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INVITATION TO COMMENT

SPR12-26

Title	Action Requested
Protective Orders: <i>Emergency Protective Order Form</i>	Review and submit comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise Form EPO-001	January 1, 2013
Proposed by	Contact
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Hon. Kimberly J. Nystrom-Geist, Cochair	
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Civil and Small Claims Advisory Committee	
Hon. Dennis M. Perluss, Chair	

Summary and Origin

The Family and Juvenile Law Advisory Committee and the Civil and Small Claims Advisory Committee recommend that the *Emergency Protective Order* (form EPO-001) be revised to highlight the firearms provisions that apply when the order is issued and to collect information whether firearms have been reported, observed, searched for, or seized in the case. In addition, the *Emergency Protective Order* would be reorganized and other changes would be made so that the form will be more effective and easier to understand. This proposal to revise the emergency protective order form was developed by the Protective Orders Working Group¹ based on suggestions from the Domestic Violence Practice and Procedure Task Force.

Background

The *Emergency Protective Order* (EPO) is used by law enforcement officers in the field in situations involving domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking. When it is appropriate to issue an emergency order, the officer contacts the court by telephone or other means to request the order. If the order is issued, the officer prepares the order using the Judicial Council EPO form adopted for this purpose. Copies of the completed form are distributed to the protected person, the restrained person, the issuing agency, and the court. The EPO form was last revised effective January 1, 2007.

¹ The working group is composed of members from several different Judicial Council advisory committees. It is chaired by Hon. Jerilyn L. Borack and Hon. Patricia M. Lucas.

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 These proposals are circulated for comment purposes only.

The Proposal

The main reason for revising the EPO form is to highlight the restrictions on firearms and ammunition in the order and to clarify whether firearms have been reported, observed, searched for, or seized in connection with an incident. Other changes are proposed to improve the clarity and understandability of the form. Although no statutory mandate exists to revise the form by a particular date, because the proposed revisions will improve public safety and increase the effectiveness of orders issued using the form, the revisions are recommended to become effective January 1, 2013.

The proposed changes to the EPO form will benefit the persons served with emergency protective orders and others by providing directly in the order that the restrained person is prohibited from owning, possessing, purchasing or receiving firearms or ammunition. Law enforcement and the courts will also benefit from having information included on the form about whether firearms were observed, reported, searched for, or seized in the case. The reorganization and revision of the form order to correspond to the content, language, and format of domestic violence restraining orders will make the form easier to use and understand.

1. Reorganization of the EPO form

The current EPO form is somewhat difficult to understand because of its layout. It would be reorganized to place the Emergency Protective Order at the top of the form instead of in the middle, between the application and the proof of service. This organization, with the title “Emergency Protective Order” at the top instead of “Application for Emergency Protective Order,” should make the main purpose of the form clearer—that is, it is a protective order.

The public, law enforcement, judicial officers, and courts are invited to comment on whether the reorganized format (order, application, and proof of service) or the current format (application, order, and proof of service) is preferable.

2. Description of Protected and Restrained Persons

At the top of the first page of the Emergency Protective Order in items 1 and 2, “PERSONS TO BE PROTECTED” would be replaced by “PROTECTED PERSONS” and “PERSON TO BE RESTRAINED” would be replaced by “RESTRAINED PERSON.” These changes are being made because the order served on the protected and restrained persons by law enforcement will already have been **granted** based on a telephone call to a judicial officer.

In the revised form, the items identifying the PROTECTED PERSONS and RESTRAINED PERSON would be located **inside** the box for the Emergency Protective Order—making the intent of the order even clearer.

3. Highlighting of firearms prohibition

In the Emergency Protective Order section of the EPO form on the front page, a new item has been added as 4.a stating:

“**YOU MUST NOT**... [o]wn, possess, purchase, receive, or attempt to purchase or receive any firearm or ammunition.”

These firearms prohibitions have been required by law for some time. Currently, a warning notice about the firearms prohibitions is included in the information on the top of the second page of the EPO form. But nothing is stated in the order on the first page regarding firearms. Placing the firearms restrictions directly in the order on page 1, instead of just in the information on the reverse side of the form, will give greater force and prominence to the firearms prohibition.

4. Other orders

The orders in item 3 have been revised so that they correspond more closely to the language, content, and format of the orders in the current domestic violence prevention forms. This uniformity should make it easier for courts and others considering the orders on the EPO form to analyze, interpret, and apply them.

