

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

### SPR11-31

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Title	Action Requested
Criminal Procedure: Criminal Protective Orders	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CR-160, CR-161, CR-162, and CR-165	January 1, 2012
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro arturo.castro@jud.ca.gov 415-865-7702

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### Summary

The proposed revisions to *Criminal Protective Order—Domestic Violence* (CR-160), *Criminal Protective Order—Other Than Domestic Violence* (CR-161), *Order to Surrender Firearms in Domestic Violence Case* (CR-162), and *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)* (CR-165) are designed to update and improve the content and organization of the forms by adding advisements, emphasizing important orders and dates, deleting unnecessary information, and revising certain orders to conform to statutory requirements.

### Discussion

#### Background

The Criminal Law Advisory Committee developed the proposed revisions to the criminal protective order forms in conjunction with the Protective Order Working Group. The working group—which is composed of members from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, the Criminal Law Advisory Committee, and the Domestic Violence Practice and Procedure Task Force—was established to undertake a comprehensive review of all court protective orders.<sup>1</sup>

The proposed revisions are designed to enhance public safety, provide more specific termination information, eliminate confusion and misuse by courts and law enforcement, clarify certain

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<sup>1</sup> Proposed revisions to other subject matter protective orders—including civil harassment, elder abuse, workplace violence, domestic violence prevention, and juvenile law—are presented in separate invitations to comment proposed by the Civil and Small Claims and Family and Juvenile Law Advisory Committees.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

statutory requirements, and update and improve the overall content and organization of all criminal protective order forms.

### **All Criminal Protective Order Forms**

The proposal includes several notable revisions to *Criminal Protective Order—Domestic Violence* (form CR-160), *Criminal Protective Order—Other Than Domestic Violence* (form CR-161), and *Order to Surrender Firearms in Domestic Violence Case* (form CR-162).

First, to provide the parties and law enforcement with more specific information about when the orders expire, the proposal adds a bolded and separately boxed item that requires courts to specify the order’s expiration date, and deletes the following phrase from item 2: “If no date is listed, this order expires three years from the date of issuance.”

Second, to remove unnecessary content, the proposal deletes (1) the “CLETS Entry By” text box from the caption of the forms, (2) the “peace officer” data fields in the box under the caption used to describe the restrained person, and (3) the form distribution key at the bottom of the forms.

### **Forms CR-160 and CR-161**

The proposal also includes several notable revisions to forms CR-160 and CR-161.

First, to enhance public safety, the proposal adds a check box to notify law enforcement that the court has received information that the defendant may have access to a firearm. Second, to improve the ability of law enforcement to identify the protected persons, the proposal requires that the order include the gender and age of each protected person.

The proposal also adds permanently marked check boxes to certain mandatory orders on the forms to eliminate the possibility that the mandatory orders will be improperly deleted or modified, and to reduce confusion by law enforcement officials who misinterpret the absence of a check box to mean that the court did not make the mandatory orders.

In addition, the proposal clarifies that the restricted person may have peaceful contact with the protected persons for purposes of court-ordered visitation, not just for the safe exchange of children for court-ordered visitation as provided in the current form.

### **Notice of Termination**

The proposal also revises *Notice of Termination of Protective Order in Criminal Proceeding* (form CR-165) to delete the check boxes in the caption that are used to identify the type of order being terminated. The check boxes are unnecessary because the order being terminated is sufficiently identified in the body of the form.

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In addition, the proposal (1) revises the advisement at the top of the form to clarify that the order does not also terminate other court protective orders, (2) deletes the “Arresting Agency” text box in the caption, (3) deletes the unnecessary form distribution key at the bottom of the form, and (4) revises item 3 to conform with the requirements of Family Code section 6380(a) regarding how termination orders must be transmitted to the Department of Justice.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

FOR COURT USE ONLY

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Not Approved by the
Judicial Council

PEOPLE OF THE STATE OF CALIFORNIA

vs.

