



SAN JOSE POLICE DEPARTMENT

TRAINING BULLETIN

TO: ALL DEPARTMENT PERSONNEL

FROM: Edgardo Garcia
Chief of Police

**SUBJECT: TEMPORARY EMERGENCY
GUN VIOLENCE RESTRAINING
ORDERS**

DATE: May 29, 2020

BULLETIN #2020-011

The Department recently published memo #2020-021 which added DM § L 4113 and revised DM § L 5704 & DM § 5705 in order to comply with Penal Code § 18108. This companion Training Bulletin explains when an investigating officer should consider petitioning for a Temporary Emergency Gun Violence Restraining Order ("GVRO")¹ and provides step by step instructions to follow when an officer determines that a GVRO is necessary.

Penal Code § 18108 has been added by the legislature to require that law enforcement agencies to develop, adopt, and implement written policies and standards relating to GVROs. In particular, it requires that officers consider applying for a GVRO when conducting a domestic disturbance response investigation or an investigation into a potential 5150 W&I hold and there are reasonable grounds to believe:

- The subject of the petition (the restrained person) poses an immediate and present danger of causing personal injury to himself, herself, or to another person by having custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, or magazines; and
- A GVRO is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be inadequate or ineffective or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition. (PC 18125 (a) (1)-(2)).

Please note that domestic violence is defined in Penal Code Section 16490.²

¹ The GVRO form on the attachment which is authorized by the Judicial Council of California is called the EPO-002 Gun Violence Emergency Protective Order.

² As used in this part, "domestic violence" means abuse perpetrated against any of the following persons:

- (a) A spouse or former spouse.
- (b) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.
- (c) A person with whom the respondent is having or has had a dating or engagement relationship.
- (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).
- (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- (f) Any other person related by consanguinity or affinity within the second degree.

Investigative Steps to Obtain a GVRO as of this Bulletin Date

Officers respond to a call and determine if the subject qualifies for a GVRO for firearms. This emergency order is good for **21 days**.

- Officers are reminded to use the most recent version of the EPO-002 (SEPTEMBER 2019). Hardcopy versions are available at Central Supply.
- The form EPO-002 Gun Violence Emergency Protective Order is completed by the officer on scene and an on-call judge will approve or disapprove the Order. This is the same process used for obtaining an EPO in domestic violence cases (California Family Code Sections 6250 – 6275).
- If the judge approves the request, the officer will write the expiration date on the EPO-002 (21 days from date of incident).
- On EPO-002, the Officer must also write the court date for the subject in **Department 66 at 9:01 am at the Family Justice Courthouse**.
 - Address of Family Justice Courthouse is 201 N. 1st Street, San Jose
 - The court date will be on a Monday or Friday that is closest to the expiration of the **21 days** without reaching the expiration date of the emergency protective order.
 - It is important that the court date and location is written on the form and does not go past the 21-day EPO-002 expiration date or the EPO-002 will have to be re-issued and served to the subject again.

Example Scenario – Officers respond to a call for service where a subject is detained on a 5150 W&I and transported to EPS. The subject has guns registered to him or her, and the officer determines that the EPO-002 is necessary. The officer obtains judicial approval for the EPO, and the 21-day period for the EPO expires on a Thursday. The officer will write the court date for a Monday prior to the Thursday expiration of the EPO, because that is within 21 days of the EPO.

- **The only exception to this is for court holidays.** It is important that officers do not assign a court date on a court holiday. Officers in the field can request dispatch conduct a record check to determine if the court date assigned is a court holiday.
- The officer will ensure the EPO-002 is served on the arrested or detained subject and complete the proof of service information at the bottom of the EPO-002.
- When serving the EPO-002, the officer shall verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control and request that all firearms and ammunition be immediately surrendered.
 - Subjects who refuse to comply are in violation of PC 18205, which is a misdemeanor. However, Department members are reminded that a GVRO does not give automatic authority to conduct a search for firearms and ammunition. Any search for firearms and ammunition must be conducted in compliance with established search & seizure laws. Examples include consent, plain view, incident to arrest, search warrant, exigent circumstances, probation, parole and Post Release Community Supervision.
- The officer will file the EPO-002 with OSSD-Warrants.

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More information regarding GVROs generally can be found in California Penal Code Sections 18100 – 18205. The specific provisions on Temporary Emergency GVRO's can be found at California Penal Code Sections 18125 – 18145.

A handwritten signature in black ink, appearing to read 'Edgardo Garcia', with a long horizontal stroke extending to the right.

Edgardo Garcia
Chief of Police

EG:PC:MB

ATTACHMENT: Example EP-002 Gun Violence Emergency Protective Order

Attachment: Example Gun Violence Emergency Protective Order

EPO-002

GUN VIOLENCE EMERGENCY PROTECTIVE ORDER

1. RESTRAINED PERSON (insert name): John Doe

Address: 201 W. Mission

San Jose, Ca 95110

Sex: ☒ M ☐ F Ht.: 6 Wt.: 00 Hair color: Br

Eye color: Br Race: W Age: 49 Date of birth: 07/01/1970

2. TO THE RESTRAINED PERSON

(Also see important Warnings and Information on page 2):

You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

If you have any firearms, ammunition, and magazines, you **MUST IMMEDIATELY SURRENDER THEM** if asked by a police officer. If a police officer does not ask you to surrender any of the above, within 24 hours of getting this order, you must take them to a police station or a licensed gun dealer to sell or store them and must file a receipt with the court proving that this has been done. You have 48 hours to file a receipt with the court shown to the right. If you do not file a receipt within 48 hours you have violated this order and can go to jail.

