

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SP17-03

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<b>Title</b> Criminal Procedure: Judicial Council Form Under Proposition 63	<b>Action Requested</b> Review and submit comments by May 31, 2017
<b>Proposed Rules, Forms, Standards, or Statutes</b> Approve form CR-210	<b>Proposed Effective Date</b> January 1, 2018
<b>Proposed by</b> Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	<b>Contact</b> Sarah Fleischer-Ihn, Attorney 415-865-7702 <a href="mailto:Sarah.Fleischer-Ihn@jud.ca.gov">Sarah.Fleischer-Ihn@jud.ca.gov</a>

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### Executive Summary and Origin

On November 8, 2016, the people of California voted to enact “The Safety for All Act of 2016” (“Proposition 63”). To implement relevant parts of Proposition 63, the Criminal Law Advisory Committee proposes an optional form for courts to use to make appropriate findings concerning firearms relinquishment in criminal cases under Penal Code section 29810.<sup>1</sup>

### Background

Effective January 1, 2018, courts are required to provide defendants subject to firearms and ammunition prohibitions upon conviction with a new Prohibited Persons Relinquishment Form (PPRF).<sup>2</sup> Section 29810, subdivision (a)(2) directs the California Department of Justice (DOJ) to develop the form, and subdivisions (c)(1) and (c)(2) direct county probation departments to (1) investigate through credible information whether the defendant owns any firearms, (2) receive the PPRF from the defendant, and (3) report the defendant’s compliance with relinquishment procedures to the court. Defendants subject to the relinquishment requirements must relinquish their firearms, through named designees, within five days of conviction if they are not in custody<sup>3</sup> and within 14 days of conviction if they are in custody.<sup>4</sup> Courts may either shorten or lengthen those time periods for good cause or allow an alternative method of relinquishment.<sup>5</sup>

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<sup>1</sup> All further references are to the Penal Code.

<sup>2</sup> § 29810(a)(2).

<sup>3</sup> § 29810(d).

<sup>4</sup> § 29810(e).

<sup>5</sup> § 29810(f).

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Prior to the final disposition or sentencing in the case, the court will be required to make specific findings as to (1) whether the probation officer's report indicates that the defendant has relinquished all of his or her firearms, and (2) whether the court has received a completed PPRF along with itemized receipts detailing who took possession of the relinquished firearms.<sup>6</sup> Further, if the court finds probable cause to believe that the defendant has failed to comply with the relinquishment requirements, the court must order the search for and removal of the firearms at any location the judge has probable cause to believe the defendant's firearms are located.<sup>7</sup>

## **The Proposal**

The proposal recommends that the Judicial Council approve an optional form for the court to enter its findings under section 29810.

*Findings form.* Optional *Prohibited Persons Relinquishment Form Findings (Penal Code, § 29810(c))* (form CR-210) provides the court with the ability to:

- Enter findings on whether the defendant has completed a PPRF developed by the DOJ;
- Enter findings on whether the PPRF includes receipts;
- Enter findings on whether the court finds probable cause that the defendant has failed to relinquish all firearms;
- Enter findings on whether the court finds probable cause for the search for and removal of the defendant's firearms; and
- Indicate whether a search is required, pursuant to a term or condition of probation, or whether a search warrant is required, with the matter referred to the prosecuting agency of the county for appropriate action.

## **Implementation Requirements, Costs, and Operational Impacts**

It is anticipated that the volume of potential cases requiring these procedures under section 29810 may be significant, considering that relevant offenses include all felonies and over 40 misdemeanors. The requirements of section 29810 may impose significant workload burdens on the court to process. The optional form is intended to mitigate the burden by providing courts with a form to streamline the process. Because the forms are optional, expected costs are limited to training, possible case management system updates, and the production of new forms.

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<sup>6</sup> § 29810(c)(3).

<sup>7</sup> § 29810(c)(4).

## 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 three 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. Proposed form CR-210, at page 4

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>NOT APPROVED BY JUDICIAL COUNCIL</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
<b>PROHIBITED PERSONS RELINQUISHMENT FORM FINDINGS</b> <b>(Penal Code, § 29810(c))</b>	<i>FOR COURT USE ONLY</i>  Date: Time: Department:

The defendant is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall relinquish all firearms pursuant to Penal Code section 29810.

The court finds as follows:

1. Defendant has completed a Prohibited Persons Relinquishment Form  Yes  No
2. Prohibited Persons Relinquishment Form includes relinquishment receipts  Yes  No
3. Defendant has relinquished all firearms per Probation Officer's report  Yes  No
4. The court finds probable cause that the defendant has failed to relinquish all firearms  Yes  No
  - a. Probable cause obtained from:
    - Probation Officer's report  Statements made in open court
    - Other:
5. The court finds probable cause for the search for and removal of defendant's firearms.
  - a. Type of firearm, if known:
  - b. Location and scope:
  - c. Probable cause obtained from:
    - Probation Officer's report  Statements made in open court
    - Other:
6. Search required, pursuant to a term or condition of probation  Yes  No
7. Search warrant required; matter referred to the prosecuting agency of the county for appropriate action  Yes  No

\_\_\_\_\_  
(DATE)

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(SIGNATURE OF JUDICIAL OFFICER)