DEFENDANT:

CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE
(CLETS - CPO) (Pen. Code, §§ 136.2, 1203.097(a)(2), 273.5(i), and 646.9(k))

ORDER UNDER PENAL CODE SECTION 136.2 MODIFICATION

PROBATION CONDITION ORDER (Pen. Code, § 1203.097)

ORDER UNDER: PENAL CODE, § 273.5(i) PENAL CODE, § 646.9(k)

CASE NUMBER:

This Order May Take Precedence Over Other Conflicting Orders, See Item 1 on Page 2.

PERSON TO BE RESTRAINED (complete name):

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

1. This proceeding was heard on (date): at (time): in Dept.: Room:
by judicial officer (name):

2. Defendant was personally served with a copy of this order at the court hearing and no additional proof of service is required.

3. COMPLETE NAME, GENDER, AND AGE OF EACH PROTECTED PERSON:

4. For good cause shown, the court grants the protected persons named above the exclusive care, possession, and control of the following animals:

5. The court has information that the defendant owns or has a firearm or ammunition, or both.

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

6. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.

7. must turn over to local law enforcement or sell to a licensed gun dealer any firearm the defendant owns or controls within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order. The defendant must not own, have, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition.

8. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.

9. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. The court finds good cause not to make the order in item 9.

10. must have no personal, electronic, telephonic, or written contact with the protected persons named above.

11. must have no contact with the protected persons named above through a third party, except an attorney of record.

12. must not come within yards of the protected persons and animals named above.

13. may have peaceful contact with the protected persons, as an exception to the "no-contact" or "stay-away" provision in item 10, 11, or 12 of this order, only for the safe exchange of children and court-ordered visitation as stated in:

a. the Family, Juvenile, or Probate court order in case number: issued on (date):

b. any Family, Juvenile, or Probate court order issued after the date this order is signed.

14. must not take, transfer, sell, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals described in item 4.

15. The protected persons are allowed to record any prohibited communications made by the defendant.

16. Other orders including stay-away orders from specific locations:

17. This order ends on (specify date):

Date:

JUDICIAL OFFICER Department/Division:

## WARNINGS AND NOTICES

1. **PRECEDENCE OF ORDERS.** Except as provided in this paragraph, this order takes precedence over any conflicting protective order, visitation order, or any other court order if the protected person is a victim of domestic violence under Penal Code section 13700. However, this order does not take precedence if (1) there is a more restrictive *Emergency Protective Order* (form EPO-001) restraining and protecting the same parties as in this order, or (2) if box **a. or b. in item 13** has been checked on page 1 of this order. (Pen. Code, § 136.2(e)(2).)
2. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (1994).
3. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms and not own or possess any firearms during the period of the protective order. Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Pen. Code, § 136.2(d).)
4. **ENFORCING THIS ORDER IN CALIFORNIA**
  - This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
  - Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)
5. **CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).** This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.
6. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
  - These orders are effective as of the date they were **issued** by a judicial officer.
  - These orders **end** as explained in item **17** on the reverse.
  - Orders under Penal Code section 136.2 are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
  - Orders under Penal Code section 1203.097 are probationary orders and the court has jurisdiction as long as the defendant is on probation. (Pen. Code, § 1203.097(a)(2).)
  - Orders under Penal Code sections 273.5 and 646.9 are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, §§ 273.5(i) and 646.9(k).)
  - To terminate this protective order, use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding* (CLETS).
7. **CHILD CUSTODY AND VISITATION**
  - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
  - Unless box **b. in item 13** on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
  - If box **a. or b. in item 13** on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
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Judicial Council

PEOPLE OF THE STATE OF CALIFORNIA

vs.

