



Judicial Council of California

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INVITATION TO COMMENT

SPR25-14

Title

Criminal Law: Findings and Orders
Regarding Prohibited Items While on
Diversion

Action Requested

Review and submit comments by May 23,
2025

Proposed Effective Date

January 1, 2026

Proposed Rules, Forms, Standards, or Statutes

Approve form CR-163

Contact

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Proposed by

Criminal Law Advisory Committee
Hon. Lisa Rodriguez, Chair

Executive Summary and Origin

Recent legislation prohibits the possession of firearms, other deadly weapons, and ammunition for a defendant participating in mental health diversion or military diversion if a court makes specific findings that the defendant poses a significant danger of causing personal injury to themselves or another and that a prohibition is necessary to prevent personal injury. The prohibition remains in effect until the defendant has either successfully completed diversion or has their firearms rights restored under Welfare and Institutions Code section 8103(g)(4).

The Criminal Law Advisory Committee proposes a new order form for optional use to assist courts with making the appropriate findings and orders prohibiting a defendant from owning or possessing firearms, other deadly weapons, and ammunition while on mental health or military diversion. The initial request for a form memorializing the court's findings came from the Department of Justice, Division of Law Enforcement, Bureau of Firearms.

Background

Effective July 1, 2024, Assembly Bill 455 (Stats. 2023, ch. 236) amended Penal Code section 1001.36 to allow the prosecution to request an order from the court to prohibit a defendant on mental health diversion from owning or possessing a firearm because they are a danger to themselves or others. For the court to order the prohibition, the prosecution must prove by clear and convincing evidence that both of the following are true: the defendant poses a significant

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danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm; and the prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.¹ If the court orders the prohibition, the court “shall inform the person that they are prohibited ... from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.”² The order remains in effect until the defendant successfully completes diversion or has firearm rights restored under Welfare and Institutions Code section 8103(g)(4).³ Welfare and Institutions Code section 8103 was also amended to add subdivision (i), outlining reporting requirements from the court to the Department of Justice when an order prohibiting firearms while on mental health diversion is issued.

Effective January 1, 2025, Senate Bill 1002 (Stats. 2024, ch. 526) amended Welfare and Institutions Code section 8103 to add other deadly weapons and ammunition to existing firearm prohibitions when specified mental health-related findings have been made. Welfare and Institutions Code section 8103(i)(1), which states that a person prohibited from owning or controlling a firearm when they have been found to be a danger to themselves or others and have been granted mental health diversion under Penal Code section 1001.36(m) must not own or control a firearm until diversion is completed successfully or firearm rights are restored under Welfare and Institutions Code section 8103(g)(4), was amended to add references to other deadly weapons or ammunition as prohibited items, alongside firearms. Penal Code section 1001.36(m) was not amended to add other deadly weapons or ammunition as prohibited items.

Effective January 1, 2025, Senate Bill 1025 (Stats. 2024, ch. 924) amended Penal Code section 1001.80 on military diversion, including adding subdivision (p) to allow, upon a prosecutor’s request, a court to prohibit firearms. This new subdivision outlines a procedure substantially similar to mental health diversion under Penal Code section 1001.36(m). Welfare and Institutions Code section 8103(i) was also amended to refer to orders issued under Penal Code section 1001.80(p), alongside orders issued under Penal Code section 1001.36(m).

The Proposal

The Criminal Law Advisory Committee proposes, effective January 1, 2026, *Findings and Orders Regarding Prohibited Items While on Diversion* (form CR-163) for findings and orders under Penal Code section 1001.36(m) for mental health diversion or 1001.80(p) for military diversion. The form includes:

- The prohibited person’s name and identifying information.

¹ Pen. Code, § 1001.36(m)(2)(A), (B).

² Pen. Code, § 1001.36(m)(3)(B).

³ Pen. Code, § 1001.36(m)(4); Welf. & Inst. Code, § 8103(i)(1).

- Information about the hearing.
- An item indicating the date and type of diversion granted.
- A section stating that the order remains in effect until the defendant successfully completes either mental health diversion or military diversion, or their firearms rights are restored under Welfare and Institutions Code section 8103(g)(4).
- A section on court findings, stating that the court finds by clear and convincing evidence that both of the following are true:
 - The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.⁴
 - The prohibition is necessary to prevent personal injury to the defendant or any other person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.⁵
- A finding that the defendant was personally present when the order issued.
- A section outlining prohibited items⁶ and a modified court advisement that the defendant is prohibited from owning or possessing the prohibited items because they are a danger to themselves or others.⁷
- A prohibition against the possession of body armor, under Penal Code section 31360, which prohibits the possession of body armor by any person prohibited from possessing a firearm under state law.

Alternatives Considered

The committee initially did not consider developing a form because it did not anticipate a high number of these orders. However, because the orders are similar to temporary restraining orders, the committee decided that a statewide form would be helpful for the courts to make the appropriate findings and orders, and could assist courts to comply with reporting requirements to the Department of Justice.

The committee discussed whether to create two separate forms, one for mental health diversion and one for military diversion. As part of the discussion, the committee noted that there are minor differences between some terms used in Penal Code sections 1001.36(m) and 1001.80(p).

⁴ Pen. Code, §§ 1001.36(m)(2)(A), 1001.80(p)(2)(A).

⁵ Pen. Code, §§ 1001.36(m)(2)(B), 1001.80(p)(2)(B).

