

Gun Violence Restraining Orders

337.1 PURPOSE AND SCOPE

State MODIFIED

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 (Pen. Code section 18108).

337.1.1 DEFINITIONS

State MODIFIED

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, including an ammunition magazine (Pen. Code section 18100).

337.2 POLICY

Best Practice MODIFIED

It is the policy of the California Department of State Hospitals (DSH) to petition and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained by DSH pursuant to such orders.

337.3 GUN VIOLENCE RESTRAINING ORDERS

State MODIFIED

An officer who reasonably believes a person is a present danger to their self or another person by controlling, owning, purchasing, possessing, receiving or otherwise having custody of a firearm may request permission from the Hospital Police Chief or designee to petition the court for a gun violence restraining order.

Officers petitioning the court, with the approval of the Hospital Police Chief or designee, should use the forms established by the Judicial Council (Pen. Code section 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 (Pen. Code section 18107). The petition should also describe why less-restrictive alternatives are ineffective or inadequate for the circumstances (Pen. Code section 18125; Pen. Code section 18150; Pen. Code section 18175).

If it is not practical under the circumstances to submit a written petition, an officer, with the approval of the Hospital Police Chief or designee, may submit the petition electronically or orally request a temporary order (Penal Code section 18122; Penal Code section 18140).

337.3.1 ADDITIONAL CONSIDERATIONS

State

Officers should also consider requesting permission to petition the court for a gun violence restraining order (Penal Code § 18108):

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- (a) When responding to a residence that is associated with a firearm registration or record.
- (b) When responding to any call or incident when a firearm is present or when one of the involved parties owns, possesses, or expresses an intent to acquire a firearm.
- (c) During a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions, if that person owns or possesses a firearm.

Officers should consider obtaining a mental health evaluation if the encounter involves a situation where there is a reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm or expresses intent to obtain a firearm (see the Mental Illness Commitments Policy) (Penal Code § 18108).

337.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS

State **MODIFIED**

An officer serving any gun violence restraining order shall:

- (a) Verbally ask the subject of the order if he/she has any firearm, ammunition, or magazine in his/her possession or under his/her custody or control (Penal Code section 18160).
- (b) Request that any firearms or ammunition be immediately surrendered and issue a receipt for the surrendered items (Penal Code section 18120).
- (c) 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).
- (d) Inform the restrained person of any scheduled hearing regarding the order (Penal Code section 18160).
- (e) Transmit the original proof of service form to the issuing court as soon as practicable but within one business day (Penal Code section 18115).
- (f) As soon as practicable, but by the end of his/her shift, submit proof of service to the Records Manager or designee for prompt entry into the California Restraining and Protective Order System (Penal Code section 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.

Note: Pursuant to the Court Ordered Firearms and Ammunition Surrenders section, DSH does not accept court-ordered firearms surrenders.

337.4.1 TEMPORARY EMERGENCY GUN VIOLENCE RESTRAINING ORDERS

State **MODIFIED**

An officer requesting a temporary emergency gun violence restraining order shall (Pen. Code section 18140):

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- (a) For oral requests, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council.
- (b) Serve the order on the restrained person if the person can be reasonably located.
- (c) Forward a copy of the order to the Records Manager for filing with the court and appropriate databases.

337.5 SEARCH WARRANTS

State **MODIFIED**

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 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 firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:
 - 1. The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
 - 2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.
- (c) If a locked gun safe belonging to someone other than the subject of a gun violence restraining order is discovered, the officer 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.

337.6 RECORDS MANAGER RESPONSIBILITIES

State **MODIFIED**

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 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 (Pen. Code section 18115).
- (b) Temporary orders are entered into the California Restraining and Protective Order System (Pen. Code section 18140).
- (c) Copies of temporary orders are filed with the court as soon as practicable, but no later than three court days, after issuance (Pen. Code section 18140).

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- (d) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by the OPS are properly maintained (Pen. Code section 18120).
- (e) Any relinquishment of firearm rights form received from the court is entered into the California Restraining and Protective Order System within one business day of receipt (Pen. Code section 18115).

337.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS

State **MODIFIED**

DSH will not accept court-ordered firearms surrenders. It is a felony to possess firearms on hospital grounds. All requests by the public or DSH employees for OPS to accept surrendered firearms will be directed to the law enforcement agency in the person's residence jurisdiction.

