number are (this does not have to be server's home telephone number or address):  
 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) \_\_\_\_\_ (SIGNATURE OF SERVER)

Judicial Council of California, www.courts.ca.gov Page 1 of 2  
 Rev. July 1, 2016, Mandatory Form  
 Penal Code, § 18120 et seq. **Firearms Emergency Protective Order (CLETS-EGV)**  
 ONE copy to court, ONE copy to restrained person, ONE copy to issuing agency

**FIREARMS 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 or ammunition. (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 your firearms 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 Turned In, Sold, or Stored* for this purpose.

This Firearms Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front.

A law enforcement officer or agency or a family member may 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 or ammunition 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, poseer, comprar o tratar de comprar, recibir o tratar de recibir u obtener un arma de alguna otra manera. (Código Penal, §§ 18125 y siguientes). Una violación de esta orden está sujeta a una multa de \$1000 y 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 a una agencia del orden público o venderlas a o guardarlas con un comerciante de armas autorizado hasta el vencimiento de esta orden. (Código Penal, §§ 18125 y siguientes). Dentro de las 48 horas de recibir esta orden, se tiene que presentar a la corte una prueba de haberlas entregado, vendido, o guardado. Se puede usar la forma GV-800 por este propósito.

Esta orden de protección de emergencia de arma de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 al otro lado.

Un agente o agencia del orden público o un familiar puede pedir que la corte emita una orden de restricción más permanente de la corte.

Si está en violación de este orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o intentar comprar o recibir un arma de fuego o municiones por otro periodo de cinco años más, a comenzar a partir del vencimiento de la orden de restricción actual de violencia con armas de fuego. (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 Firearms Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. A copy must be filed with the court as soon as practicable after issuance. 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 Firearms 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.

EPO-002 (Rev. July 1, 2016) **FIREARMS EMERGENCY PROTECTIVE ORDER (CLETS-EGV)** Page 2 of 2

For your protection and privacy, please press the Clear this Form button after you have printed the form.