5. Instructions on bringing the EPO form to court and filing in juvenile cases

A new statement has been added to item 7, which provides information on the location of the court where requests for restraining orders should be filed. It states: “If you go to court, take your copy of this form with you.” This instruction should assist the courts by encouraging persons seeking emergency protective orders to provide a copy of the completed EPO form to the judicial officer considering a request for a restraining order. In addition, a statement has been added at the end of item 7: “If a juvenile petition is pending, file in that court.” This will help ensure that requests for orders are filed in the proper court.

6. Judicial officer approval

The place for law enforcement to indicate the judicial officer’s approval has been shortened, for reasons of space, from two lines to one, without changing anything substantively. It would read as follows:

“Judicial officer (*name*): _____ granted this Order on
(*date*): _____ at (*time*): _____”

This line would be located at item 9, at the end of the Emergency Protective Order box, rather than at the end of the Application for Emergency Protective Order section, as provided in the current form.

7. Identification of firearms

An important change in the form would be to require law enforcement to provide specific information about any firearms at the scene. In the Application section of the EPO form, after the space for the text to describe the events that cause the protected person to fear immediate and present danger, a new line has been added for law enforcement to identify the presence of any firearms. (See item 10.)

“[] Firearms were: [] Observed [] Reported [] Searched for [] Seized”

8. Name of person providing information

On the current EPO form, a line at the top identifies the name of the person who provided the information in the application. This line has been deleted because of insufficient space. If this

line is reinstated, it is suggested that it be put at the beginning of the Application section as item 10 and read as follows:

“The information in items 11–13 was provided by: the protected person other (*name*):”

Comments are invited on whether this information is needed and, if so, what other text on the form might be omitted in its place.

9. Elimination of items

Because of space limitations, some text in the current EPO form needs to be eliminated. Not all of the text on the current form is required by statute; though helpful, some of it is unnecessary. (See Fam. Code, §§ 6240–6275.)

This proposal recommends retaining some of the text from the current form while eliminating other text to permit the new items described above to be added. The following text from items 5b, 6, and 7 on the current EPO form has been deleted:

From current 5b:

“ The person to be protected is a minor child in immediate danger of being abducted by the person to be restrained because of the facts alleged in item 3.”

From current item 6:

“ A child welfare worker or probation officer has advised the undersigned that a juvenile court petition has already been filed. will be filed. will NOT be filed.”²

From current item 7:

“ Adult Protective Services has been notified.”

Comments are invited on whether these items should be left off the form, reinstated, or reinstated with modifications. If reinstating an item is recommended, please explain the reasons for inclusion of the item and consider the issue of limited space, as explained under the next heading.

10. Addition or reinstatement of items and limitations of space

If any items are to be added to or reinstated on the EPO form, it is very important to explain the need for and priority of these changes. Because of the manner in which this form is used by law enforcement, the Emergency Protective Order, Application, and Proof of Service on the EPO form **must all fit on one page**. The reverse side, which contains instructions, must also be limited to **one page**. The form is completed by law enforcement officers in the field using an NCR form (that is, a form that, when manually completed, has an original and multiple copies to be distributed to the protected person, restrained persons, courts, and law enforcement). The one-page, two-sided EPO form with printed instructions on the reverse side cannot be expanded to additional pages.

² To the extent that this item was meant to ensure that the EPO form would contain information about any pending juvenile court proceedings for filing and jurisdictional purposes, this has been addressed on the revised EPO form by adding the new sentence at the end of item 7 stating: “If a juvenile petition is pending, file in that court.”

Given these strict page limitations, suggestions for additions or reinstatements of text must clearly provide not only an explanation of the reasons for including the text, but also an indication of what text might be removed from the proposed EPO form to include the new text.

11. Instructions on the reverse side

On the reverse side of the EPO form, the Penal Code section references have been changed to reflect recent renumbering of the firearms statutes.

12. Footer

In the footer on page one, the reference to the Family Code section has been changed from “§ 6200 et seq.” to “§§ 6240–6275” because this more specific reference would be more useful to users.

Alternatives Considered

In revising the *Emergency Protective Order* form, the option of retaining the existing organization and layout was considered. After discussions, the conclusion was reached that the proposed new organization and layout are an improvement; hence, the version of the form that is recommended and being circulated for public comment is the reorganized version.

As far as the content of the form is concerned, the selection of which items to add and which to remove was thoroughly discussed. As indicated above, because of space limitations, several items on the current form had to be eliminated in order to add new items. The proposed form is a revision of the existing EPO form that is designed to be used as a paper form that permits law enforcement officers to simultaneously prepare multiple copies manually and distribute them. This proposal does not change that feature of the form. However, in the future, it may be desirable to have an alternative version of the EPO form available that can be generated electronically. Comments are invited on whether such an alternative version should be developed.

