



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W25-05

Title

Criminal Law: New Postconviction Retail
Crime Restraining Order

Action Requested

Review and submit comments by January 6,
2025

Proposed Rules, Forms, Standards, or Statutes

Adopt form CR-164

Proposed Effective Date

July 1, 2025

Proposed by

Criminal Law Advisory Committee
Hon. Lisa Rodriguez, Chair

Contact

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Executive Summary and Origin

The Criminal Law Advisory Committee proposes a new retail crime restraining order to implement Assembly Bill 3209 (Stats. 2024, ch. 169). The order would prohibit defendants convicted of specified offenses from entering the premises of a protected retail establishment for up to two years.

Background

Assembly Bill 3209 authorizes courts to order defendants convicted of specified offenses¹ or persons arrested for specified offenses² to stay away from a protected retail establishment for up to two years. (Pen. Code, § 490.8.)³ The orders must be entered into the California Law Enforcement Telecommunications System (CLETS) and included in the California Restraining and Protective Order System, similar to other protective orders. (Fam. Code, § 6380(b).) The

¹ These offenses are shoplifting (Pen. Code, § 459.5); any theft, including a violation of Penal Code sections 487 or 488, from a retail establishment; organized retail theft (Pen. Code, § 490.4); vandalism of a retail establishment (Pen. Code, § 594); or any assault or battery of a retail establishment employee, including a violation of Penal Code section 240, 242, or 245.

² The Judicial Council's Civil and Small Claims Advisory Committee is circulating a proposal to implement procedures for arrest-based retail crime restraining orders under Penal Code section 490.8(e); the invitation to comment is available at www.courts.ca.gov/policyadmin-invitationstocomment.htm.

³ All further statutory references are to the Penal Code unless otherwise specified.

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 It is circulated for comment purposes only.

Judicial Council may prescribe the form of the petitions and orders and any other documents, and may promulgate any rules of court necessary for implementation. (§ 490.8(j)).

The Proposal

In a criminal case, a court sentencing a defendant for specified theft offenses “shall consider issuing an order restraining the defendant from entering the premises of the retail establishment, that may be valid for up to two years, as determined by the court.” (§ 490.8(a).) The order prohibits the restrained person from entering the retail establishment, or being present on the ground of, or any parking lot adjacent to and used to service, the retail establishment. (§ 490.8(c)(1).) Additionally, if the retail establishment is part of a chain or franchise, the court may include other retail establishments in that chain or franchise within a specified geographic range in the order. (§ 490.8(c)(2).)

Proposed form CR-164, *Retail Crime Restraining Order—Criminal*, identifies the restrained person, the name and address of the protected retail establishment and any additional protected establishments within California in the same chain or franchise, the order’s expiration date, hearing information, and whether the restrained person attended the hearing and, if not, states that the restrained person must be personally served. It also directs the restrained person not to enter any named retail establishment, be present on the grounds of any named retail establishment or be present on any parking lot next to and used for any named retail establishment, and includes an advisement that not obeying the order may result in arrest, charges, and imprisonment for up to six months. Finally, similar to other protective orders, the order includes instructions for law enforcement about enforcing the order, and the footer includes a placeholder for a CLETS order type.⁴

Alternatives Considered

Since AB 3209 requires a retail crime restraining order to be entered into CLETS, the committee determined that entering the stay-away on a minute order was insufficient and that the terms of the order should be added to an existing or new protective order form.

The committee considered whether to add the retail crime restraining order provisions to the existing *Criminal Protective Order—Other Than Domestic Violence* (form CR-161), but determined that many of the items on that order, such as firearm prohibitions and items intended for protecting people, would not apply to persons subject to a retail crime restraining order, and that it would likely be confusing if the retail crime restraining order provisions were included.

The committee also considered developing a restraining order with the Civil and Small Claims Advisory Committee that could be used in either a criminal or civil case, because the orders are generally the same in either type of case. However, the committees concluded that separate

⁴ The CLETS order type is a three-digit identifier that is provided by the Department of Justice for every protective order type issued in California. The identifier will be updated once it has been provided by the Department of Justice.

orders would be clearer and more useful, and that a joint order could present challenges for entering information into CLETS.

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are largely attributable to legislation. Expected costs include 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?

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-164, at pages 4–6
2. Link A: Assem. Bill 3209,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB3209

Clerk stamps date here when form is filed.

11/07/2024
DRAFT
Not approved by the
Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Criminal Restraining Order

This is a postconviction criminal restraining order issued under Penal Code section 490.8(a).

2 Restrained Person

(Information that has a star () next to it is required to add this order into the California Restraining and Protective Order System. Please provide all known information.)*

*Name: _____

*Gender: M F Nonbinary *Race: _____

*Date of Birth: _____ Age: _____

Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

3 Protected Retail Establishment

Name: _____

Address: _____

Additional addresses: The court finds that the retail establishment is part of a chain or franchise and includes the following additional establishments in the state of California within ____ miles of the address above:

4 Expiration Date

This order expires on (date): _____ *at (time):* _____ a.m. p.m. midnight

If no expiration date is written here, this Order expires two years from the date of issuance.

5 Hearing

This proceeding was heard on *(date)*: _____ *at (time)*: _____

in Dept.: _____ by *(judicial officer)*: _____

6 Service

a. The restrained person personally attended the hearing. No other proof of service is needed.

b. The restrained person did not attend the hearing. Law enforcement or someone who is at least 18 years old and not a party to the action must personally serve a copy of this Order on the restrained person.

This is a Court Order.



7 Stay-away order

The restrained person must not:

- Enter any retail establishment named in ③.
- Be present on the grounds of any retail establishment named in ③.
- Be present on any parking lot next to and used for any retail establishment named in ③.

Not obeying this order can result in being arrested and charged with a crime and can include up to six months in jail.

8 Number of pages attached to this Order, if any: _____

Date: _____

Judicial Officer

This is a Court Order.



Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing (see ⑥), the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge’s signature on page 2 and *ends* on the expiration date in ④ on page 1.

Notice/Proof of Service

The law enforcement officer must first determine if the restrained person had notice of the order. If notice cannot be verified, the officer must advise the restrained person of the terms of the order and then enforce it. (Fam. Code, § 6383(e).)

Consider the restrained person served (given notice) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was at the hearing or was informed of the order by an officer. An officer can obtain information about the contents of the order and proof of service in CARPOS.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected party from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *Emergency Protective Order (EPO)*: If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. *No-Contact Order*: If a restraining/protective order includes a no-contact order, the no-contact order must be enforced.
3. *Criminal Protective Order (CPO)*: If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Fam. Code, §§ 6383(h)(2) and 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Pen. Code, § 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. *Civil Restraining Orders*: If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment, retail crime), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

Clerk’s Certificate
[seal]

(Clerk will fill out this part.)
—Clerk's Certificate—

I certify that this *Retail Crime Restraining Order—Criminal* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.