

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG19-03

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| Title | Action Requested |
| Judicial Council–Sponsored Legislation: Temporary Emergency Gun Violence Restraining Order | Review and submit comments by June 7, 2019 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Amend Penal Code section 18140 | January 1, 2021 |
| Proposed by | Contact |
| Civil and Small Claims Advisory Committee | Kristi Morioka, 916-643-7056 kristi.morioka@jud.ca.gov |
| Hon. Ann I. Jones, Chair | Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov |

Executive Summary and Origin

The Civil and Small Claims Advisory Committee, at the suggestion of several courts, proposes that the Judicial Council sponsor legislation amending Penal Code section 18140, which currently requires that a law enforcement officer who requests a temporary emergency gun violence restraining order (emergency GVRO) “[f]ile a copy of the order with the court as soon as practicable after issuance.” (Pen. Code, § 18140(c).) The proposal would add a time frame of no later than three court days to ensure that the court receives the emergency GVRO with sufficient time to set and notice a hearing within 21 days, as required by newly enacted Penal Code section 18148.

The Proposal

Senate Bill 1200 (Stats. 2018, ch. 898) took effect January 1, 2019. Among other things, the new law adds section 18148 to the Penal Code,¹ 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, on telephonic application of a law enforcement officer who completes the *Gun Violence Emergency Protective Order* (form EPO-002) in the field.² These orders last for 21

¹ All statutory references hereafter are to the Penal Code, unless otherwise noted.

² §§ 18140 and 18145.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

days and, until the enactment of SB 1200, 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 in any way when SB 1200 added the new post- emergency GVRO hearing requirement.

To implement the new hearing requirement, several new and revised Judicial Council forms are being developed. When these proposed forms were recently circulated for public comment, several commenters, including the Superior Courts of Orange County and Los Angeles County 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 committee agrees with the commenters and proposes that the council sponsor such legislation.

This proposal would require law enforcement to file the emergency GVRO (form EPO-002) within three court days. 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,⁵ and receive and review any opposition from the restrained party, should the party wish to file it. This proposal is needed to ensure that all law enforcement agencies timely file the emergency GVRO.

Alternatives Considered

The committee considered maintaining the status quo, but concluded—particularly in light of information that some law enforcement agencies file emergency GVRO in batches and may take as long as a week before filing the forms with the courts—that the proposed legislation would improve the court’s overall administration of these orders.

The committee also considered alternative time frames for the legislative proposal, 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

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 § 18170 et seq.

⁴ § 18140(c).

⁵ 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.

the California Restraining and Protective Order System (CARPOS)⁶ 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.

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.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- 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.
- What would the implementation requirements 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?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Penal Code section 18140, at page 4

⁶ 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.

Penal Code section 18140 would be amended, effective January 2, 2021, to read:

1 **§ 18140**

2

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

5

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

9

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

12

13 (c) File a copy of the order with the court as soon as practicable after issuance, but within
14 three court days.

15

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