Implementation Requirements, Costs, and Operational Impacts

The revised EPO form will be used by law enforcement officers in the field to prepare emergency protective orders to be used in situations involving domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking. The main responsibility for implementing the use of the EPO form will fall on law enforcement officers, who will need to contact the courts to request issuance of the orders and prepare copies of the orders for distribution. The cost of reproducing copies of the revised form will be borne by law enforcement. Both law enforcement and the courts will need information and some training on the revisions to the EPO form. The revisions to the EPO form should benefit law enforcement, the courts, and persons who are served with copies of the order. Most important, the revisions would highlight and clarify the firearms prohibitions for those subject to protective orders. The proposed revisions would also ensure that law enforcement and the issuing judicial officer will know if firearms were observed, reported, searched for, or seized in the case.

Request for Specific Comments

In addition to any general comments on the EPO form, comments are invited on the following specific issues:

- Does the proposal to revise the EPO form appropriately address the stated purposes?
- Do you prefer the reorganized EPO form with the Emergency Protective Order at the top of page one to the current format? Besides the proposed changes, would you suggest any other changes in the organization or layout of the EPO form?
- On the revised EPO form, should any specific items be added to or reinstated from the current EPO form, including items 5b, 6, and 7. If so, please explain the reasons for including the items and indicate what text on the revised EPO form should be removed in order to provide space for this additional text.
- Should an electronic version of this EPO form be developed?
- Will the revisions in the EPO form result in cost savings?
- What costs and implementation requirements will be incurred by the courts and law enforcement as a result of this proposal to revise the EPO form? Provide specific information, if possible.
- Would two months from Judicial Council approval of this proposal to revise the EPO form until its effective date provide sufficient time for implementation?

EMERGENCY PROTECTIVE ORDER *(See reverse for important notices.)*

1. PROTECTED PERSONS *(insert names of all persons protected by this Order):*

2. RESTRAINED PERSON *(name):* _____
Sex: M F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

3. TO THE RESTRAINED PERSON:
a. **YOU MUST NOT** harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy any personal property of, disturb the peace of, keep under surveillance, or block the movements of each person named in item 1.
b. **YOU MUST NOT** contact, either directly or indirectly, by any means, including but not limited to by telephone, mail, e-mail or other electronic means, any person named in item 1.
c. **YOU MUST** stay away at least: _____ yards from each person named in item 1.
 stay away at least: _____ yards from move out immediately from
(address): _____

4. If any order in item 3 above is granted (checked), **YOU MUST NOT:**
a. Own, possess, purchase, receive, or attempt to purchase or receive any firearm or ammunition.
b. Take any action, directly or through others, to obtain the addresses or locations of any person named in item 1.

5. *(Name):* _____ is given temporary care and control of the following minor children of the parties *(names and ages):* _____

6. **THIS EMERGENCY PROTECTIVE ORDER WILL EXPIRE AT 5:00 P.M. ON:** _____

7. **TO THE PROTECTED PERSON:** If you need protection for a longer period of time, you must request restraining orders at *(court name and address):* _____

INSERT DATE OF FIFTH COURT DAY OR SEVENTH CALENDAR DAY, WHICHEVER IS EARLIER; DO NOT COUNT DAY THE ORDER IS GRANTED

If you go to court to request restraining orders, take your copy of this form with you. If a juvenile petition is pending, file in that court.

8. Reasonable grounds for the issuance of this Order exist, and an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking.

9. Judicial officer *(name):* _____ granted this Order on *(date):* _____ at *(time):* _____

APPLICATION

10. The events that caused the protected person to fear immediate and present danger of domestic violence, child abuse, child abduction, elder or dependent adult abuse (except solely financial abuse), or stalking are *(give facts and dates; specify weapons):*

Firearms were: Observed Reported Searched for Seized

11. The person to be protected lives with the person to be restrained and requests an order that the restrained person move out immediately from the address in item 3.

12. The person to be protected has minor children in common with the person to be restrained, and a temporary custody order is requested because of the facts alleged in item 10. A custody order does does not exist.

By: _____
(PRINT NAME OF LAW ENFORCEMENT OFFICER) ▶ _____
(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No.: _____ Badge No.: _____

PROOF OF SERVICE

13. Person served *(name):* _____

14. I personally delivered copies of this Order to the person served as follows: Date: _____ Time: _____
Address: _____

15. At the time of service, I was at least 18 years of age and not a party to this cause. I am a California sheriff or marshal.