DEFENDANT:

CRIMINAL PROTECTIVE ORDER—OTHER THAN DOMESTIC VIOLENCE
(CLETS - CPO) (Pen. Code, §§ 136.2 and 646.9(k))

- ORDER UNDER PENAL CODE SECTION 136.2
PROBATION CONDITION ORDER (Pen. Code, § 136.2)
ORDER UNDER PENAL CODE SECTION 646.9(k)
MODIFICATION

CASE NUMBER:

PERSON TO BE RESTRAINED (complete name):

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

- 1. This proceeding was heard on (date): at (time): in Dept.: Room: by judicial officer (name):
2. Defendant was personally served with a copy of this order at the court hearing and no additional proof of service is required.
3. COMPLETE NAME, GENDER, AND AGE OF EACH PROTECTED PERSON:
4. The court has information that the defendant owns or has a firearm or ammunition, or both.

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

- 5. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
6. must turn over to local law enforcement or sell to a licensed gun dealer any firearm the defendant owns or controls within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order. The defendant must not own, have, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition.
7. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
8. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. The court finds good cause not to make the order in item 8.
9. must have no personal, electronic, telephonic, or written contact with the protected persons named above.
10. must have no contact with the protected persons named above through a third party, except an attorney of record.
11. must not come within yards of the protected persons named above.
12. may have peaceful contact with the protected persons, as an exception to the "no-contact" or "stay-away" provision in item 9, 10, or 11 of this order, only for the safe exchange of children and court-ordered visitation as stated in:
a. the Family, Juvenile, or Probate court order in case number: issued on (date):
b. any Family, Juvenile, or Probate court order issued after the date this order is signed.
13. The protected persons are allowed to record any prohibited communications made by the restrained person.
14. Other orders including stay-away orders from specific locations:

15. This order ends on (specify date):

Date:

JUDICIAL OFFICER Department/Division:

## WARNINGS AND NOTICES

1. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a felony, a misdemeanor, or contempt of court.
2. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms and not own or possess any firearms during the period of the protective order. Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Pen. Code, § 136.2(d).)
3. **ENFORCING THIS ORDER IN CALIFORNIA**
  - This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
  - Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Code Civ. Proc., § 527.6.)
4. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
  - These orders are effective as of the date they were issued by a judicial officer.
  - These orders end as explained in item 15 on the reverse.
  - Orders under Penal Code section 136.2 are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
  - Orders under Penal Code section 646.9 are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, § 646.9(k).)
  - To terminate this protective order, use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)*.
5. **CHILD CUSTODY AND VISITATION**
  - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
  - Unless box b. in item 12 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
  - If box a. or b. in item 12 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
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CITY AND ZIP CODE:
BRANCH NAME:

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Judicial Council

PEOPLE OF THE STATE OF CALIFORNIA
vs.
DEFENDANT:

ORDER TO SURRENDER FIREARMS IN DOMESTIC VIOLENCE CASE
(CLETS - CPO)
(Penal Code, § 136.2(a)(7)(B))

CASE NUMBER:

PERSON TO SURRENDER FIREARMS (complete name):
Sex: [ ] M [ ] F Ht.: \_\_\_\_\_ Wt.: \_\_\_\_\_ Hair color: \_\_\_\_\_ Eye color: \_\_\_\_\_ Race: \_\_\_\_\_ Age: \_\_\_\_\_ Date of birth: \_\_\_\_\_

- 1. This proceeding was heard on (date): at (time): in Dept.: Room: by judicial officer (name):
2. This order ends on (specify date):
3. [ ] Defendant was personally served with a copy of this order at the court hearing and no additional proof of service of this order is required.
4. GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT must turn over to local law enforcement or sell to a licensed gun dealer any firearm the defendant owns or controls within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving the order. The defendant must not own, have, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. Such conduct is subject to a \$1,000 fine and imprisonment.

Date: JUDICIAL OFFICER Department/Division:

NOTICES

This order is effective as of the date it was issued by the judicial officer and ends as explained in item 2.
This order is to be used ONLY when the court orders firearms relinquishment but does not make any other protective or restraining orders. Do NOT use in conjunction with other Criminal Protective Orders (form CR-160 or CR-161).



## Item SPR11-31 Response Form

**Title:** **Criminal Procedure: Criminal Protective Orders** (revise forms CR-160, CR-161, CR-162, and CR-165)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*