

# Gun Violence Restraining Order

## 339.1 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.

### 339.1.1 DEFINITIONS

The following definitions relate to terms used within this policy:

**Temporary Firearms Restraining Order:** An order, in writing, signed by the court, prohibiting a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (Penal Code § 18100).

**Firearms Emergency Protective Order:** An order, approved by a judicial officer, prohibiting a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition (Penal Code § 18125).

**Gun Violence Restraining Order Property Receipt:** A property receipt containing the following language:

"The release of firearms is subject to a California Department of Justice Bureau of Firearms Law Enforcement Gun Release (LEGR) Application (Penal Code § 33850). Application forms are available online at <http://ocsd.org/legr> or by calling (916) 227-7527. If you are notified the Department of Justice has determined you are eligible for return of the firearm to you, you will have 180 days to claim the firearm at 320 N. Flower St. Santa Ana, CA 92703. Please call 714-834-6482 to make an appointment. Any unclaimed firearm may be disposed of after the 180- day period has expired."

## 339.2 POLICY

It is the policy of the Orange County Sheriff's 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.

## 339.3 GUN VIOLENCE RESTRAINING ORDERS

A deputy who reasonably believes a person is a present danger or danger in the near future to him/herself or another person by controlling, owning, purchasing, possessing, receiving, or otherwise having custody of a firearm should petition the court for a temporary firearms restraining order or a firearms emergency protective order. A deputy petitioning the court for a gun violence restraining order shall comply with notice, hearing and renewal requirements set forth in Penal Code § 18100, et seq.

Petitions should also describe why the order is necessary to prevent personal injury to the subject of the petition or another person because less-restrictive alternatives are ineffective or inadequate for the circumstances (Penal Code § 18125; Penal Code § 18150; Penal Code § 18175).

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Deputies petitioning the court should use the forms established by the Judicial Council (Penal Code § 18105). Form GV-100 is the Petition for Firearms Restraining Order Form GV-110 is the Temporary Firearms Restraining Order; Form GV-109 is the Notice of Court Hearing; Form GV-200 is the Proof of Personal Service; and Form EPO-002 is the Firearms Emergency Protective Order. Forms can be located on the Orange County Sheriff's Department Document Center.

#### **339.3.1 TEMPORARY FIREARMS RESTRAINING ORDER**

Temporary firearms restraining orders may be obtained by a deputy sheriff or a family member of the person named on the order. If the criteria mentioned in section 345.3 are met, a deputy sheriff should seek a temporary firearms restraining order by completing a Petition for Firearms Restraining Order (GV-100), and completing sections one and two of the Temporary Firearms Restraining Order (GV-110) and completing the Notice of Court Hearing form (GV-109). A temporary firearms restraining order signed by a judicial officer shall be served in accordance with section 339.4 of this policy.

#### **339.3.2 FIREARMS EMERGENCY PROTECTIVE ORDER**

Under many circumstances it may not be practical to submit a written petition to the court. A deputy may orally request an order using the procedures for obtaining an Emergency Protective Order and using Judicial Council Form EPO-002 which is a Firearms Emergency Protective Order (Penal Code § 18140; Penal Code § 18145). A Firearms Emergency Protective Order approved by a judicial officer shall be served in accordance with section 339.4 of this policy.

A Firearms Emergency Protective Order is valid for 21 days beginning the day after the date of issuance. If a Firearms Emergency Protective Order is granted, the Firearms Emergency Protective Order should be forwarded to the responsible investigative unit for determination of further action including whether a Petition for a Firearms Restraining Order should be sought which, if granted, is valid for one year.

#### **339.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS**

A deputy serving any gun violence restraining order shall:

1. Serve the order on the restrained person if the restrained person can reasonably be located.
2. Request that any firearms or ammunition be immediately surrendered and issue a Gun Violence Restraining Order Property Receipt, located on the Orange County Sheriff's Department Document Center, for the surrendered items. (Penal Code § 18120).
3. 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).
4. Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160) and serve the restrained person with the Notice of Court Hearing (GV-109), if applicable.
5. File a copy of the proof of personal service form or emergency firearms protection order with the court as soon as practicable after issuance by faxing the order and proof

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of service to the Orange County Superior Court Protective Order Unit at [REDACTED]

6. As soon as practicable, but no later than the end of the deputy's shift, submit proof of service for either temporary firearms restraining order or emergency firearms protection order to Teletype for prompt entry into the California Restraining and Protective Order System (Penal Code § 18115).

The deputy 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.

As soon as practicable, the deputy SHALL also inform County Counsel at [REDACTED] of the issuance of any temporary firearms restraining order (GV-110) to allow for a deputy county counsel to be assigned in the event of a hearing.

### **339.5 SEARCH WARRANTS**

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

1. The deputy 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.
2. If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if both of the following conditions are met:
  - (a) The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
  - (b) There is no evidence that the owner unlawfully possesses the firearm or ammunition.
3. If a locked gun safe owned by a person other than the subject of a gun violence restraining order is discovered, the deputy shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner's presence.

### **339.6 TELETYPE RESPONSIBILITIES**

Teletype is responsible for ensuring:

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1. Proof of service of any gun violence restraining order served by a deputy or received from the clerk of the court is entered into the California Restraining and Protective Order System within one business day of service if served by a deputy, 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).
2. Orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).

#### **339.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS**

Deputy Sheriffs 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:

1. Record the individual's name, address and telephone number.
2. Record the serial number of the firearm.
3. Prepare a property report.
4. Provide a Gun Violence Restraining Order Property Receipt to the individual who surrendered the firearms and ammunition.
5. Package and submit the firearms and ammunition in accordance with the Property and Evidence Policy.

#### **339.8 RELEASE OF FIREARMS AND AMMUNITION**

1. 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 the Property and Evidence Policy.
2. Firearms and ammunition that were taken pursuant to a search warrant must be retained by the Orange County Sheriff's Department and may only be released in accordance with Penal Code § 1536 and the Property and Evidence Policy.