16. My name, address, and telephone number are *(this does not have to be server's home telephone number or address):*

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

Date: _____

(TYPE OR PRINT NAME OF SERVER) ▶ _____
(SIGNATURE OF SERVER)

**EMERGENCY PROTECTIVE ORDER
WARNINGS AND INFORMATION**

EPO-001

VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR MAY BE PUNISHABLE AS A FELONY. PERSONS SUBJECT TO A RESTRAINING ORDER ARE PROHIBITED FROM OWNING, POSSESSING, PURCHASING, RECEIVING, OR ATTEMPTING TO PURCHASE OR RECEIVE A FIREARM OR AMMUNITION (PENAL CODE SECTIONS 29825(a), 30305(a)). SUCH CONDUCT IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA WHO ARE AWARE OF OR SHOWN A COPY OF THE ORDER. UNDER PENAL CODE SECTION 13710(b), "THE TERMS AND CONDITIONS OF THE PROTECTION ORDER REMAIN ENFORCEABLE, NOTWITHSTANDING THE ACTS OF THE PARTIES, AND MAY BE CHANGED ONLY BY ORDER OF THE COURT."

To the restrained person: This order will last until the date and time in item 6 on the reverse. The protected person may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in responding to the order.

A la persona bajo restricción judicial: Esta orden durará hasta la fecha y hora indicada en el punto 6 al dorso. La persona protegida puede, sin embargo, obtener una orden de entredicho (restricción judicial) más permanente de la corte. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta orden. Debe consultar al abogado inmediatamente para que él o ella le pueda ayudar a responder a la orden.

To the protected person: This order will last only until the date and time noted in item 6 on the reverse. If you wish to seek continuing protection, you will have to apply for an order from the court at the address in item 7, or you should apply to the court in the county where you live, if it is a different county and the violence is likely to occur there. You may apply for a protective order free of charge. In the case of an endangered child, you may also apply for a more permanent order at the address in item 7, or if there is a juvenile dependency action pending, you may apply for a more permanent order under section 213.5 of the Welfare and Institutions Code. In the case of a child being abducted, you may apply for a *Child Custody and Visitation Order* from the court at the address in item 7. You may seek the advice of an attorney on any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application. You do not have to have an attorney to get the protective order.

A la persona protegida: Esta orden durará sólo hasta la fecha y hora indicada en el punto 6 al dorso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada en el punto 7, o tendrá que hacer la solicitud ante la corte del condado donde usted vive, si se trata de un condado diferente y es probable que la violencia ocurra allí. La solicitud de la orden de protección es gratis. En el caso de que un niño o una niña se encuentre en peligro, puede solicitar una orden más permanente en la dirección indicada en el punto 7, o si hay una acción legal pendiente de tutela juvenil, puede solicitar una orden más permanente conforme a la sección 213.5 del código titulado en inglés **Welfare and Institutions Code**. En el caso del secuestro de un niño o una niña, usted puede solicitar de la corte una orden para la guarda del niño o de la niña (*Child Custody and Visitation Order*), en la dirección indicada en el punto 7 de este formulario. Puede consultar a un abogado en conexión con cualquier asunto relacionado con las solicitudes de órdenes de la corte que usted presente en el futuro. Debe consultar un abogado inmediatamente para que él o ella le pueda ayudar a presentar su solicitud. Para obtener la orden de protección no es necesario que un abogado le represente.

To law enforcement: Penal Code section 13710(c) provides that, "[u]pon request, law enforcement shall serve the party to be restrained at the scene of a domestic violence incident or at any time the restrained party is in custody." The officer who requested the emergency protective order, while on duty, shall carry copies of the order. The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance. The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse. A law enforcement officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A law enforcement officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

If a child is in danger of being abducted: This order will last only until the date and time noted in item 7 on the reverse. You may apply for a child custody order from the court.

En el caso de peligro de secuestro de un niño o de una niña: Esta orden será válida sólo hasta la hora y fecha indicada en el punto 7 al dorso. Usted puede solicitar de la corte una orden para la guarda del niño o de la niña (*Child Custody and Visitation Order*).

This emergency protective order is effective when made. This order shall expire on the date and time specified in item 12 on the reverse. The provisions of this emergency protective order take precedence in enforcement over provisions of other existing protective orders between the same protected and restrained persons to the extent the provisions of this order are more restrictive. In other words, the provisions in this emergency protective order take precedence over the provisions in any other protective order, including a criminal protective order, if (1) the person to be protected is already protected by the other protective order, (2) the person to be restrained is subject to that other order, and (3) the provisions in this emergency order are more restrictive than the provisions in that other order. The provisions in another existing protective order remain in effect and take precedence if they are more restrictive than the provisions in this emergency protective order.