3. This order will last until: 12/15/19 (Sunday)

Time: 8:00 pm

INSERT DATE OF 21st CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)

4. Court Hearing ☐ A court hearing will be set within 21 days.

☒ A court hearing will take place at the court above on: Date: 12/13/19 (Friday) Time: 9:01 am

You must go to the court hearing if you do not want this restraining order against you. At the hearing, the judge can make this order last for up to 1 year.

5. Reasonable grounds for the issuance of this order exist, and a Gun Violence Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, or magazines; and (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

6. Judicial officer (name): Judge Smith

granted this order on (date): November 25, 2 at (time): 8:00 pm

APPLICATION

7. Officer has a reasonable cause to believe that the grounds set forth in item 5, above, exist (state supporting facts and dates; specify weapons—number, type and location):

On 11/25/19, I responded to a call for service at 201 W. Mission. Based on Subject Doe's behavior, I determined that he was a danger to others. Subject Doe stated that he wanted to shoot citizens because he was scared of them. Subject Doe has firearms registered to him and Subject Doe was detained pursuant to 5150 W&I and transported to EPS.

8. ☒ Firearms were ☐ observed ☒ reported ☒ searched for ☐ seized.

☒ Ammunition (including magazines) was ☐ observed ☒ reported ☒ searched for ☐ seized.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: Sgt John Smith
(PRINT NAME OF LAW ENFORCEMENT OFFICER)

(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: SJPD

Telephone No: 277-4631

Badge No: _____

Address: 201 W. Mission

PROOF OF SERVICE

9. I personally delivered copies of this Order to the restrained person name in item 1.

Date of service: 11/25/19 Time of service: 8:00 pm Address: Write in Address where you served the order

10. At the time of service, I was at least 18 years of age.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 25, 2019 John Smith

(TYPE OR PRINT NAME OF SERVER/LAW ENFORCEMENT OFFICER)

(SIGNATURE OF SERVER)

Attachment: Example Gun Violence Emergency Protective Order

GUN VIOLENCE EMERGENCY PROTECTIVE ORDER WARNINGS AND INFORMATION

EPO-002

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm, ammunition, or a magazine. (Pen. Code, § 18125 et seq.) A violation of this order is a misdemeanor punishable by a \$1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.)

Within 24 hours of receipt of this order, you must turn in all firearms, ammunition, and magazines to a law enforcement agency or sell them to or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48-hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use Form GV-800, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored*.

This Gun Violence Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front. The court will hold a hearing within 21 days to determine if a longer-term order should be issued. If the date and time are not stated in item 4 on the front, you will get a notice with the date and time of the hearing in the mail at the residential address listed on page 1 of this form. If you would like to respond to this order in writing you must use Form GV-020, *Response to Gun Violence Emergency Protective Order*. A family member may also seek a more permanent restraining order from the court.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for an additional five-year period, to begin on the expiration of the more permanent gun violence restraining order. (Pen. Code, § 18205.)

This protective order must be enforced by all law enforcement officers in the state of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

A LA PERSONA RESTRINGIDA: Tiene prohibido ser dueño de un arma de fuego, municiones o cargadores, o poseer, comprar, recibir, o tratar de comprar o recibir un arma de fuego, municiones o cargadores. (Código Penal, §§ 18125 y siguientes). Una violación de esta orden está sujeta a una multa de \$1000 o encarcelamiento de seis meses o ambos. (Código Penal, §§ 19 y 18205.)

Dentro de las 24 horas de recibir esta orden, tiene que entregar sus armas de fuego, municiones y cargadores a una agencia del orden público o venderlos a un comerciante de armas autorizado, o almacenarlos con el mismo hasta el vencimiento de esta orden. (Código Penal, §§ 18125 y siguientes). Se tiene que presentar a la corte una prueba de haberlos entregado, vendido, o almacenado dentro de las 48 horas de recibir esta orden. Se puede usar el formulario GV-800, *Prueba de entrega, venta o almacenamiento de armas de fuego, municiones y cargadores*, por este propósito.

Esta orden de protección de emergencia de armas de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 de la primera página. Se realizará una audiencia dentro de 21 días para determinar si es necesario emitir una orden que dure por más tiempo. Si la fecha y la hora no se indican en el punto 4 de la primera página, recibirá un aviso con la fecha y la hora de la audiencia por correo a la dirección residencial indicada en la primera página. Si desea responder a esta orden por escrito, tiene que usar el formulario GV-020, *Respuesta a la orden de protección de emergencia de armas de fuego*. Un miembro de su familia también puede solicitar al tribunal una orden de restricción más permanente.

Si contraviene esta orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o tratar de comprar o recibir un arma de fuego, municiones o cargadores por otro periodo de cinco años más, comenzando a partir del vencimiento de la orden de restricción de armas de fuego más permanente. (Código Penal, § 18205.)

Todo agente del orden público del estado de California que tenga conocimiento de la orden o a quien se le muestre una copia de la misma deberá hacer cumplir esta orden de protección. Los términos y condiciones de esta orden se podrán hacer cumplir independientemente de las acciones de las partes; solo la corte podrá cambiar esta orden.

To law enforcement: The Gun Violence Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. Ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control. A copy must be filed with the court as soon as practicable after issuance so a hearing can be set, if one was not already scheduled. If the court did not give you a hearing date when issuing the order (to put in item 4 on the front), the court will set a hearing within 21 days and will provide you with notice of the hearing. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

The provisions in this temporary Gun Violence Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.