⁶ Although Penal Code sections 1001.36(m) and 1001.80(p) only prohibit owning or possessing firearms, Welfare and Institutions Code section 8103(i)(1) also prohibits other deadly weapons or ammunition. The form includes all of these as prohibited items, as well as firearm parts under Penal Code section 16520(b)(26) (definition of firearm includes firearm parts per Welfare and Institutions Code sections 8100–8108).

⁷ Pen. Code, §§ 1001.36(m)(3)(B), 1001.80(p)(3)(B).

For example, the court must inform a defendant under section 1001.36(m)(3)(B) that the defendant is prohibited from “owning or controlling a firearm,” whereas a defendant under section 1001.80(p)(3)(B) is prohibited from “controlling, owning, purchasing, possessing, or receiving a firearm.” The committee discussed whether the differences were sufficient enough to require separate forms for each type of diversion, but agreed that the terms were substantively similar. Given that the court findings and order are largely identical, the committee decided to propose one form.

The committee extensively discussed whether to require the personal presence of the defendant, either physically or remotely, at the time the findings and order are made. The statute does not squarely address this issue but does require the court to inform the defendant of the prohibition. The committee discussed the importance of proper service and notice of the prohibition to the defendant, especially since the prohibition may outlast the period of diversion if diversion is unsuccessfully terminated.⁸ The committee considered several alternatives to accommodate situations in which defense counsel is appearing for a defendant under Penal Code section 977, such as allowing counsel to notify the defendant and calendaring a follow-up date to require the defendant’s presence or the filing of an acknowledgment of receipt. However, because of the nature and durability of the finding, and the significant consequences it holds, the committee decided the defendant’s presence at the time the findings and order were made were crucial. The committee seeks specific comments on possible alternatives to this requirement.

Although the authorizing statutes, Penal Code sections 1001.36(m) and 1001.80(p), only prohibit the possession of firearms while on diversion when specific findings are made, Welfare and Institutions Code section 8103(i), which is cross-referenced in both statutes,⁹ was amended under SB 1002 to reference other deadly weapons or ammunition as additional prohibited items. Although there was a question about whether to prohibit other deadly weapons or ammunition when there was no corresponding prohibition in the authorizing statutes, the committee decided to propose prohibiting other deadly weapons or ammunition across the board.

When ordering the prohibition, the court “shall inform the person that they are prohibited ... from owning or controlling a firearm until they successfully complete diversion because they are a danger to themselves or others.”¹⁰ The committee discussed including a verbatim version of the advisement but was concerned that it was not fully accurate, given that the defendant is also prohibited from owning or controlling other deadly weapons or ammunition and that the second pathway for ending the prohibition is restoration of firearm rights under Welfare and Institutions

⁸ Pen. Code, §§ 1001.36(m)(4), 1001.80(p)(4); Welf. & Inst. Code, § 8103(i)(1).

⁹ See Pen. Code, §§ 1001.36(m)(1), 1001.80(p)(1) (the prosecution may request an order from the court that the defendant be prohibited from controlling, owning, purchasing, possessing, or receiving a firearm until they successfully complete diversion because they are a danger to themselves or others under Welfare and Institutions Code section 8103(i)).

¹⁰ Pen. Code, §§ 1001.36(m)(3)(B), 1001.80(p)(3)(B).

Code section 8103(g)(4). The committee proposes supplementing the advisement with references to this additional information (see item 5b).

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are largely attributable to legislation. Expected costs include staff training, case management system updates, and the production of new forms.

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?
- Are there alternatives to requiring the personal presence of the defendant at the time the findings and order are made?

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?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Form CR-163, at page 6
2. Link A: Assem. Bill 455,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB455
3. Link B: Sen. Bill 1002,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1002
4. Link C: Sen. Bill 1025,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1025

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> 03/14/2025 DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
FINDINGS AND ORDERS REGARDING PROHIBITED ITEMS WHILE ON DIVERSION (Pen. Code, §§ 1001.36(m), 1001.80(p); Welf. & Inst. Code, § 8103(i))	CASE NUMBER:
*Name: *Gender: <input type="checkbox"/> M <input type="checkbox"/> F <input type="checkbox"/> Nonbinary *Race: _____ *Date of birth: _____ Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Information that has a star (*) is required.	

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

2. On *(date)*: _____ the count granted *(check one)*: mental health diversion military diversion

3. **Term of order**
 This order remains in effect until the defendant has successfully completed either mental health diversion or military diversion, or their firearms rights are restored under Welfare and Institutions Code section 8103(g)(4).

4. **Court findings**
 - a. The court finds by clear and convincing evidence that both of the following are true:
 - (1) The defendant poses a significant danger of causing personal injury to themselves or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm.
 - (2) The prohibition is necessary to prevent personal injury to the defendant or another person because less restrictive alternatives either have been tried and found to be ineffective or are inadequate or inappropriate for the circumstances of the defendant.
 - b. The court finds that the defendant was personally present when this order issued.

5. **No firearms (guns), firearm parts, other deadly weapons, ammunition, or body armor**
 The court orders that:
 - a. The defendant must not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearms (guns), firearm parts (meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame; see Penal Code section 16531), other deadly weapon, or ammunition until they successfully complete diversion or their firearms rights are restored under Welfare and Institutions Code section 8103(g)(4). Possession of prohibited items while this order is in effect may subject the defendant to prosecution and may include a fine and jail or prison time.
 - b. The defendant is prohibited from owning, controlling, purchasing, possessing, or receiving the prohibited items because the defendant is a danger to themselves or others.
 - c. The defendant must not own, possess, or buy any body armor (defined in Penal Code section 16288). Defendant must relinquish any body armor in their possession.

Date: _____ JUDICIAL OFFICER _____