

Gun Violence Restraining Orders

390.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for petitioning and serving gun violence restraining orders and accounting for the firearms obtained pursuant to those orders.

390.1.1 DEFINITIONS

Definitions related to this policy include:

Gun violence restraining order - Civil restraining order prohibiting a named person from controlling, owning, purchasing, possessing, receiving or otherwise having custody of any firearms or ammunition (Penal Code § 18100).

390.2 POLICY

It is the policy of the Elk Grove Police Department to petition and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained by the Department pursuant to such orders.

390.3 GUN VIOLENCE RESTRAINING ORDERS

An officer who reasonably believes a person is a present and immediate danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving or otherwise having custody of a firearm may request permission from his/her supervisor to petition the court for an emergency, ex parte and/or permanent gun violence restraining order. An officer petitioning the court for a gun violence restraining order shall comply with the notice, hearing, and renewal requirements set forth in Penal Code § 18100, et seq.

Officers petitioning the court should use the forms established by the Judicial Council (Penal Code § 18105). The petition should describe the number, types and locations of any firearms and ammunition that the officer believes to be possessed or controlled by the person (Penal Code § 18107). The petition should also describe why less-restrictive alternatives are ineffective or inadequate for the circumstances (Penal Code § 18125; Penal Code § 18150; Penal Code § 18175).

If it is not practical under the circumstances to submit a written petition, an officer may orally request an order using the procedures for obtaining an oral search warrant and preparing the order using the appropriate Judicial Council form (Penal Code § 18140; Penal Code § 18145).

390.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS

An officer serving any gun violence restraining order shall:

- (a) Request that any firearms or ammunition be immediately surrendered and issue a receipt for the surrendered items (Penal Code § 18120).
- (b) Take into temporary custody any firearm or other deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250).

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- (c) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).
- (d) Transmit the original proof of service form to the issuing court as soon as practicable but within one business day (Penal Code § 18115).
- (e) As soon as practicable, but by the end of his/her shift, submit proof of service to the Records Manager for entry into the California Restraining and Protective Order System within one business day from service of the order (Penal Code § 18115).

The officer should also inform the restrained person that he/she is required, within 24 hours, to surrender to a law enforcement agency any other firearms and ammunition he/she owns or that are in his/her custody or control or sell them to a firearms dealer. This notification should be documented.

All firearms and ammunition collected shall be handled and booked in accordance with the Property and Evidence Policy.

390.4.1 SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS

If a temporary gun violence restraining order is obtained orally, the officer shall (Penal Code § 18140):

- (a) Memorialize the order of the court on the form approved by the Judicial Council.
- (b) Serve the order on the restrained person in the manner outlined above, 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) Ensure the order is provided to the Records Bureau for entry into the computer database system for protective and restraining orders maintained by the Department of Justice.

390.5 SEARCH WARRANTS

If a person who has been served with a gun violence restraining order refuses to surrender any firearm or ammunition, the officer should consider whether to seek a search warrant. If a search warrant is to be obtained, the preparation and service of the search warrant shall be done in accordance with the Warrant Service Policy (Penal Code § 1524(a)(14)). Additionally, (Penal Code § 1542.5):

- (a) The officer serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the gun violence restraining order, including any discovered pursuant to the warrant, a consensual search or other lawful search.
- (b) If the location being searched is jointly occupied and the officer finds a firearm or ammunition in the restrained person's custody, control or possession, but the firearm(s) or ammunition is owned by a person other than the restrained person, the firearm or ammunition shall not be seized if both of the following conditions are met:
 1. The firearm or ammunition is removed from the restrained person's custody or control or possession and stored in a manner that does not allow the restrained person to have control or access.

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2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.
- (c) If the location to be searched during the execution of the warrant is jointly occupied by the restrained person and one or more other persons and a locked gun safe belonging to someone other than the restrained person is discovered, the officer shall not search the contents of the safe except in the owner's presence, and with the owner's consent or with a valid search warrant for the gun safe.

390.6 RECORDS MANAGER RESPONSIBILITIES

The Records Manager is responsible for ensuring:

- (a) Proof of service of any gun violence restraining order served by an officer or received from the clerk of the court is entered in the computer database system for protective and restraining orders maintained by the Department of Justice within one business day of service of the order if served by an officer, or within one business day of receipt of proof of service if served by a person other than a law enforcement officer (Penal Code § 18115).
- (b) Oral orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).
- (c) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by the Department are properly maintained (Penal Code § 18120).

390.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS

Authorized members shall accept firearms and ammunition from any individual who is the subject of a gun violence restraining order. The member receiving any firearm or ammunition shall:

- (a) Record the individual's name, address and telephone number.
- (b) Record the serial number of the firearm.
- (c) Prepare an incident report and property report.
- (d) Provide a property receipt to the individual who surrendered the firearms and ammunition.
- (e) Package and submit the firearms and ammunition in accordance with the Property and Evidence Policy.

390.8 RELEASE OF FIREARMS AND AMMUNITION

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code §§ 18120 and 33850, Property and Evidence Policy, and as otherwise authorized under Penal Code § 18120(c). Unclaimed firearms or ammunition are subject to Penal Code § 34000 (Penal Code 18120(c)(1)).