337.8 STORAGE AND RELEASE OF FIREARMS AND AMMUNITION

State

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be stored in accordance with the Property and Evidence Policy.

Firearms and ammunition shall be returned to the restrained person upon the expiration of the order in accordance with Penal Code § 18120 and the Property and Evidence Policy (Penal Code § 18108).

337.9 GUN VIOLENCE RESTRAINING ORDER COORDINATOR

State

The Chief of Law Enforcement will appoint a gun violence restraining order coordinator. The responsibilities of the coordinator include:

- (a) Developing and maintaining procedures for the filing of a petition for an order or a renewal of an order by OPS members, also including procedures for requesting and serving (Penal Code § 18108):
 1. A temporary emergency gun violence restraining order.
 2. An ex parte gun violence restraining order.
 3. A gun violence restraining order issued after notice and hearing.
 4. Renewal orders.
- (b) Developing and maintaining factors to consider when assessing the need to seek an order, including (Penal Code § 18108; Penal Code § 18155):
 1. Whether threats have been made, and if so, whether the threats are credible and specific.
 2. Whether the potential victim is within close proximity.
 3. Whether the person has expressed suicidal tendencies.
 4. Whether the person has access to firearms.

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5. The criminal history of the person, in particular any history of criminal violence, including whether the person is currently on parole, probation, or monitored release.
 6. The mental health history of the person, in particular whether the person has any history of mental illness or has ever been detained for being a danger to themselves or others.
 7. Any upcoming holidays, anniversaries, or other dates of significance that may serve as a trigger for the person, such as the death of a family member.
 8. Whether the person has any history of drug or alcohol abuse.
- (c) Developing and maintaining procedures for the receipt and service of orders consistent with the requirements of Penal Code § 18115; Penal Code § 18120; Penal Code § 18135; Penal Code § 18140; and Penal Code § 18160. Procedures should include:
1. Evaluation of an order to determine appropriate service and necessary precautions (see the Warrant Service Policy and the Operations Planning and Deconfliction Policy).
 2. Forwarding orders to the Records Manager for recording in appropriate databases and required notice to the court, as applicable.
 3. Preparing or obtaining a search warrant prior to attempting service of an order, when appropriate (Penal Code § 18108).
 4. Seizure procedures of firearms and ammunition at the time of issuance of a temporary emergency gun violence restraining order.
 5. Verification procedures for the removal of firearms and ammunition from the subject of a gun violence restraining order (Penal Code § 18108).
- (d) Coordinating with the Training Coordinator to provide officers who may be involved in petitioning for or serving orders with training on such orders. Training should include determining when a petition is appropriate, the process for seeking an order, and the service of such orders.
- (e) Reviewing each petition and any associated court documents for an order prepared by members, for compliance with this policy, OPS procedures, and state law.
- (f) Developing and maintaining procedures for members to accept voluntarily surrendered prohibited items at times other than when an order is being served by the OPS.
1. Procedures should include preparing and providing a receipt identifying all prohibited items to the person surrendering the items.
- (g) Coordinating review of notices of court hearings and providing notice to the appropriate officer of the hearing date and the responsibility to appear and participate in the evidence presentation process (Penal Code § 18108).
- (h) Coordinating with the Training Coordinator to ensure officers remain current with the following (Penal Code § 18108):

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1. Types of evidence a court considers when determining whether grounds exist for the issuance of a gun violence restraining order as provided in Penal Code § 18155 (Grounds for gun violence restraining order; examination by court).
2. The different procedures and protections afforded by different types of firearm-prohibiting emergency protective orders that are available to law enforcement petitioners.
 - (i) Establishing standards and procedures for addressing violations of a gun violence restraining order (Penal Code § 18108).
 - (j) Establishing procedures for officers to provide information about mental health referral services during contact with persons exhibiting mental health issues (Penal Code § 18108).

337.10 RENEWAL OF GUN VIOLENCE RESTRAINING ORDERS

State

The Office of Special Investigations supervisor is responsible for the review of a gun violence restraining order (including temporary or ex parte orders) obtained by the OPS to determine if renewal should be requested within the time prescribed by law (Penal Code § 18190).

337.11 POLICY AVAILABILITY

State MODIFIED

The Chief of Law Enforcement or the authorized designee shall be responsible for making this policy available to the public upon request (Pen. Code section 18108).

337.12 TRAINING

State MODIFIED

The Training Coordinator should ensure that members receive periodic training on the requirements of this policy (Pen. Code section 18108).